

File No.9-ITPO (1)/EI/2020
India Trade Promotion Organisation
(Administration Division, EI Section)

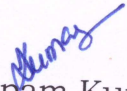
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Circular No. Admin. / 50 / 2022

Sub: Updated Manuals for Procurement of Goods, Services and Works – reg.

All concerned are advised to take note and comply with the instructions issued vide DPE's letter no. 7(4)/2017-Fin dated 10.08.2022 and D/o Expenditure's OM no. F.1/1/2021-PPD dated 04.08.2022 on the above mentioned subject forwarding therewith copies of the following three updated Procurement Manuals.

- a) Manual for Procurement of Goods
- b) Manual for Procurement of Works
- c) Manual for Procurement of Consultancy and Other Services


(Col. Pushpam Kumar, SM)
Officer on Special Duty (Admin)

To:

All HoDs

Copy to:

1. Centralised Procurement Cell
2. Regional Offices (Kolkata, Mumbai, Chennai)
3. IT Services Division: to upload on ITPO website
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MANUAL FOR PROCUREMENT OF CONSULTANCY & OTHER SERVICES

(Updated June, 2022)



**Government of India
Ministry of Finance
Department of Expenditure**

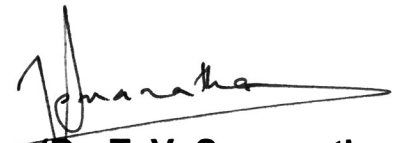
Manual for Procurement of Consultancy & Other Services

(Updated June, 2022)

Government of India
Ministry of Finance
Department of Expenditure

FOREWORD

1. The Manual for Procurement of Consultancy & Other Services was comprehensively revised and issued in 2017. The manual, over a period of time, has become a standard reference document for officials involved in Public Procurement across all Ministries/ Departments/ Attached and Sub-ordinate bodies/ Central Public Sector Enterprises, etc. The Manual is also a resource material for institutes providing training on Public Procurement.
2. Public Procurement is a dynamic field where policies are constantly reviewed to help Government achieve its socio-economic or strategic goals. Hence, there is a need to keep reference documents, like manuals, updated to ensure their continued relevance.
3. Instructions on procurement issued by Department of Expenditure from time to time, since issuance of the last Manual, have been incorporated in the current edition. **Further, all procurement related instructions issued by Central Vigilance Commission have been subsumed into the Manual, in collaboration with the Commission.**
4. I would like to acknowledge the hard work of the concerned officers not only in this Department but in other Organisations, Ministries and Departments; the role of Shri Vikram Rajvanshi, Consultant (Public Procurement) is also specifically acknowledged.
5. I hope that this updated Manual will help procuring officials working in various Ministries/ Departments and Public Enterprises as a guiding template, deepen the impact of policy initiatives and improve the ease of doing business with the Government.



(Dr. T. V. Somanathan)
Finance Secretary

Date: 1st July, 2022

FOREWORD

1. Government organizations procure a wide variety of goods and services and undertake execution of works in pursuance of their duties and responsibilities. With a view to improving transparency in decision making in public procurement and reducing the scope for subjectivity, Department of Expenditure in 2006 had prepared a set of three Manuals on Policies and Procedures for Procurement of Goods, Works and hiring of Consultants, in conformity with the General Financial Rules (GFR), 2005. Over the years, these Manuals have served as a guide book for procurement.
2. In the last few years, the Government of India has issued new instructions in the domain of public procurement. Some of these important changes include introduction of Central Public Procurement Portal (CPPP), Government e-Marketplace (GeM), preferential market access for micro and small enterprises, inclusion of integrity pact, etc. The GFR has been revised comprehensively in March 2017 covering inter-alia these set of new instructions. Consequently the Manual of Procurement too has been revised after a decade and within a month of the release of GFR 2017.
3. The new Manual on Procurement of Consultancy & other Services has been extensively revised in keeping with GFR 2017 and in consonance with the fundamental principles of transparency, fairness, competition, economy, efficiency and accountability. Efforts have been made to cover all major aspects of procurement in this Manual in a user-friendly manner. The manual is the outcome of extensive consultations in two stages with Ministries/Departments/PSUs and other organizations over a period of six months.
4. Manuals issued by this Department are to be taken as generic guidelines, which have to be necessarily broad in nature. Ministries/Departments are advised to supplement this manual to suit their local/specialized needs, by issuing their own detailed manuals (including customized formats); Standard Bidding Documents and Schedule of Procurement Powers to serve as detailed instructions for their own procuring officers.
5. I would like to acknowledge the lead taken by Dr. Vivek Joshi, Joint Secretary, DoE and dedicated efforts of Shri Sanjay Aggarwal, Director (PPD), Shri Vinayak T. Likhari, Under Secretary (PPD) and Shri Girish Bhatnagar, Consultant (Public Procurement) in revision of this Manual. I would also like to thank Ministries, Departments, other organisations and individuals who reviewed the drafts of the Manual and provided their valuable inputs.
6. I hope that this Manual would be useful to procuring officials working in various Ministries/Departments as operating instructions and will bring about greater transparency and predictability in Government procedures and help in improving the ease of doing Business with Government.


(Ashok Lavasa)
Finance Secretary

Date : 18.04.2017

Disclaimer

While every care has been taken to ensure that the contents of this Manual are accurate and up to date till June 2022, the procuring entities are advised to check the precise current provisions of extant law and other applicable instructions from the original sources. In case of any conflict between the provisions stipulated in this Manual and in the original source such as GFR or the prevailing laws, the provisions contained in the extant law and the original instructions shall prevail.

Table of Contents

FOREWORD	iii
Disclaimer	v
Abbreviations and Acronyms	xiii
Procurement Glossary	xv
Chapter 1: Introduction to Procurement of Consultancy/ Other Services.....	1
1.1 Procurement Rules and Regulations; and this Manual	1
1.2 Clarification, Amendments and Revision of this Manual	2
1.3 Applicability of this Manual.....	2
1.4 Authorities competent to procure Consultancy and other services and their Purchase Powers.....	4
1.5 Basic Aims of Procurement – Five R’s of Procurement	4
1.6 Principles of Public Procurement	5
1.7 Standards (Canons) of Financial Propriety	5
1.8 Public Procurement Infrastructure at the Centre.....	6
1.9 Preferential/Mandatory Purchase from certain sources.....	6
1.10 When is Procurement of Services justified	16
1.11 Principles for Public Procurement of Services.....	17
1.12 The Law of Agency – applicable to Procurement of Consultancy and other Services 17	
1.13 Proactive Information Disclosures	18
1.14 Public Procurement Cycle	18
1.15 Procurement Proposal (Concept Paper) for Consultancy and other services.....	19
Chapter 2: Consultants, service providers and Governance Issues	21
2.1 Types of consultants/ service providers	21
2.2 Code of Integrity for Public Procurement (CIPP)	22
2.3 Integrity Pact (IP)	27
2.4 Debarment of Suppliers/ contractors/ consultants/ service providers	29
Chapter 3: Types of Contracts and Systems of Selection of consultants/ service providers	34
3.1 Types of Contracts	34
3.2 Lump Sum (Firm Fixed Price) Contract.....	34
3.3 Time-Based (Retainer-ship) Contract	35
3.4 Percentage (Success/ contingency Fee) Contract.....	36
3.5 Retainer and Success (Contingency) Fee Contract.....	37
3.6 Indefinite Delivery Contract (Price Agreement).....	37
3.7 Systems of Selection of service providers	38
3.8 Price based System - Least Cost Selection (LCS).....	40
3.9 Quality and Cost Based Selection (QCBS).....	41
3.10 Direct Selection: Single Source Selection (SSS).....	43
3.11 Fixed Budget – based Selection (FBS) for consultancy services :	44
Chapter 4: Preparing for Procurement of Consultancy Services.....	45
4.1 Preparation of Terms of Reference (ToR).....	45
4.2 Estimating Costs, Setting the Budget, and Seeking Approval	47

4.3	Finalizing and Approval of the ToR.....	48
4.4	Developing a Procurement Plan	49
4.5	e-Procurement	49
Chapter 5:	Shortlisting Stage in Procurement of Consultancy Services	50
5.1	Shortlisting of qualified consultants – Expression of Interest (EoI)	50
5.2	Short List of consultants.....	55
5.3	Shortlisting – Risks and Mitigation	57
Chapter 6:	Selection of consultants by Competitive Process.....	58
6.1	The evaluation process	58
6.2	Preparation and Issuance of the Request for Proposals (RfP)	58
6.3	Pre-proposal Meeting.....	67
6.4	Receipt of Proposal.....	67
6.5	Consultancy Evaluation Committee (CEC)	67
6.6	First Stage of Evaluation: Consideration of Responsiveness	71
6.7	Evaluation of the Quality – Technical Proposals.....	71
6.8	Evaluation of Cost.....	73
6.9	Selection of the winning consultant.....	74
6.10	Negotiations and Award of Contract.....	77
6.11	Rejection of All Proposals, and Re-invitation.....	77
6.12	Confidentiality	77
6.13	RfP, Evaluation and Award Stage – Risks and Mitigation	78
Chapter 7:	Special Types of Engagements.....	79
7.1	Single Source Selection (SSS)	79
7.2	Selection of Individual consultants/ service providers.....	79
7.3	Selection of Specialized Agencies/ Institutions	80
7.4	Selection of Nongovernmental Organizations (NGO)	81
7.5	Procurement Agents	81
7.6	Inspection Agents.....	81
7.7	Financial Advisors	82
7.8	Auditors	82
7.9	Public competition for Design of symbols/logos.....	83
Chapter 8:	Monitoring Consultancy/ Other services Contract	84
8.1	Monitoring of the Contract.....	84
8.2	Contract Monitoring Committee – (CMC).....	84
8.3	Issuing Notice to Proceed - consultant/ service provider’s Mobilisation.....	85
8.4	Consultancy Services - Review of Inception Phase:.....	85
8.5	Reporting of Progress	85
8.6	Monitoring a Time-based Contract.....	86
8.7	Monitoring a Lump-sum Contract.....	86
8.8	Unsatisfactory Performance.....	86
8.9	Delays	86
8.10	Issuing Contract Variations.....	87
8.11	Substitution of Named Key Personnel.....	87
8.12	Billing and Payments	88
8.13	Disputes and Conflicts.....	88
8.14	Force Majeure	90

8.15	Terminating Services Prior to End of Contract	91
8.16	Concluding the Assignment.....	91
8.17	Monitoring of Consultancy Contracts – Risks and Mitigation	92
Chapter 9: Procurement (Outsourcing) of Other (Non-consultancy) services		93
9.1	Applicability of this Chapter to Procurement (Outsourcing) of Other (Non-consultancy) Services	93
9.2	Authorities competent to procure Consultancy and other services and their Purchase Powers.....	94
9.3	When is Procurement/ Outsourcing of Other (Non-consultancy) Services justified	94
9.4	Principles for Public Procurement of other (non-consultancy) services:.....	94
9.5	Types of Contracts in Other (Non-consultancy) Services	95
9.6	System of Selection in Other (Non-consultancy) Services.....	96
9.7	One Stop Government e-Marketplace (GeM)	96
9.8	Procurement Proposal (Concept Paper) for other (non-consultancy) Services	109
9.9	Obtaining Final Administrative and Budgetary Approvals	109
9.10	Procedure for Single Source Selection (SSS).....	111
9.11	Procedure for Small Value and emergency Procurements of Other (Non-consultancy) Services	111
9.12	Procedure for Procurements below Rs 10 (Rupees Ten) Lakhs	112
9.13	Procedure for higher Value of Procurements	112
9.14	Preparation of the Request for Proposals (RfP)	112
9.15	Important Provisions of ITB	113
9.16	Standard Formats for Technical and Financial Proposals.....	118
9.17	Receipt of Bids, Evaluation and Award of Contract.....	118
9.18	Service Level Agreement (SLA)	122
9.19	Monitoring the Contract	123
Annexures		124
Annexure 1: Procurement Guidelines.....		125
Annexure 2A: Delegation of Financial Powers – Indents, Contracts and Purchases for public service		126
Annexure 2B: Suggested Structure of Schedule of Procurement Powers (SoPP).....		127
Annexure 2C: Model Clause/ Certificate to be inserted in tenders etc. w.r.t Order (Public Procurement No.1)		130
Annexure 2D: Format for seeking the approval of the Competent Authority for inviting Global Tender Enquiry for procurements less than Rs. 200 crores		133
Annexure 2E: List of Medical Devices and IVDs, where local manufacturers are not available, as on 17.12.2021 (as verified with the Medical Devices Manufacturing Associations)		135
Annexure 2F: Example of Formula for Price Variation Clause		138
Annexure 3: Format of Procurement Proposal		140
Annexure 4: Terms of Reference (ToR) Format.....		142
Annexure 5: Bid Opening Attendance Sheet cum Report		143
Annexure 6: CEC Committee Minutes Format for Consultancy Services		144
Annexure 6A:	Format for evaluation of Responsiveness	147
Annexure 6B:	Format for Simplified evaluation of quality (LCS/ EoI)	148
Annexure 6C:	Format for Detailed Technical evaluation - Summary Sheet	149
Annexure 6D:	Evaluation of Consultancy Firm’s Experience	150
Annexure 6E:	Evaluation of Methodology & Work Schedule.....	151

Annexure 6F	Evaluation of the Key Professionals	152
Annexure 7:	Activity and Other Schedule for Other (Non-consultancy) Services	153
Annexure 8:	Certificate for Procurement of other services without Quotation.....	154
Annexure 9:	Purchase Committee Certificate for Procurement of other services	155
Annexure 10:	Tender Committee Minutes Format for Other (Non-consultancy) Services ..	156
Appendix.....		158
Appendix 1:	Basic Aims and Fundamental Principles of Public Procurement.....	159
1.1	Basic Aims of Procurement – the Five Rs of Procurement.....	159
1.2	Refined Concepts of Cost and Value – Value for Money.....	160
1.3	Fundamental Principles of Public Procurement	162
Appendix– 2:	Legal Aspects of Public Procurement.....	172
1.0	Relevant Provisions of the Constitution of India.....	172
2.0	Salient Features of the Indian Contract Act	173
3.0	Salient Features of the Indian Arbitration & Conciliation Act 1996	179
4.0	Salient Features of Competition Act, 2002 relating to Anti-competitive Practices	183
5.0	Salient Features of the Whistle Blowers Protection Act, 2011 and the Whistle Blowers Protection (Amendment) Act, 2015.....	186
Appendix 3:	Electronic Procurement (e-Procurement).....	189
1.0	Electronic procurement (e-procurement)	189
2.0	Service Provider.....	189
	A service provider is engaged to provide an e-procurement system.....	189
3.0	The e-Procurement Process	189

Abbreviations and Acronyms

AAEC	Appreciable Adverse Effect on Competition	EPF	Employee Provident Fund
BC (selling)	Bill for Collection Selling (Foreign Exchange) Rate	ESI	Employee State Insurance
BDS	Bid Data Sheet	FA (&CAO)	Financial Adviser (and Chief Accounts Officer)
C&AG	Comptroller and Auditor General (of India)	FEMA	Foreign Exchange Management Act
C (F) A	Competent (Financial) Authority	FM	Force Majeure
CAPEX	Capital Expenditure (model of acquisition/ procurement)	FTP	Full Technical Proposal
CBI	Central Bureau of Investigation	GCC	General Conditions of Contract
CCI	Competition Commission of India	GeM	Government Electronic Market
CEC	Consultancy Evaluation Committee	GeMAR&PTS	GeM Availability Report and Past Transaction Summary
CIPP	Code of Integrity for Public Procurement	GFR	General and Financial Rules, 2017
CMC	Contract Management Committee	Gol	Government of India
CPO	Central Purchasing Organizations	GTE	Global Tender Enquiry
CPPP	Central Public Procurement Portal	HOD	Head of the Department
CRAC	Consignee Receipt and Acceptance Certificate	HUF	Hindu Undivided Family
CV	Curriculum Vitae	ICT	Information & Communications Technology
CVC	Central Vigilance Commission	IEM	Independent External Monitor
CVO	Chief Vigilance Officer	IP	Integrity Pact
DFPR	Delegation of Financial Power	ISO	International Organization for Standardization
DG	Director General	IT	Information Technology
DGS&D	Directorate General of Supplies and Disposals	ITB	Instructions to Bidders (may in some instance be called Instructions to Tenderers - ITT)
DPIIT	Department for Promotion of Industry and Internal Trade	ITC	Instructions to consultants
DSC	Digital Signature Certificate	JV	Joint Venture (Consortium)
EC	Evaluated Cost	L-1	Lowest Bidder
ECS	Electronic Clearing System	LCC	Life Cycle Costing
EMD	Earnest Money Deposit	LCS	Least Cost System
Eoi	Expression of Interest (Tender)	LD	Liquidated Damages
		LEC	Lowest Evaluated Cost

Abbreviations

Lol	Letter of Invitation	TC	Tender Committee also called Tender Purchase or Evaluation Committee (TPC/ TEC)
LTE	Limited Tender Enquiry	TCO	Total Cost of Ownership
MSME (Ministry of)	Micro Small and Medium Enterprises	ToR	Terms of Reference
MSMED	Micro, Small and Medium Enterprises Development Act, 2006	UAM	Udyam Aadhaar Memorandum
NGO	Non Government Organisation	URC	Udyan Registration Certificate
NIC	National Informatics Centre	VfM	(Best) Value for Money
NIT	Notice Inviting Tender	WOL	Whole of Life (Cost) or Total Cost of Ownership TCO
OPEX	Operating Expense (model of acquisition/ procurement)		
PA	Procurement Agent(s)		
PAN	Personal Account Number		
PPD	Procurement Policy Division		
PPP-MII	Public Procurement (Preference to Make in India), Order		
PQB	Prequalification Bidding		
PSARA	Private Security Agencies Regulation Act, 2005		
(C)PSU/ PSE	(Central) Public Sector Undertaking/ Enterprise		
QCBS	Quality and Cost Based Selection		
(S)RfP	(Standard) Request for Proposals (Document)		
REoi	Request for Expression of Interest		
RTI	Right to Information (Act)		
SBD	Standard Bidding Document		
SCC	Special Conditions of Contract		
SHG	Self Help Group		
SLA	Service Level Agreement		
SoPP	Schedule of Procurement Powers		
SoR	Schedule of Rates		
SSS/ STE	Single Source Selection/ Single Tender Enquiry		
STP	Simplified Technical proposal		

Procurement Glossary

In this Manual and in the 'Procurement Guidelines', unless the context otherwise requires¹:

- i) "Bid" (including the term 'tender', 'offer', 'quotation' or 'proposal' in certain contexts) means an offer to supply goods, services or execution of works made in accordance with the terms and conditions set out in a document inviting such offers;
- ii) "Bidder" (including the term 'tenderer', 'consultant' or 'service provider' in certain contexts) means any eligible person or firm or company, including a consortium (that is an association of several persons, or firms or companies), participating in a procurement process with a Procuring Entity;
- iii) "(Standard) Bid(ding) documents" (including the term 'tender (enquiry) documents' or 'Request for Proposal Documents' – RfP documents in certain contexts) means a document issued by the Procuring Entity, including any amendment thereto, that sets out the terms and conditions of the given procurement and includes the invitation to bid. A Standard (Model) Bidding Document is the standardised template to be used for preparing Bidding Documents after making suitable changes for specific procurement;
- iv) "Bidder registration document" means a document issued by a Procuring Entity, including any amendment thereto, that sets out the terms and conditions of registration proceedings and includes the invitation to register;
- v) "Bid security" (including the term 'Earnest Money Deposit'(EMD), in certain contexts) means a security from a bidder securing obligations resulting from a prospective contract award with the intention to avoid: the withdrawal or modification of an offer within the validity of the bid, after the deadline for submission of such documents; failure to sign the contract or failure to provide the required security for the performance of the contract after an offer has been accepted; or failure to comply with any other condition precedent to signing the contract specified in the solicitation documents.;
- vi) "Central Public sector enterprise" means a body incorporated under the Companies Act or established under any other Act and in which the Central Government or a Central enterprise owns more than 50 (fifty) per cent of the issued share capital;
- vii) "Central Purchase Organisation" means a Procuring Entity which is authorised by the Government of India by an order, made in this behalf, to make procurement for one or more procuring entities;
- viii) "Class-I local supplier" means a supplier or service provider, whose goods, services or works offered for procurement, meets the minimum local content as prescribed for 'Class-I local supplier' under the Public Procurement (Preference to Make in India), Order 2017²;

¹ The main preferred term is within the inverted commas. Alternative equivalent terms used in certain contexts, if any, are listed in the brackets. Text within brackets is not considered for sort-order of terms.

² Notified vide Order No. P-45021/2/2017-PP (BE-II) issued by Department of Promotion of Industry and Internal Trade dated 16.09.2020

- ix) "Class-II local supplier" means a supplier or service provider, whose goods, services or works offered for procurement, meets the minimum local content as prescribed for 'Class-II local supplier' but less than that prescribed for 'Class-I local supplier' under the Public Procurement (Preference to Make in India), Order 2017³;
- x) "Competent authority" means the officer(s) who finally approves the decision.
- xi) "Consultancy services" covers a range of services that are of an advisory or professional nature and are provided by consultants. These Services typically involve providing expert or strategic advice e.g., management consultants, policy consultants or communications consultants. Advisory and project related Consultancy Services which include, for example: feasibility studies, project management, engineering services, Architectural Services, finance accounting and taxation services, training and development. It may include small works or supply of goods or other services which are incidental or consequential to such services;
- xii) "e-Procurement" means the use of information and communication technology (specially the internet) by the Procuring Entity in conducting its procurement processes with bidders for the acquisition of goods (supplies), works and services with the aim of open, non-discriminatory and efficient procurement through transparent procedures;
- xiii) "Goods" includes all articles, material, commodity, livestock, medicines, furniture, fixtures, raw material, consumables, spare parts, instruments, machinery, equipment, industrial plant, vehicles, aircrafts, ships, railway rolling stock assemblies, sub-assemblies, accessories, a group of machines comprising an integrated production process or such other categories of goods or intangible, products like technology transfer, licenses, patents or other intellectual properties (but excludes books, publications, periodicals, etc., for a library), procured or otherwise acquired by a Procuring Entity. Procurement of goods may include certain small work or some services, which are incidental or consequential to the supply of such goods, such as transportation, insurance, installation, commissioning, training and maintenance;
- xiv) "Indenter" (or the term 'User (Department)' in certain contexts) means the entity and its officials initiating a procurement indent, that is, a request to the Procuring Entity to procure goods, works or services specified therein;
- xv) "Inventory" means any material, component or product that is held for use at a later time;
- xvi) "Invitation to (pre-)qualify" means a document including any amendment thereto published by the Procuring Entity inviting offers for pre-qualification from prospective bidders;
- xvii) "Invitation to register" means a document including any amendment thereto published by the Procuring Entity inviting offers for bidder registration from prospective bidders;

³ Notified vide Order No. P-45021/2/2017-PP (BE-II) issued by Department of Promotion of Industry and Internal Trade dated 16.09.2020

- xviii) "Local Content" means the amount of value added in India which shall, unless otherwise prescribed by the Nodal Ministry, be the total value of the item procured (excluding net domestic indirect taxes) minus the value of imported content in the item (including all customs duties) as a proportion of the total value, in percent.
- xix) "Non-Local supplier" means a supplier or service provider, whose goods, services or works offered for procurement, has local content less than that prescribed for 'Class-II local supplier' under the Public Procurement (Preference to Make in India), Order 2017⁴;
- xx) "Non-Local supplier" means a supplier or service provider, whose goods, services or works offered for procurement, has local content less than that prescribed for 'Class-II local supplier' under the Public Procurement (Preference to Make in India), Order 2017⁵;
- xxi) "Notice inviting tenders" (including the term 'Invitation to bid' or 'request for proposals' in certain contexts) means a document and any amendment thereto published or notified by the Procuring Entity, which informs the potential bidders that it intends to procure goods, services and/or works.;
- xxii) "Other services" (including the term 'Non-consultancy services' in certain contexts) are defined by exclusion as services that cannot be classified as Consultancy Services. Other services involve routine repetitive physical or procedural non-intellectual outcomes for which quantum and performance standards can be tangibly identified and consistently applied and are bid and contracted on such basis. It may include small works, supply of goods or consultancy service, which are incidental or consequential to such services. Other services may include transport services; logistics; clearing and Forwarding; courier services; upkeep and maintenance of office/ buildings/ Estates (other than Civil & Electrical Works etc.); drilling, aerial photography, satellite imagery, mapping and similar operations etc;
- xxiii) "Outsourcing of Services" means deployment of outside agencies on a sustained long-term (for one year or more) for performance of other services which were traditionally being done in-house by the employees of Ministries/ departments (e.g. Security Services, Horticultural Services, Janitor/ Cooking/ Catering/ Management Services for Hostels and Guest Houses, Cleaning/ Housekeeping Services, .Errand/ Messenger Services, and so forth). Besides outsourcing, other services also include procurement of short-term stand-alone services.
- xxiv) "Pre-qualification (bidding) procedure" means the procedure set out to identify, prior to inviting bids, the bidders that are qualified to participate in the procurement;
- xxv) "Pre-qualification document" means the document including any amendment thereto issued by a Procuring Entity, which sets out the terms and conditions of the pre- qualification bidding and includes the invitation to pre-qualify;

⁴ Notified vide Order No. P-45021/2/2017-PP (BE-II) issued by Department of Promotion of Industry and Internal Trade dated 16.09.2020

⁵ Notified vide Order No. P-45021/2/2017-PP (BE-II) issued by Department of Promotion of Industry and Internal Trade dated 16.09.2020

- xxvi) "Procurement" or "public procurement" (or 'Purchase', or 'Government Procurement/ Purchase' in certain contexts) means acquisition by way of purchase, lease, license or otherwise, either using public funds or any other source of funds (e.g. grant, loans, gifts, private investment etc.) of goods, works or services or any combination thereof, including award of Public Private Partnership projects, by a Procuring Entity, whether directly or through an agency with which a contract for procurement services is entered into, but does not include any acquisition of goods, works or services without consideration, and the term "procure" or "procured" shall be construed accordingly;
- xxvii) "Procurement contract" (including the terms 'Purchase Order' or 'Supply Order' or 'Withdrawal Order' or 'Work Order' or 'Consultancy Contract' or 'Contract for other services' under certain contexts), means a formal legal agreement in writing relating to the subject matter of procurement, entered into between the Procuring Entity and the supplier, service provider or contractor on mutually acceptable terms and conditions and which are in compliance with all the relevant provisions of the laws of the country. The term "contract" will also include "rate contract" and "framework contract";
- xxviii) "(Public) Procurement Guidelines" means guidelines applicable to Public Procurement, consisting of under relevant context a set of – i) Statutory Provisions (The Constitution of India; Indian Contract Act, 1872; Sales of Goods Act, 1930; and other laws as relevant to the context); ii) Rules & Regulations (General Financial Rules, 2017; Delegation of Financial Power Rules and any other regulation so declared by the Government); iii) Manuals of Policies and Procedures for Procurement (of Goods; Works; Consultancy/ other services or any for other category) promulgated by the Ministry of Finance and iv) Procuring Entity's Documents relevant to the context (Codes, Manuals and Standard/ Model Bidding Documents);
- xxix) "Procurement process" means the process of procurement extending from the assessment of need; issue of invitation to pre-qualify or to register or to bid, as the case may be; the award of the procurement contract; execution of contract till closure of the contract;
- xxx) "Procuring authority" means any Ministry or Department of the Central Government or a unit thereof or its attached or subordinate office to which powers of procurement have been delegated;
- xxxi) "Procuring Entity" (including the term Procuring Entity and including Associated/ integrated Finance, technical departments, besides any other) means all the entities involved in one way or another, in various stages of the process, starting from need assessment to the closure of contract;
- xxxii) "Prospective bidder" means anyone likely or desirous to be a bidder;
- xxxiii) "Public Private Partnership" means an arrangement between the central, a statutory entity or any other government-owned entity, on one side, and a private sector entity, on the other, for the provision of public assets or public services or both, or a combination thereof, through investments being made or management being undertaken by the private sector entity, for a specified period of time, where there is predefined allocation of risk between the private sector and the public entity and the private entity receives performance-linked payments that conform

- (or are benchmarked) to specified and predetermined performance standards, deliverables or Service Level agreements measurable by the public entity or its representative;
- xxxiv) "Rate contract " (or the term 'framework agreement' in certain contexts) means an agreement between a Central Purchase Organisation or Procuring Entity with one or more bidders, valid for a specified period of time, which sets out terms and conditions under which specific procurements can be made during the term of the agreement and may include an agreement on prices which may be either predetermined or be determined at the stage of actual procurement through competition or a predefined process allowing their revision without further competition;
- xxxv) "Registering authority" means an authority which registers bidders for different categories of procurement.
- xxxvi) "Registered Supplier" means any supplier who is on a list of registered suppliers of the Procuring Entity or a Central Purchase Organisation;
- xxxvii) "Reverse auction" (or the term 'Electronic reverse auction' in certain contexts) means an online real-time purchasing technique utilised by the Procuring Entity to select the successful bid, which involves presentation by bidders of successively more favourable bids during a scheduled period of time and automatic evaluation of bids;
- xxxviii) "service" is defined by exception as any subject matter of procurement other than goods or works, except those incidental or consequential to the service, and includes physical, maintenance, professional, intellectual, training, consultancy and advisory services or any other service classified or declared as such by a Procuring Entity but does not include appointment of an individual made under any law, rules, regulations or order issued in this behalf. It includes 'Consultancy Services' and 'Other (Non-consultancy) Services';
- xxxix) "Subject matter of procurement" means any item of procurement whether in the form of goods, services or works or a combination thereof;
- xl) "Works" refer to any activity, sufficient in itself to fulfil an economic or technical function, involving construction, fabrication, repair, overhaul, renovation, decoration, installation, erection, excavation, dredging, and so on, which make use of a combination of one or more of engineering design, architectural design, material and technology, labour, machinery and equipment. Supply of some materials or certain services may be incidental or consequential to and part of such works. The term "Works" includes (i) civil works for the purposes of roads, railway, airports, shipping-ports, bridges, buildings, irrigation systems, water supply, sewerage facilities, dams, tunnels and earthworks; and so on, and (ii) mechanical and electrical works involving fabrication, installation, erection, repair and maintenance of a mechanical or electrical nature relating to machinery and plants.

Chapter 1: Introduction to Procurement of Consultancy/ Other Services

1.1 Procurement Rules and Regulations; and this Manual

Various ministries, departments, attached and subordinate offices, local urban bodies, public sector enterprises and other government (including autonomous) bodies (hereinafter referred as 'Procuring Entities') spend a sizeable amount of their budget on procurement of goods, works and services to discharge the duties and responsibilities assigned to them.

The Ministries / Departments have been delegated full powers to make their own arrangements for procurement of goods and services, that are not available⁶ on Government e-Marketplace (GeM). These powers have to be exercised which have to be exercised as per the Delegation of Financial Power Rules and in conformity with the 'Procurement Guidelines' described below. Common use Goods and Services available on GeM are required to be procured mandatorily through GeM as per Rule 149 of GFR, 2017

To ensure that these procurements are made by following a uniform, systematic, efficient and cost-effective procedure and also to ensure fair and equitable treatment of service providers, there are statutory provisions; rules; financial, vigilance, security, safety, counter-trade and other regulations; orders and guidelines of the Government on the subject of public procurement (hereinafter referred as 'Procurement Guidelines') which provide framework for the public procurement system.

At the apex of the Statutory framework governing public procurement is Article 299 of the Constitution of India, which stipulates that contracts legally binding on the Government have to be executed in writing by officers specifically authorized to do so. The Constitution also enshrines Fundamental Rights (In particular Article 19 (1) (g) – Right to carry on a Profession) which have implications for Public Procurement. Further, the Indian Contract Act, 1872, Arbitration and Conciliation Act, 1996; Competition Act, 2002; Information Technology Act, 2000 etc (and amendments thereto) are major legislations governing contracts for procurement (both private and public) in general. There is no law exclusively governing public procurement.

However, comprehensive Rules and Regulations in this regard are available in the General Financial Rules (GFR), 2017, especially chapter 6; Delegation of Financial Powers Rules (DFPR); Government orders regarding purchase preference like Public Procurement (Preference to Make in India), Order 2017 or other facilities to Micro and Small Enterprises etc. and the guidelines issued by the Central Vigilance Commission to increase transparency and objectivity in public procurement.

Without purporting to be a comprehensive compendium of all such 'Procurement Guidelines', this Manual is intended to serve as a portal to enter this vast area and draw attention to basic norms and practices governing public procurement.

⁶ Rule 147 of GFR, 2017 amended vide OM No. F.1/26/2018-PPD dated 02.04.2019

1.2 Clarification, Amendments and Revision of this Manual

For revision, interpretation, clarification and issues relating to this manual, the Procurement Policy Division, Department of Expenditure, Ministry of Finance would be the nodal authority.

1.3 Applicability of this Manual

1.3.1 This manual is applicable to procurement of all "Services" defined by exception as any subject matter of procurement other than goods or works, except those incidental or consequential to the service, and includes physical, maintenance, professional, intellectual, training, consultancy and advisory services or any other service classified or declared as such by a Procuring Entity but does not include appointment of an individual made under any law, rules, regulations or order issued in this behalf. It includes 'Consultancy Services' and 'Other (Non-consultancy) Services'. If the generic word "Services" is used in this manual, it implies both Consultancy and other services taken together.

These guidelines would not be applicable to projects funded by World Bank and other International Funding Agencies, as, such external aid/ loans etc. received are covered under the applicable policies/ legal agreements executed as permitted under Rules 264 of GFR 2017.

1.3.2 "Consultancy services" (Rule 177 of GFR 2017) means any subject matter of procurement (which as distinguished from 'Non- Consultancy Services' involves primarily non-physical project-specific, intellectual and procedural processes where outcomes/deliverables would vary from one consultant to another), other than goods or works, except those incidental or consequential to the service, and includes professional, intellectual, training and advisory services or any other service classified or declared as such by a Procuring Entity but does not include direct engagement of a retired Government servant. These Services typically involve providing expert or strategic advice e.g., management consultants, policy consultants, communications consultants, Advisory and project related Consulting Services which include, feasibility studies, project management, engineering services, finance, accounting and taxation services, training and development etc.

Procurement of IT Projects should normally be carried out as Procurement of Consultancy services, as the outcomes/deliverables vary from one service provider to another. The IT Projects may include:

- i) bespoke software development;
- ii) cloud based services and
- iii) composite IT system integration services involving design, development, deployment, commissioning of IT system including supply of hardware, development of software, bandwidth and operation/maintenance of the system for a define period after go-live etc.

1.3.3 "Other services" (including the term 'Non-consultancy services' in certain contexts) are defined by exclusion as services that cannot be classified as Consultancy Services. Other services involve routine repetitive physical or procedural non-intellectual outcomes for which quantum and performance standards can be tangibly identified and consistently applied and are bid and contracted on such basis. It may include small works, supply of goods or consultancy service, which are incidental or consequential to such services. Other

services may include transport services; logistics; clearing and Forwarding; courier services; upkeep and maintenance of office/ buildings/ Estates (other than Civil & Electrical Works etc.); drilling, aerial photography, satellite imagery, mapping and similar operations etc.

1.3.4 The term 'Outsourcing of Services' implies deployment of outside agencies on a sustained long-term (for one year or more) for performance of other services which were traditionally being done in-house by the employees of Ministries/ departments (Security Services, Horticultural Services, Janitor/ Cooking/ Catering/ Management Services for Hostels and Guest Houses, Cleaning/ Housekeeping Services, Errand/ Messenger Services, and so forth). There may be Human Resources and administrative issues involved in 'outsourcing' which are beyond the scope of this manual, but nevertheless need to be addressed. Besides outsourcing, other services also include procurement of short-term stand-alone services.

1.3.5 If the other services involve construction, fabrication, repair, maintenance, overhaul, renovation, decoration, installation, erection, excavation, dredging, and so on, of Civil assets, then it should be handled as procurement of Works. In case of fabrication, repair, maintenance, overhaul, renovation, decoration, installation, erection and so on, of mechanical, electrical or ICT assets – e.g. Annual Maintenance Contracts or installation/ commissioning of Machinery and Plant and so on, it may be handled as Procurement of Goods rather than procurement of services.

1.3.6 It is possible that, depending on the nature and complexity of the assignment, a task could be dealt with either as a consultancy or non-consultancy service. In essence, if the intellectual and advisory part of services dominates (and the physical part is incidental), the selection needs to be dealt with in Consultancy mode. For example, if the task is looking at the condition of a dam (for dam safety) by physically inspecting a dam through underwater observation, this task is collection of data using technologies and photography, but the actual analysis is an intellectual and advisory task and is the crux of the assignment. Therefore, the entire task needs to be dealt with as selection of a consultant.

1.3.7 For sake of simplicity, this Manual for Procurement of Consultancy and Other Services is written from the point of view of procurement of Consultancy Services. A separate Chapter at the end covers the Outsourcing/ Procurement of Other (non-consultancy) Services, and points out areas where policies and procedures are different for such outsourcing/ procurements. However generic word 'Service(s)' wherever used implies both Consultancy and other services taken together.

1.3.8 The 'Procurement Entities' who can benefit from this manual include ministries, departments, or a unit thereof, or an attached or subordinate offices/units; Central Public Sector Enterprises (CPSEs) or undertakings; any other body (including autonomous bodies) substantially owned or controlled by or receiving substantial financial assistance from the Central Government. These procurement guidelines would continue to apply if these procurement entities outsource the procurement process or bundle the procurement process with other contractual arrangements or utilise the services of procurement support agency or procurement agents to carry out the procurement on their behalf. But these procurement guidelines would not apply to procurements by these procuring entities for their own use (but not for purpose of trading/ sale) from their subsidiary companies including Joint Ventures in which they have controlling share.

1.3.9 However, by a general or special notification, the government may permit certain 'Procuring Entities' mentioned in sub-para above, considering unique conditions under which they operate, for all or certain categories of procurements, to adopt detailed approved guidelines for procurement, which may deviate in some aspects but conform with all other essential aspects of 'Procurement Guidelines'.

1.3.10 This Manual is to be taken as generic guidelines, which have to be necessarily broad in nature. Subject to the observance of these generic guidelines, the initiation, authorization, procurement and execution of Services Contracts undertaken by a particular Ministry or Department shall be regulated by detailed rules and orders contained in the respective departmental regulations and by other special orders applicable to them. Ministries/ Departments are advised to supplement these manuals to suit local/specialized needs, by issuing their own detailed Manuals (including customized formats); Standard Bidding Documents; Schedule of Procurement Powers and Checklists to serve as practical instructions for their officers and to ensure completeness of examination of cases. Major Consultancy/ Services procuring Ministries/Departments may be having their own detailed guidelines tailored to unique individual requirements, e.g. Manuals or Procedure Orders. Many other Ministries/ Departments as well as CPSEs also have their own Procurement Manuals. For these Procuring Entities, this Manual would serve as a generic reference.

1.3.11 **For procurements financed by Loans/Grants extended by International Agencies:** The Articles of Agreement with the International Agencies like the World Bank, Asian Development Bank etc. stipulate specific procurement procedures to be followed by the borrower. The procurement procedures, as finalized and incorporated in the Agreements after consideration and approval of the Ministry of Finance are to be followed accordingly.

1.4 Authorities competent to procure Consultancy and other services and their Purchase Powers

An authority which is competent to incur expenditure may sanction the procurement of Consultancy and other services required for use in public service in accordance with the Delegation of Financial Rules, (DFPR – extracted in Annexure 2A) by following the 'Procurement Guidelines' described in this Manual. No separate sanction would be required for such services which are distinctly and explicitly named and included in a sanctioned and approved work/ project. Each 'Procuring Entity' may issue a Schedule of Procurement Powers (SoPP) adding further details to the broad delegations in the DFPR, based on the assessment of risks involved in different decisions/ approvals at various stages of Procurement Cycle. A suggested structure of such SoPP is enclosed as Annexure 2B. (Rule 145 of GFR 2017)

1.5 Basic Aims of Procurement – Five R's of Procurement

In every procurement, public or private, the basic aim is to achieve just the right balance between costs and requirements concerning five parameters called the five Rs of procurement. The entire process of procurement (from the time that need for an item, facility or services is identified till the need is satisfied) is designed to achieve following basic aims. Although couched in jargon of procurement of Goods, it's equally applicable to procurement of Consultancy and other services. The term 'Right' is used here in the sense of being optimal:

- i) Right quality;
- ii) Right quantity;
- iii) Right price;
- iv) Right time and place; and
- v) Right source.

(For more details on basic aims of procurement, please refer to Chapter 1 of the Manual for Procurement of Goods – reproduced in Appendix 1).

1.6 Principles of Public Procurement

Over and above the basic aims of procurement, the obligations of procuring authorities can be grouped into following five fundamental principles of public procurement, which all procuring authorities must abide by and be accountable for:

- i) Transparency principle;
- ii) Professionalism principle;
- iii) Broader obligations principle;
- iv) Extrinsic legal principle; and
- v) Public accountability principle.

(For more details on basic aims of procurement, please refer to Chapter 1 of the Manual for Procurement of Goods relevant portions extracted in Appendix 1. Please refer to Broader obligation principle under Appendix 1 for instructions related to registration of bidders belonging to countries sharing land border with India and Annexure-).

1.7 Standards (Canons) of Financial Propriety

Public Procurement like any other expenditure in Government must conform to the Standards (also called Canons) of Financial Propriety. It may be useful to refer to the relevant provisions in the General Financial Rules, 2017

Rule 21. Standards of financial propriety: *Every officer incurring or authorizing expenditure from public moneys should be guided by high standards of financial propriety. Every officer should also enforce financial order and strict economy and see that all relevant financial rules and regulations are observed, by his own office and by subordinate disbursing officers. Among the principles on which emphasis is generally laid are the following:-*

- i) *Every officer is expected to exercise the same vigilance in respect of expenditure incurred from public moneys as a person of ordinary prudence would exercise in respect of expenditure of his own money.*
- ii) *The expenditure should not be prima facie more than the occasion demands.*
- iii) *No authority should exercise its powers of sanctioning expenditure to pass an order which will be directly or indirectly to its own advantage.*
- iv) *Expenditure from public moneys should not be incurred for the benefit of a particular person or a section of the people, unless -*
 - a) *a claim for the amount could be enforced in a Court of Law, or*
 - b) *the expenditure is in pursuance of a recognized policy or custom.*
- v) *The amount of allowances granted to meet expenditure of a particular type should be so regulated that the allowances are not on the whole a source of profit to the recipients.*

- vi) *While discharging the duties of financial concurrence of any public expenditure, such authorities subsequent to such decision, shall not be involved in any future financial/audit/payment responsibilities which may create conflict of interest.*

1.8 Public Procurement Infrastructure at the Centre

1.8.1 Procurement Policy Division

Procurement Policy Division (PPD) in Department of Expenditure; Ministry of Finance has been created to encourage uniformity and harmonisation in public procurement processes by dissemination of best practices, provision of guidance, oversight and capacity building and issuing of procurement manuals. However Centralisation of procurement or involvement in procurement processes is not the intended purpose of creation of PPD.

1.8.2 Central Public Procurement Portal

Central Public Procurement Portal (CPPP) has been designed, developed and hosted by National Informatics Centre (NIC, Ministry of Electronics & Information Technology) in association with Dept. of Expenditure to ensure transparency in the public procurement process. The primary objective of the Central Public Procurement portal is to provide a single point access to the information on procurements made across various Ministries and the Departments. The CPPP has e-publishing and e-procurement modules. It is mandatory for all Ministries/ Departments of the Central Government, Central Public Sector Enterprises (CPSEs) and Autonomous and Statutory Bodies to publish on the CPPP all their tender enquiries and information about the resulting contracts. CPPP provides access to information such as documents relating to pre-qualification, Bidders' registration, Bidding documents; details of bidders, their pre-qualification, registration, exclusions/ debarments; decisions taken regarding prequalification and selection of successful bid (*Rule 159 of GFR 2017*). It is also now mandatory to implement end-to-end e-Procurement for all procurements either through CPPP portal or any other suitable portal.

1.9 Preferential/Mandatory Purchase from certain sources

The Central Government may, by notification, provide for mandatory procurement of any goods or services from any category of bidders, or provide for preference to bidders on the grounds of promotion of locally manufactured goods or locally provided services.

Note: Before considering any Purchase Preference mentioned below, the Procuring Entity should check the latest directives in this regard for necessary action. Purchase Preference provision shall invariably be part of the Notice Inviting Tender (NIT) and Instructions to Bidders (ITB).

1.9.1 Public Procurement Policy for Micro and Small Enterprises (MSEs)-Rule 153 (ii) of GFR 2017

- i) From time to time, the Government of India (Procuring Entity) lays down procurement policies to help inclusive national economic growth by providing long-term support to small and medium enterprises and disadvantaged sections of society and to address environmental concerns. The Procurement Policy for Micro and Small Enterprises, 2012 [amended 2018 and 2021] has been notified by the Government in exercise of the powers conferred in Section 11 of the Micro, Small and Medium Enterprises

- Development (MSMED) Act, 2006. Details of the policy along with the amendments issued in 2018 and 2021 are available on the MSME website⁷.
- ii) Micro and Small Enterprises (MSEs) registered under Udyam Registration are eligible to avail the benefits under the policy.
 - iii) The Policy is applicable to all the Central Government Ministries / Departments / CPSUs, irrespective of the volume and nature of procurement. However, the policy is not applicable to State Government Ministries/ Departments/ PSUs.
 - iv) To reduce transaction cost of doing business, MSEs are facilitated by providing them tender documents free of cost, exempting from payment of earnest money deposit, adopting e-procurement to bring transparency in tendering process. However, exemption from paying Performance Bank Guarantee is not covered under the policy. MSEs may also be given relaxation in prior turnover and prior experience criteria during the tender process, subject to meeting of quality and technical specifications. However, there may be circumstances (like procurement of items related to public safety, health, critical security operations and equipment, etc.) where procuring entity may prefer the vendor to have prior experience rather than giving orders to new entities⁸.
 - v) Chapter V of the MSMED Act, 2006 also has provision for ensuring timely payments to the MSE suppliers. The period agreed upon for payment must not exceed forty-five days after the supplies. For delays in payment the buyer shall be liable to pay compound interest to the supplier on the delayed amount at three times of the bank rate notified by the Reserve Bank. For arbitration and conciliation regarding recovery of such payments and interests, Micro and Small Enterprises Facilitation Council has been setup in states.
 - vi) In tender, participating Micro and Small Enterprises (MSE) quoting price within price band of L1+15 (fifteen) per cent shall also be allowed to supply a portion of requirement by bringing down their price to L1 price in a situation where L1 price is from someone other than a MSE and such MSE shall be allowed to supply up to 25 (twenty five) per cent of total tendered value. The 25 (twenty five) per cent quantity is to be distributed proportionately among these bidders, in case there are more than one MSMEs within such price band.
 - vii) Within this 25% (Twenty Five Percent) quantity, a purchase preference of four (4) per cent [that is, 16 (sixteen) per cent out of 25 (twenty five) per cent] is reserved for MSEs owned by Scheduled Caste (SC)/ Scheduled Tribe (ST) entrepreneurs (if they participate in the tender process and match the L1 price). However, in event of failure of such MSEs to participate in tender process or meet tender requirements and L1 price, four percent sub-target for procurement earmarked for MSEs owned by SC/ST entrepreneurs and three percent earmarked to women entrepreneur will be met from other MSEs.. MSEs would be treated as owned by SC/ ST entrepreneurs:
 - a) In case of proprietary MSE, proprietor(s) shall be SC/ ST;
 - b) In case of partnership MSE, the SC/ ST partners shall be holding at least 51% (fifty-one percent) shares in the unit;

⁷ <http://dcmsme.gov.in/pppm.htm.aspx>

⁸ Notified vide OM No.F.20/2/2014-PPD(Pt.) issued by Department of Expenditure dated 29.09.2016.

- c) In case of Private Limited Companies, at least 51% (fifty-one percent) share shall be held by SC/ ST promoters.
- viii) In case of tender item cannot be split or divided, etc. the MSE quoting a price within the band L1+15% may be awarded for full/ complete supply of total tendered value to MSE, considering the spirit of the Policy for enhancing Govt. Procurement from MSEs
- ix) To develop MSE vendors so as to achieve their targets for MSEs procurement, Central Government Ministries /Departments /PSUs shall take necessary steps to develop appropriate vendors by organizing Vendor Development Programmes (VDPs) or Buyer-Seller Meets focused on developing MSEs for procurement through the Government e-Marketplace (GeM) portal. In order to develop vendors belonging to MSEs for Public Procurement Policy, the Ministry of MSME is regularly organizing State Level VDPs and National Level VDPs under the Procurement and Marketing Support Scheme. For enhancing participation of MSEs owned by SCs /STs/ Women in Government procurement, Central Government Ministries/ Departments/ CPSUs have to take the following steps:
- a) Special Vendor Development Programmes/ Buyer-Seller Meets would be conducted by Departments/ CPSUs for SC/STs and Women.
 - b) Outreach programmes will be conducted by National Small Industries Corporation (NSIC) to cover more and more MSEs from SC/STs under its schemes of consortia formation; and
 - c) NSIC would open a special window for SCs/ STs under its Single Point Registration Scheme (SPRS).
 - d) A National SC/ST hub scheme was launched in October, 2016, for providing handholding support to SC/ST entrepreneur which is being coordinated / implemented by the NSIC under this Ministry.
- x) The condition of prior turnover and prior experience may be relaxed for Startups (*Rule 173 (i) of GFR 2017*) (as defined by Department of Industrial Policy and Promotion) subject to meeting of quality & technical specifications and making suitable provisions in the bidding document. The quality and technical parameters are not to be diluted. As defined by Department of Policy & Promotion (DIPP) an entity shall be considered as a 'start-up'-
- a) Up to ten years from the date of its incorporation/ registration.
 - b) If its turnover for any of the financial years has not exceeded Rs 100 (Rupees Hundred) crore
 - c) It is working towards innovation, development or improvement of products or processes or services, or if it is a scalable business model with a high potential of employment generation or wealth creation
 - d) Provided further that in order to obtain benefits a Startup so identified under the above definition shall be required to be recognized as Startup by DPIIT⁹.

As per Department of Expenditure's OM No.F.20/2/2014-PPD dated 20.09.2016, relaxation regarding the prior turnover and prior experience is applicable **only to all startups** recognized by Department of Industry & Internal Trade (DPIIT) subject to

⁹ Notified vide OM No. F.1/7/2021-PPD-2 issued by Department of Expenditure dated 02.08.2021

- meeting of quality and technical specifications. Startups may be MSMEs or otherwise.
- xi) Where any Aggregator has been appointed by the Ministry of MSME, themselves quote on behalf of some MSE units, such offers will be considered as offers from MSE units and all such facilities would be extended to these also.
 - xii) This Policy is meant for procurement of only goods produced and services rendered by MSEs. However, traders/ distributors/ sole agent/ Works Contract are excluded from the purview of the policy.
 - xiii) Exemptions from the policy: Given their unique nature, defence armament imports shall not be included in computing 20 (twenty) per cent goal for Ministry of Defence. In addition, defence equipments like weapon systems, missiles, etc. shall remain out of purview of such Policy of reservation. Monitoring of goals set under the policy will be done, in so far as they related to Defense sector, by Ministry of Defense itself in accordance with suitable procedures to be established by them.
 - xiv) A Review Committee has been constituted under the Chairmanship of Secretary, Ministry of MSME for monitoring and reviewing of Public Procurement Policy for MSEs. M/O MSME will review and/or modify the composition of the Committee as and when required. This Committee will, inter alia, review the list of 358 items reserved for exclusive purchase from MSEs on a continuous basis, consider requests from Central Government Departments, CPSUs for exemption from 25 (twenty five) percent target on a case to case basis and monitor achievements under the Policy.
 - xv) To monitor the progress of procurement by Central Government Ministries/ Departments and CPSUs from MSEs, Ministry of MSME has launched the MSME 'Sambandh'¹⁰ Portal on 8th December, 2017 for uploading procurement details by all CPSUs on a monthly and an annual basis which is regularly monitored by the Ministry.
 - xvi) To redress the grievances of MSEs related to non-compliance of the Policy a Grievance cell named "CHAMPION Portal" has been set up in the Ministry of MSME.

1.9.2 Procurement Preference to Make in India-Rule 153 (iii) of GFR, 2017

To encourage 'Make in India' and promote manufacturing and production of goods and services in India with a view to enhancing income and employment, Department of Promotion of Industry and Internal Trade (DPIIT), Ministry of Commerce and Industry, Government of India, issued Public Procurement (Preference to Make in India), Order 2017¹¹. The order is issued pursuant to Rule 153 (iii) of GFR, 2017. The Order is applicable on the procurement of Goods, Works and Services. For the purpose of this Order:-

- a) 'L1' means the lowest tender or lowest bid or the lowest quotation received in a tender, bidding process or other procurement solicitation as adjudged in the evaluation process as per the tender or other procurement solicitation.

¹⁰ https://sambandh.msme.gov.in/PPP_Index.aspx

¹¹ Latest revision to the Order notified vide OM No. P-45021/2/2017-PP (BE-II) issued by DPIIT, dated 16.09.2020

- b) *'Margin of purchase preference'* means the maximum extent to which the price quoted by a "Class-I local supplier" may be above the L1 for the purpose of purchase preference. It has been fixed as 20 (twenty) percent.
 - c) *'Nodal Ministry'* means the Ministry or Department identified pursuant to this order in respect of a particular item of goods or services or works.
 - d) *'Procuring entity'* means a Ministry or department or attached or subordinate office of, or autonomous body controlled by, the Government of India and includes Government companies as defined in the Companies Act.
 - e) *'Works'* means all works as per Rule 130 of GFR- 2017, and will also include *'turnkey works'*.
- i) **Eligibility of 'Class-I local supplier'/ 'Class-II local supplier'/ 'Non-local suppliers' for different types of procurement**

- a) In procurement of all goods, services or works in respect of which the Nodal Ministry / Department has communicated that there is sufficient local capacity and local competition, only 'Class-I local supplier', shall be eligible to bid irrespective of purchase value.
- b) Only 'Class-I local supplier' and 'Class-II local supplier', shall be eligible to bid in procurements undertaken by procuring entities, except when Global tender enquiry has been issued. In global tender enquiries, 'Non-local suppliers' shall also be eligible to bid along with 'Class-I local suppliers' and 'Class-II local suppliers'. In procurement of all goods, services or works, not covered by sub-para (i)(a) above, and with estimated value of purchases less than Rs. 200 Crore, in accordance with Rule 161(iv) of GFR, 2017, Global tender enquiry shall not be issued except with the approval of competent authority as designated by Department of Expenditure.
- c) For the purpose of this Order, works includes Engineering, Procurement and Construction (EPC) contracts and services include System Integrator (SI) contracts.

ii) **Purchase Preference**

- a) Subject to the provisions of the Order and to any specific instructions issued by the Nodal Ministry or in pursuance of the Order, purchase preference shall be given to 'Class-I local supplier' in procurements undertaken by procuring entities in the manner specified here under.
- b) In the procurements of goods or works, which are covered by para (i)(b) above and which are divisible in nature, the 'Class-I local supplier' shall get purchase preference over 'Class-II local supplier' as well as 'Non-local supplier', as per following procedure:
 - 1. Among all qualified bids, the lowest bid will be termed as L1. If L1 is 'Class-I local supplier', the contract for full quantity will be awarded to L1.
 - 2. If L1 bid is not a 'Class-I local supplier', 50 (fifty) percent of the order quantity shall be awarded to L1. Thereafter, the lowest bidder among the 'Class-I local supplier' will be invited to match the L1 price for the remaining 50 (fifty) percent quantity subject to the Class-I local supplier's quoted price falling

within the margin of purchase preference, and contract for that quantity shall be awarded to such 'Class-I local supplier' subject to matching the L1 price. In case such lowest eligible 'Class-I local supplier' fails to match the L1 price or accepts less than the offered quantity, the next higher 'Class-I local supplier' within the margin of purchase preference shall be invited to match the L1 price for remaining quantity and so on, and contract shall be awarded accordingly. In case some quantity is still left uncovered on Class-I local suppliers, then such balance quantity may also be ordered on the L1 bidder.

- c) In the procurements of goods or works, which are covered by para (i)(b) above and which are not divisible in nature, and in procurement of services where the bid is evaluated on price alone, the 'Class-I local supplier' shall get purchase preference over 'Class-II local supplier' as well as 'Non-local supplier', as per following procedure:
1. Among all qualified bids, the lowest bid will be termed as L1. If L1 is 'Class-I local supplier', the contract will be awarded to L1.
 2. If L1 is not 'Class-I local supplier', the lowest bidder among the 'Class-I local supplier', will be invited to match the L1 price subject to Class-I local supplier's quoted price falling within the margin of purchase preference, and the contract shall be awarded to such 'Class-I local supplier' subject to matching the L1 price.
 3. In case such lowest eligible 'Class-I local supplier' fails to match the L1 price, the 'Class-I local supplier' with the next higher bid within the margin of purchase preference shall be invited to match the L1 price and so on and contract shall be awarded accordingly. In case none of the 'Class-I local supplier' within the margin of purchase preference matches the L1 price, the contract may be awarded to the L1 bidder.
 4. "Class-II local supplier" will not get purchase preference in any procurement, undertaken by procuring entities.

iii) **Applicability in tenders where contract is to be awarded to multiple bidders**

In tenders where contract is awarded to multiple bidders subject to matching of L1 rates or otherwise, the 'Class-I local supplier' shall get purchase preference over 'Class-II local supplier' as well as 'Non-local supplier', as per following procedure:

- a) In case there is sufficient local capacity and competition for the item to be procured, as notified by the nodal Ministry, only Class I local suppliers shall be eligible to bid. As such, the multiple suppliers, who would be awarded the contract, should be all and only 'Class I Local suppliers'.
- b) In other cases, 'Class II local suppliers' and 'Non local suppliers' may also participate in the bidding process along with 'Class I Local suppliers' as per provisions of the Order.
- c) If 'Class I Local suppliers' qualify for award of contract for at least 50 (fifty) percent of the tendered quantity in any tender, the contract may be awarded to all the qualified bidders as per award criteria stipulated in the bid documents. However, in case 'Class I Local suppliers' do not qualify for award of contract for at least 50 (fifty) percent of the tendered quantity, purchase preference should be given to the 'Class I local supplier' over 'Class II local suppliers'/ 'Non local suppliers' provided that their

quoted rate falls within 20 (twenty) percent margin of purchase preference of the highest quoted bidder considered for award of contract so as to ensure that the 'Class I Local suppliers' taken in totality are considered for award of contract for at least 50 (fifty) percent of the tendered quantity.

- d) First purchase preference has to be given to the lowest quoting 'Class-I local supplier', whose quoted rates fall within 20 (twenty) percent margin of purchase preference, subject to its meeting the prescribed criteria for award of contract as also the constraint of maximum quantity that can be sourced from any single supplier. If the lowest quoting 'Class-I local supplier', does not qualify for purchase preference because of aforesaid constraints or does not accept the offered quantity, an opportunity may be given to next higher 'Class-I local supplier', falling within 20 (twenty) percent margin of purchase preference, and so on.
- e) To avoid any ambiguity during bid evaluation process, the procuring entities may stipulate its own tender specific criteria for award of contract amongst different bidders including the procedure for purchase preference to 'Class-I local supplier' within the broad policy guidelines stipulated in sub-paras above.
- iv) **Exemption of small purchases:** Notwithstanding anything contained in paragraph (i), procurements where the estimated value to be procured is less than Rs. 5 lakhs shall be exempt from the Order. However, it shall be ensured by procuring entities that procurement is not split for the purpose of avoiding the provisions of this Order.
- v) **Minimum local content:** The 'local content' requirement to categorize a supplier as 'Class-I local supplier' is minimum 50 (fifty) percent. For 'Class-II local supplier', the 'local content' requirement is minimum 20 (twenty) percent. Nodal Ministry/ Department may prescribe only a higher percentage of minimum local content requirement to categorize a supplier as 'Class-I local supplier'/ 'Class-II local supplier'. For the items, for which Nodal Ministry/ Department has not prescribed higher minimum local content notification under the Order, it shall be 50 (fifty) percent and 20 (twenty) percent for 'Class-I local supplier'/ 'Class-II local supplier' respectively.
- vi) **Requirement for specification in advance:** The minimum local content, the margin of purchase preference and the procedure for preference to Make in India shall be specified in the notice inviting tenders or other form of procurement solicitation and shall not be varied during a particular procurement transaction.
- vii) **Government E-marketplace:** In respect of procurement through the Government E-marketplace (GeM) shall, as far as possible, specifically mark the items which meet the minimum local content while registering the item for display, and shall, wherever feasible, make provision for automated comparison with purchase preference and without purchase preference and for obtaining consent of the local supplier in those cases where purchase preference is to be exercised.
- viii) **Verification of local content:**
 - a) The 'Class-I local supplier'/ 'Class-II local supplier' at the time of tender, bidding or solicitation shall be required to indicate percentage of local content and provide self-certification that the item offered meets the local content requirement for 'Class-I local supplier'/ 'Class-II local supplier', as the case may be. They shall also give details of the location(s) at which the local value addition is made.
 - b) In cases of procurement for a value in excess of Rs. 10 crores, the 'Class-I local supplier'/ 'Class-II local supplier' shall be required to provide a certificate from the

statutory auditor or cost auditor of the company (in the case of companies) or from a practicing cost accountant or practicing chartered accountant (in respect of suppliers other than companies) giving the percentage of local content.

- c) Decisions on complaints relating to implementation of this Order shall be taken by the competent authority which is empowered to look into procurement-related complaints relating to the procuring entity.
- d) Nodal Ministries may constitute committees with internal and external experts for independent verification of self-declarations and auditor's/ accountant's certificates on random basis and in the case of complaints.
- e) Nodal Ministries and procuring entities may prescribe fees for such complaints.
- f) False declarations will be in breach of the Code of Integrity under Rule 175(1)(i)(h) of the General Financial Rules for which a bidder or its successors can be debarred for up to two years as per Rule 151 (iii) of the General Financial Rules along with such other actions as may be permissible under law.
- g) A supplier who has been debarred by any procuring entity for violation of the Order shall not be eligible for preference under the Order for procurement by any other procuring entity for the duration of the debarment. The debarment for such other procuring entities shall take effect prospectively from the date on which it comes to the notice of other procurement entities, in the manner prescribed under paragraph (h) below.
- h) The Department of Expenditure shall issue suitable instructions for the effective and smooth operation of this process, so that:
 - 1. The fact and duration of debarment for violation of the Order by any procuring entity are promptly brought to the notice of the Member-Convenor of the Standing Committee and the Department of Expenditure through the concerned Ministry /Department or in some other manner;
 - 2. on a periodical basis such cases are consolidated and a centralized list or decentralized lists of such suppliers with the period of debarment is maintained and displayed on website(s);
 - 3. in respect of procuring entities other than the one which has carried out the debarment, the debarment takes effect prospectively from the date of uploading on the website(s) in the such a manner that ongoing procurements are not disrupted.

ix) **Specifications in Tenders and other procurement solicitations:**

- a) Every procuring entity shall ensure that the eligibility conditions in respect of previous experience fixed in any tender or solicitation do not require proof of supply in other countries or proof of exports.
- b) Procuring entities shall endeavour to see that eligibility conditions, including on matters like turnover, production capability and financial strength do not result in unreasonable exclusion of 'Class-I local supplier'/ 'Class-II local supplier' who would otherwise be eligible, beyond what is essential for ensuring quality or creditworthiness of the supplier.
- c) Procuring entities shall review all existing eligibility norms and conditions with reference to sub-paragraphs (viii) (a) and (b) above.

d) **Reciprocity Clause**

1. When a Nodal Ministry/Department **identifies** that Indian suppliers of an item are not allowed to participate and/ or compete in procurement by any foreign government, due to restrictive tender conditions which have direct or indirect effect of barring Indian companies such as registration in the procuring country, execution of projects of specific value in the procuring country etc., it shall provide such details to all its procuring entities including CMDs/CEOs of PSEs/PSUs, State Governments and other procurement agencies under their administrative control and GeM *for appropriate reciprocal action*.
 2. Entities of countries which have been identified by the nodal Ministry/Department as not allowing Indian companies to participate in their Government procurement for any item related to that nodal Ministry shall not be allowed to participate in Government procurement in India for all items related to that nodal Ministry/ Department, except for the list of items published by the Ministry/ Department permitting their participation.
 3. The stipulation in (2) above shall be part of all tenders invited by the Central Government procuring entities stated in (1) above. All purchases on GeM shall also necessarily have the above provisions for items identified by nodal Ministry/ Department.
 4. State Governments should be encouraged to incorporate similar provisions in their respective tenders.
 5. The term 'entity' of a country shall have the same meaning as under the FDI Policy of DPIIT as amended from time to time.
- e) Specifying foreign certifications/ unreasonable technical specifications/ brands/ models in the bid document is restrictive and discriminatory practice against local suppliers. If foreign certification is required to be stipulated because of non-availability of Indian Standards and/or for any other reason, the same shall be done only after written approval of Secretary of the Department concerned or any other Authority having been designated such power by the Secretary of the Department concerned.
- f) “All administrative Ministries/Departments **whose procurement exceeds Rs. 1000 Crore per annum** shall notify/ update their procurement projections every year, including those of the PSEs/PSUs, for the next 5 years on their respective website.”
- x) **Action for non-compliance of the Provisions of the Order:** In case restrictive or discriminatory conditions against domestic suppliers are included in bid documents, an inquiry shall be conducted by the Administrative Department undertaking the procurement (including procurement by any entity under its administrative control) to fix responsibility for the same. Thereafter, appropriate action, administrative or otherwise, shall be taken against erring officials of procurement entities under relevant provisions. Intimation on all such actions shall be sent to the Standing Committee.
- xi) **Assessment of supply base by Nodal Ministries:** The Nodal Ministry shall keep in view the domestic manufacturing / supply base and assess the available capacity and the extent of local competition while identifying items and prescribing the higher minimum local content or the manner of its calculation, with a view to avoiding cost increase from the operation of this Order.

- xii) **Increase in minimum local content:** The Nodal Ministry may annually review the local content requirements with a view to increasing them, subject to availability of sufficient local competition with adequate quality.
- xiii) **Manufacture under license/ technology collaboration agreements with phased indigenization**
- a) While notifying the minimum local content, Nodal Ministries may make special provisions for exempting suppliers from meeting the stipulated local content if the product is being manufactured in India under a license from a foreign manufacturer who holds intellectual property rights and where there is a technology collaboration agreement / transfer of technology agreement for indigenous manufacture of a product developed abroad with clear phasing of increase in local content.
 - b) In procurement of all goods, services or works in respect of which there is substantial quantity of public procurement and for which the nodal ministry has not notified that there is sufficient local capacity and local competition, the concerned nodal ministry shall notify an upper threshold value of procurement beyond which foreign companies shall enter into a joint venture with an Indian company to participate in the tender. Procuring entities, while procuring such items beyond the notified threshold value, shall prescribe in their respective tenders that foreign companies may enter into a joint venture with an Indian company to participate in the tender. The procuring Ministries/Departments shall also make special provisions for exempting such joint ventures from meeting the stipulated minimum local content requirement, which shall be increased in a phased manner.
- xiv) **Powers to grant exemption and to reduce minimum local content:** The administrative Department undertaking the procurement (including procurement by any entity under its administrative control), with the approval of their Minister-in-charge, may by written order, for reasons to be recorded in writing,
- a) reduce the minimum local content below the prescribed level; or
 - b) reduce the margin of purchase preference below 20 (twenty) percent; or
 - c) exempt any particular item or supplying entities from the operation of this Order or any part of the Order.

A copy of every such order shall be provided to the Standing Committee and concerned Nodal Ministry / Department. The Nodal Ministry / Department concerned will continue to have the power to vary its notification on Minimum Local Content.

xv) **Directions to Government companies:** In respect of Government companies and other procuring entities not governed by the General Financial Rules, the administrative Ministry or Department shall issue policy directions requiring compliance with this Order.

xvi) **Standing Committee.** A standing committee is hereby constituted with the following membership:

Secretary, Department for Promotion of Industry and Internal Trade-Chairman
 Secretary, Commerce-Member
 Secretary, Ministry of Electronics and Information Technology-Member
 Joint Secretary (Public Procurement), Department of Expenditure-Member
 Joint Secretary (DPIIT)-Member-Convenor

The Secretary of the Department concerned with a particular item shall be a member in respect of issues relating to such item. The Chairman of the Committee may co-opt technical experts as relevant to any issue or class of issues under its consideration.

xvii) **Removal of difficulties:** Ministries /Departments and the Boards of Directors of Government companies may issue such clarifications and instructions as may be necessary for the removal of any difficulties arising in the implementation of the Order.

xviii) **Ministries having existing policies:** Where any Ministry or Department has its own policy for preference to local content approved by the Cabinet after 1st January 2015, such policies will prevail over the provisions of the Order. All other existing orders on preference to local content shall be reviewed by the Nodal Ministries and revised as needed to conform to this Order, within two months of the issue of this Order.

xix) **Transitional provision:** The Order shall not apply to any tender or procurement for which notice inviting tender or other form of procurement solicitation has been issued before the issue of this Order.

1.10 When is Procurement of Services justified

1.10.1 **Consultancy Services:** *Rule 178 & 180 of GFR 2017*, permits Ministries/ Departments to hire external professionals, consultancy firms or consultants (referred to as consultant hereinafter) for a specific job, which is well defined in terms of content and time frame for its completion. Engagement of consultants may be resorted to in situations requiring high quality services for which the Procuring Entity does not have requisite expertise. Approval of the competent authority should be obtained before engaging consultant(s). We may justify need for Procurement of Consultancy Services on consideration of:-

- i) The inadequacy of Capability or Capacity of required expertise in-house;
- ii) The need to have qualified consultant for providing a specialized high quality service;
- iii) Need for impartial advice from a consultant (acting independently from any affiliation, economic or otherwise) to avoid conflicts of interest;
- iv) The need in some cases for Transfer of Knowledge/ Training/ Capacity and capability building as a by-product of such engagement;
- v) Need to acquire information about/ identifying and implementing new methods and systems;
- vi) Need for planning and implementing organizational change
- vii) There may be internal capacity/ capability to do the job but there are considerations of economy, speed and efficiency in relation to additional requirement/ commitment/ usage of;
 - a) Staff/ Management/ Organization;
 - b) Technological and Material Resources;
 - c) Money, and
 - d) Time/ Speed of execution.

1.10.2 **Other (Non-consultancy) Services:** In the interest of economy, efficiency and to provide more effective delivery of public services, GFR, 2017 permits Ministries/ Departments to procure/ outsource auxiliary and support services. Approval of the competent authority should be obtained before engaging service providers. We may justify need for Procurement of other services on consideration of:-

- i) Economy, speed and efficiency and more effective delivery of public services relating to additional requirement/ commitment/ usage of:

- a) Staff/ Management/ Organization;
 - b) Technological and Material Resources;
 - c) Money, and
 - d) Time/ Speed of execution.
- ii) An administrative policy decided by the Ministry/ Department to outsource specific (class of) services;

1.11 Principles for Public Procurement of Services

1.11.1 Other principles of Public Procurement as mentioned in 1.6 above are also equally applicable to Procurement of consultancy/ other services. To ensure value for money during procurement of consultancy and other services, the following additional principles shall be considered:

- i) Services to be procured should be justifiable in accordance with Para 1.10 above;
- ii) In case of Consultancy Services - well-defined scope of work/ Terms of Reference (ToR – description of services) and the time frame, for which services are to be availed of, should be determined consistent with the overall objectives of Procuring Entity. In other (non-consultancy services) Activity Schedule (a document covering well-defined scope of work/ description of services and the time frame for which services are to be availed of) should be consistent with the overall objectives of Procuring Entity;
- iii) Equal opportunity to all qualified service providers/ consultants to compete should be ensured;
- iv) Engagements should be economical and efficient. (*Rule 182 of GFR 2017*);
- v) Transparency and integrity in the selection process (that is, proposed, awarded, administered, and executed according to highest ethical standards) and;
- vi) Additionally, in procurement of consultancy services, consultants should be of high quality, in line with justification as per para 1.10.1 above

1.11.2 In Procurement of Consultancy, these considerations can be best addressed through unrestricted competition among qualified shortlisted firms or individuals in which selection is based on the quality of the proposal and, where appropriate, on the cost of services to be provided. Hence Procurement of Consultancy needs to be done in a two stage process.

However procurement of other services is done by a simpler process akin to those of procurement of Goods and Works. These are detailed in Chapter 9.

(Rule 179 of GFR 2017)

1.12 The Law of Agency – applicable to Procurement of Consultancy and other Services

Laws which are applicable to Public Procurement of goods equally apply to Procurement of Consultancy and other services. These are detailed in Appendix 2. Legally speaking consultants/ service provider would be an Agent of the Principal/ Client/ Procuring Entity – Procuring Entity, to carry out the service/ assignment on its behalf. Such a relationship is covered by The Law of Agency (Section 182 to section 238, of the Indian Contract Act, 1872) and hence there exists a Principal/ Procuring Entity and Agent relationship between Procuring Entity and such consultant/ service provider. As per this law, the Procuring Entity is vicariously legally and financially liable for actions of its Agents. For example, a violation of

certain labour laws in deputing staff for Procuring Entity's contract by the agents may render the Procuring Entity legally and financially answerable for such violations, under certain circumstances. There is a need to be aware of such eventualities. Standard Bidding Documents should take care of this aspect.

1.13 Proactive Information Disclosures

Section 4(1) (b) of the RTI Act lays down the information to be disclosed by public authorities on a suo motu or proactive basis and Section 4(2) and Section 4(3) prescribe the method of its dissemination to enhance transparency and also to reduce the need for filing individual RTI applications. The Department of Personnel & Training, Ministry of Personnel, Public Grievances & Pensions, Government of India, has issued "Guidelines on suo motu disclosure under Section 4 of the RTI Act" vide their OM No.1/6/2011-IR dated April 15, 2013.¹² The relevant guidelines relating to information disclosure relating to procurement are reproduced below:

"Information relating to procurement made by public authorities including publication of notice/tender enquiries, corrigenda thereon, and details of bid awards detailing the name of the Vendor/ Contractor of goods/services being procured or the works contracts entered or any such combination of these and the rate and total amount at which such procurement or works contract is to be done should be disclosed. All information disclosable as per Ministry of Finance, Department of Expenditure's O.M. No 10/1/2011-PPC dated 30th November, 2011¹³ (and 05th March 2012¹⁴) on Mandatory Publication of Tender Enquiries on the Central Public Procurement Portal and O.M. No. 10/3/2012- PPC dated 09th January 2014 on implementation of comprehensive end-to-end e-procurement should be disclosed under Section 4 of the Right to Information Act.

1.14 Public Procurement Cycle

The entire process of procurement and implementation of Consultancy and other services shall include the following steps:

- i) Preparation of Concept Paper/ Procurement Proposal and obtaining in principle approvals;
- ii) Preparation of the ToR (in case of consultancy services)/ Activity Schedule(in case of other/ non-consultancy services), cost estimate and seeking administrative and budgetary approval;
- iii) In case of Procurement of Consultancy Services - Short list of consultants - EoI formulation, publication, receipt of proposals and evaluation;
- iv) Preparation and issuance of the RfP; Receipt of proposals; Evaluation of technical proposals: consideration of quality; Evaluation of financial proposals; Selection of winning proposal; Negotiations and award of the contract to the selected firm; and
- v) Monitoring of Assignments.

¹² <http://cic.gov.in/GuidelinesOnProActive.pdf>

¹³ http://finmin.nic.in/the_ministry/dept_expenditure/gfrs/pub_tender_enq_cpportal.pdf

¹⁴http://eprocure.gov.in/cppp/sites/default/files/instruction_contents/INST_DOC_NO_7/OM_DoE_5thMarch2012.pdf

Details and procedures of various stages of the procurement cycle would be described in following Chapters of the manuals.

1.15 Procurement Proposal (Concept Paper) for Consultancy and other services

1.15.1 A critical part of the procurement of *Services* process is preparing an appropriately staffed and budgeted Procurement Proposal/ Concept Paper (which serve the role that an Indent serves in procurement of Goods).

1.15.2 Preparing Procurement Proposal/ Concept Paper

As a first step towards procurement of services, a formal written brief Proposal and Justification for the Services should be prepared (*Please see a suggested format in Annexure 3: Format of Procurement Proposal*). It is akin to the Indent for Materials/ Material Requisition in case of Procurement of Goods. The User should prepare in simple and concise language the requirement, purpose/ objectives and the scope/ outcomes of the assignment and justify the assignment based on analysis of in-house available capacity/ capability. The eligibility and pre-qualification criteria to be met by the consultants/ service providers should also be clearly identified at this stage. Justifications for procurement of Consultancies/ Services as given in Para 1.10 may be kept in view. It is the basic document for initiating procurement of services. It is also the document from which the subsequent detailing of Terms of Reference (in case of consultancy services)/ Activity Schedule (in case of other/ non-consultancy services) is drawn up. A procurement proposal should contain:

i) Purpose/ Objective Statement of Services

"Purpose/ Objective Statement of Services" should be prepared by the user. One of the important content of this statement is description of service to describe the subject matter of procurement which would be used in all subsequent documents. Bringing out the background and context, this should justify how the proposed procurement of services would fit in with short-term and strategic goals of Procuring Entity. Making such a statement is important to put the need for services in clear perspective. It may seem elementary or academic, but is a necessary and critical first step in properly designing a procurement proposal.

ii) Service Outcome Statement

Once the "Purpose/ Objective of Services" has been clearly defined, the next step is to formulate a 'Service Outcome Statement'. This should list out qualitatively and quantitatively the outcomes expected from the Procurement of Services, as well as the expected Time-frame and a rough estimate of cost of Procurement of services (including related costs to be incurred by the organization). At this stage, it is not necessary go into details of all the activities required to achieve the service outcomes, but it should list at least the broad activities, would help in putting a rough estimate to the cost of the assignment. A 'Service Outcome Statement' should provide a concrete basis for subsequently defining the type and amount of work that needs to be done by service provider and the time-frame within which the output needs to be received by the user. The estimated cost is needed to ascertain the level of approval necessary as per SoPP.

iii) Justification for the procurement of Services

The Concept Paper/ Procurement proposal should analyse the capabilities/ capacities required to carry out the assignment. It should also analyse the available in-house capabilities/ capacities and compare these with the ones required for the assignment. Based on this assessment the Procurement should be justified in the light of para 1.10.1.

1.15.3 In-principle Approval for initiating procurement of Services

Based on the justification contained in the Procurement Proposal, in-principle administrative approval and budgetary sanction for initiating procurement of such services should be accorded by the Competent Authority (CA) as laid down in SoPP. Further stages may be proceeded with, only after such approvals. (Rule 181 of GFR 2017)

Chapter 2: Consultants, service providers and Governance Issues

2.1 Types of consultants/ service providers

The term consultants/ service providers includes a wide variety of private and public entities, including Consultancy firms, engineering firms, Architectural Firms/ consultants, construction management firms, management firms, procurement agents, inspection agents, auditors, investment and merchant bankers, universities/ educational institutions, research institutions, government agencies, nongovernmental organizations (NGOs) and individuals/experts or their joint ventures. These can be grouped as:

2.1.1 Consortium of consultants/ service providers

In large and complex assignments consultants/ service providers may associate with each other to form a consortium to complement their respective areas of expertise, to increase the technical responsiveness of their proposal, and make larger pools of experts available or for other reasons. Such an association may be for the long term (independent of any particular assignment) or for a specific assignment. The consortium may take the form of a Joint Venture (JV) or a sub consultancy. In case of a JV, all members of the JV shall sign the contract and shall be jointly and severally liable for the entire assignment. After the short list is finalised, and the Request for Proposal (RfP) is issued, any association in the form of a JV or sub consultancy among the short-listed firms shall be permissible in accordance with provisions stated in the RfP. Under such circumstance, one of the shortlisted consultants/ service providers must become the lead member of the consortium. The Procuring Entity only deals with the lead member of consortiums for all the purposes. Bid documents should clearly specify whether JVs are allowed to bid (in case of complex and large assignments, say above certain values (say - Rs. 5 (Rupees five) crore). Maximum number of partners in JV shall be limited (say – three). In case JVs are permitted to bid, it should be clarified what qualifications are to be collectively (clubbed together) met by the JV partners (say experience of particular consultancy, Financial Turnover etc) and what each partner has to individually and separately meet (financial soundness). In this case it should also be specified that each partner should meet at least 25% (and the lead partner at least 50%) out of the qualifying limit in case of experience of particular consultancy and financial turnover, if any.

Conflicting Association: A firm shall submit only one proposal, either individually or as a JV partner in another proposal. If a firm, including a JV partner, submits or participates in more than one proposal, all such proposals shall be disqualified. This does not, however, preclude a firm from participating as a sub-consultant or an individual consultant to participate as a team member in more than one proposal when circumstances justify but only if permitted by the RfP document.

2.1.2 Consultancy or Service Providing Firms

The main source of consultants and service providers is Consultancy or Service providing firms of diverse specializations that provide teams to Clients. These firms provide project preparation services, project implementation supervision services, training, advisory services, and policy guidance. Such firms are normally classified as either international – firms that have international experience and are capable of undertaking work at international

level at international rates; or national – firms that may not have international exposure and normally undertake assignments only within that country, usually at significantly lower rates.

2.1.3 Individual consultants/ service providers

Individual consultants or service providers are recruited for similar activities as Consultancy/ Service providing firms when a full team is not considered necessary. They may be independent experts not permanently associated with any particular firm, or they may be employees of a firm recruited on an individual basis. They may also be employees of an agency, institution, or university. They are normally recruited for project implementation supervision, training, provision of specific expert advice on a highly technical subject, policy guidance, special studies, compliance supervision, or implementation monitoring. Individual consultants/ service providers are not normally recruited for project preparation unless the proposed project is simple and, generally, a repeat of an already established and successful project. If more than three experts are required, then the assignment should normally be undertaken by a team from a firm. As with firms, individual consultants/ service providers are classed as either international or national, depending on their level of expertise and their international experience and exposure.

2.1.4 Specialized Agencies and Institutions

Specialized agencies or institutions (including Government/ Semi-Government agencies, universities and professional institutions) may also from time to time be recruited to provide Consultancy/ other services. These services may be provided by individuals (as discussed above) or by teams. Nonetheless, there are at times distinct advantages to using such agencies. Experts and teams from such agencies and institutions may undertake a variety of roles across the whole field of possible Consultancy and other services. These may range from project preparation through project supervision and policy advice to project benefit monitoring and evaluation.

2.1.5 Non-governmental Organizations (NGO)

There may be distinct advantage in use of Nongovernmental organizations (NGOs) in Projects which emphasize experience in community participation and in-depth local knowledge – for example, Projects related to Corporate Social Responsibility (CSR).

2.1.6 Retired Government Servant

Rule 177 of GFR, 2017, says that the consulting services do not include direct engagement of retired Government servants. They should not be engaged against regular vacant posts as consultant under this rule. Retired Government servants can be engaged only for the specific task and for specific duration as consultant. They should be assigned clear output related goals.

2.2 Code of Integrity for Public Procurement (CIPP)

2.2.1 Public procurement is perceived to be prone to corruption and ethical risks. To mitigate this, the officials of Procuring Entities and the bidders/ suppliers/ contractors/ consultants/ service providers involved in procurement process must abide by the following Code of Integrity for Public Procurement (CIPP). All Procuring officials may be asked to sign declarations to this effect periodically and in various Procurement decisions (including Need Assessment). The bidders/ suppliers/ contractors/ consultants/ service providers should be

asked to sign a declaration for abiding by a Code of Integrity for Public Procurement in registration applications and in bid documents, with a warning that, in case of any transgression of this code, its name is not only liable to be removed from the list of registered suppliers/ contractors/ consultants/ service providers, but it would be liable for other punitive actions such as cancellation of contracts, banning and blacklisting or action in Competition Commission of India, and so on.

2.2.2 Code of Integrity for Public Procurement: Procuring authorities as well as bidders, suppliers, contractors and consultants/ service providers should observe the highest standard of ethics and should not indulge in the following prohibited practices, either directly or indirectly, at any stage during the procurement process or during execution of resultant contracts:

- i) **“Corrupt practice”**: making offers, solicitation or acceptance of bribe, rewards or gifts or any material benefit, in exchange for an unfair advantage in the procurement process or to otherwise influence the procurement process or contract execution;
- ii) **“Fraudulent practice”**: any omission or misrepresentation that may mislead or attempt to mislead so that financial or other benefits may be obtained or an obligation avoided. This includes making false declaration or providing false information for participation in a tender process or to secure a contract or in execution of the contract;
- iii) **“Anti-competitive practice”**: any collusion, bid rigging or anti-competitive arrangement, or any other practice coming under the purview of The Competition Act, 2002, between two or more bidders, with or without the knowledge of the Procuring Entity, that may impair the transparency, fairness and the progress of the procurement process or to establish bid prices at artificial, non-competitive levels;
- iv) **“Coercive practice”**: harming or threatening to harm, persons or their property to influence their participation in the procurement process or affect the execution of a contract;
- v) **“Conflict of interest”**: participation by a bidding firm or any of its affiliates that are either involved in the consultancy contract to which this procurement is linked; or if they are part of more than one bid in the procurement; or if the bidding firm or their personnel have relationships or financial or business transactions with any official of Procuring Entity who are directly or indirectly related to tender or execution process of contract; or improper use of information obtained by the (prospective) bidder from the Procuring Entity with an intent to gain unfair advantage in the procurement process or for personal gain; and
- vi) **“Obstructive practice”**: materially impede the Procuring Entity’s investigation into allegations of one or more of the above mentioned prohibited practices either by deliberately destroying, falsifying, altering; or by concealing of evidence material to the investigation; or by making false statements to investigators and/or by threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or by impeding the Procuring Entity’s rights of audit or access to information;

2.2.3 Conflict of Interest in case of consultants

- i) The consultant is required to provide professional, objective, and impartial advice, at all times holding the Procuring Entity’s interests paramount, strictly avoiding conflicts

with other assignments or his/its own corporate interests, and acting without any consideration for future work.

- ii) The consultant has an obligation to disclose to the Procuring Entity any situation of actual or potential conflict that impacts its/his capacity to serve the best interest of its client/Procuring Entity. Failure to disclose such situations may lead to the disqualification of the consultant or termination of its/his contract during execution of the assignment.
- iii) Without limitation on the generality of the foregoing, and unless stated otherwise in the data sheet for the RfP document, the consultant shall not be hired under the circumstances set forth below:
 - a) **Conflicting activities:** a firm that has been engaged by the client to provide goods, works, or non-consultancy services for a project, or any of its affiliates, shall be disqualified from providing Consultancy service resulting from or directly related to those goods, works, or non-Consultancy services. Conversely, a firm hired to provide consultancy services for the preparation or implementation of a project, or any of its affiliates, shall be disqualified from subsequently providing goods or works or no consultancy services resulting from or directly related to the consultancy services for such preparation or implementation;
 - b) **Conflicting assignments:** Consultants (including its experts and sub-consultants) or any of their affiliates shall not be hired for any assignment that, by its nature, may be in conflict with another assignment of the consultant for the same or for another Procuring Entity; and
 - c) **Conflicting relationships:** A consultant (including its/his experts and sub-consultants) that has a close business or family relationship with a professional staff of the Procuring Entity who are directly or indirectly involved in any part of: (i) the preparation of ToR for the assignment; (ii) selection process for the contract; or (iii) supervision of the contract, may not be awarded a contract, unless the conflict stemming from this relationship has been resolved in a manner acceptable to the client throughout the selection process and execution of the contract.

2.2.4 Unfair Competitive Advantage in case of consultants

Fairness and transparency in the selection process require that the consultants or their affiliates competing for a specific assignment do not derive an unfair competitive advantage from having provided consultancy services related to the assignment in question. Such unfair competitive advantage is best avoided by full transparency and by providing equal opportunity so that all firms or individuals interested or involved have full information about a service assignment and its nature, scope, and background information. To that end, the request for proposals and all information would be made available to all short listed consultants simultaneously.

2.2.5 Obligations for Proactive Disclosures

- i) Procuring authorities as well as bidders, suppliers, contractors and consultants/ service providers, are obliged under Code of Integrity for Public Procurement to suo-moto proactively declare any conflicts of interest (coming under the definition mentioned above

– pre-existing or as and as soon as these arise at any stage) in any procurement process or execution of contract. Failure to do so would amount to violation of this code of integrity; and

- ii) Any bidder must declare, whether asked or not in a bid document, any previous transgressions of such a code of integrity with any entity in any country during the last three years or of being debarred by any other Procuring Entity. Failure to do so would amount to violation of this code of integrity;
- iii) To encourage voluntary disclosures, such declarations would not mean automatic disqualification for the bidder making such declarations. The declared conflict of interest may be evaluated and mitigation steps, if possible, may be taken by the Procuring Entity. Similarly, voluntary reporting of previous transgressions of Code of Integrity elsewhere may be evaluated and barring cases of various grades of debarment, an alert watch may be kept on the bidders' actions in the tender and subsequent contract.

2.2.6 Punitive Provisions: Without prejudice to and in addition to the rights of the Procuring Entity to other penal provisions as per the bid documents or contract, if the Procuring Entity comes to a conclusion that a (prospective) bidder/contractor/ Supplier/ consultant/ service provider, directly or through an agent, has violated this code of integrity in competing for the contract or in executing a contract, the Procuring Entity may take appropriate measures including one or more of the following:

- i) if his bids are under consideration in any procurement
 - a) Forfeiture or encashment of bid security
 - b) calling off of any pre-contract negotiations, and;
 - c) rejection and exclusion of the bidder from the procurement process
- ii) if a contract has already been awarded
 - a) Cancellation of the relevant contract and recovery of compensation for loss incurred by the Procuring Entity,;
 - b) Forfeiture or encashment of any other security or bond relating to the procurement;
 - c) Recovery of payments made by the Procuring Entity along with interest thereon at the prevailing rate;
- iii) Provisions in addition to above:
 - a) Removal from the list of registered suppliers and banning/debarment of the bidder from participation in future procurements of the Procuring Entity for a period not less than one year;
 - b) In case of anti-competitive practices, information for further processing may be filed under a signature of the Joint Secretary level officer, with the Competition Commission of India;
 - c) Initiation of suitable disciplinary or criminal proceedings against any individual or staff found responsible.

2.2.7 Conduct of Public Servants in Public Procurement - Risks and Mitigations	
Risk	Mitigation
Hospitality: Hospitality (including	Hospitality must never be solicited, directly or

<p>facilitation of travel, lodging, boarding and entertainment during official or unofficial programs) from suppliers/ contractors/ consultants/ service providers may tend to cross the limits of ethical/ occasional/ routine/ modest/ normal business practice. Officials sent to firm's premises for inspections/ meetings may mistakenly presume entitlement to hospitality from the firm, even if other arrangements are available at the location.</p>	<p>indirectly. The frequency, scale and number of officials availing hospitality should not be allowed to identify the recipient in a public way with any particular supplier/ contractor/ consultant/ service provider or raise doubts about its neutrality. It should not involve significant travel, overnight accommodation or trips abroad. Particular care should be taken in relation to offers of hospitality from firms (say participating in current or imminent tenders or its execution) who stand to derive a personal or commercial benefit from their relationship with the recipient.</p>
<p>Gifts: Gifts from suppliers/ contractors/ consultants/ service providers may tend to cross the limits of ethical/ occasional/ routine/ modest/ normal business practice, especially on festive season. Since the value of the gift may not be known to the recipient, it may cause inadvertent violation of Conduct rules.</p>	<p>Gifts must never be solicited, directly or indirectly. An official should not accept and retain gifts more valuable than the limit as laid down in the conduct rules. Particular care should be taken in relation to gifts from firms (say participating in current or imminent tenders or its execution) who stand to derive a personal or commercial benefit from their relationship with the recipient. Cash, gift cheques or any vouchers that may be exchanged for cash may not be accepted regardless of the amount. Any gift received inadvertently in violation of above, must immediately either be returned or else reported and deposited in Toshakhana/ Treasury.</p>
<p>Private Purchases from Official Suppliers/ contractors/ consultants/ service providers: Procuring Officials may mistakenly consider it innocuous to seek discounts in private procurements from suppliers/ contractors/ consultants/ service providers having official dealings or its associates (especially against Rate Contracts).</p>	<p>Public purchasers must not seek or accept special facilities or discounts on private purchases (particularly same items which are being ordered officially) from contractors, suppliers/ contractors/ consultants/ service providers (including Rate Contract holders) with whom they have official dealings.</p>
<p>Sponsorship of Events: Procuring Officials may mistakenly consider it innocuous to seek financial favours (donations, advertisements for souvenirs, and contributions in cash or kind) in relation to sponsoring of cultural, social, charitable, religious, or sporting events, in the false belief that since he/ she is personally not</p>	<p>Public purchasers must never get involved in any non-official pecuniary transaction with the contractors, suppliers/ contractors/ consultants/ service providers including soliciting of sponsorship for unofficial and private cultural, social, sporting, religious, charitable or similar organisations or events from.</p>

benefitted, it would not be a violation of CIPP.	
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2.3 Integrity Pact (IP)

2.3.1 The Pre-bid Integrity Pact is a tool to help governments, businesses and civil society to fight corruption in public contracting. It binds both buyers and sellers to ethical conduct and transparency in all activities from pre-selection of bidders, bidding and contracting, implementation, completion and operation related to the contract. This removes insecurity of Bidders, that while they themselves may abjure Bribery, but their competitors may resort to it and win contract by unfair means.

2.3.2 Ministry of Finance, Department of Expenditure have mandated¹⁵ Ministries/ Departments and their attached/ subordinate offices (including autonomous bodies) to incorporate Integrity Pact by, depending on the nature of procurements/ contracts above a threshold value. The nature of procurement and threshold of value is to be decided by the Ministries/ Departments with approval of the Minister in charge. As guidance, the threshold should be such as to cover bulk (80-90%) of its procurement expenditure.

2.3.3 "The pact essentially envisages an agreement between the prospective vendors/bidders and the buyer, committing the persons/officials of both sides, not to resort to any corrupt practices in any aspect/stage of the contract. Only those vendors/bidders, who commit themselves to such a Pact with the buyer, would be considered competent to participate in the bidding process. In other words, entering into this Pact would be a preliminary qualification. The essential ingredients of the Pact include:

- i) Promise on the part of the Procuring Entity to treat all bidders with equity and reason and not to seek or accept any benefit, which is not legally available;
- ii) Promise on the part of bidders not to offer any benefit to the employees of the Procuring Entity not available legally and also not to commit any offence under Prevention of Corruption Act, 1988 or Indian Penal Code 1860;
- iii) Promise on the part of Bidders not to enter into any undisclosed agreement or understanding with other bidders with respect to prices, specifications, certifications, subsidiary contracts, etc.
- iv) Undertaking (as part of Fall Clause) by the Bidders that they have not and will not sell the same material/ equipment at prices lower than the bid price;
- v) Foreign bidders to disclose the name and address of agents and representatives in India and Indian Bidders to disclose their foreign principals or associates;
- vi) Bidders to disclose the payments to be made by them to agents/ brokers or any other intermediary;
- vii) Bidders to disclose any past transgressions committed over the specified period with any other company in India or abroad that may impinge on the anti-corruption principle;
- viii) Integrity Pact lays down the punitive actions for any violation;
- ix) IP would be implemented through a panel of Independent External Monitors (IEMs), appointed by the organization in consultation with Central Vigilance Commission. The IEM would review independently and objectively, whether and to what extent parties

¹⁵ OM No.14(12)/ 2008- E-II(A) dated 19th July 2011

have complied with their obligations under the Pact. Government of India organizations and Public Sector Undertakings desirous of implementing Integrity Pact are required to select at most three persons (below the age of 70 (seventy) years) of high integrity and reputation as Independent External Monitors (IEM) after due diligence and forward to the CVC for its approval. Only those officers of Government of India departments or Public Sector Undertakings, who have retired from top management positions, would be considered for appointment as IEM, provided they are neither serving or retired from the same organization. Eminent persons, retired judges of High/ Supreme Courts, executives of private sector of considerable eminence could also be considered for functioning as Independent External Monitors. The appointment of Independent External Monitors would be for an initial period of three years and could be extended for another term of two years (maximum tenure of five years). Names and contact details of the Independent External Monitor(s) should be listed in Notice Inviting Tender (NIT);

- x) In tenders meeting the criteria of threshold value/ nature of procurement - Integrity Pact clause and format should be included in the Bid Documents. Each page of such Integrity pact proforma would be duly signed by Purchaser's competent signatory. All pages of the Integrity Pact are to be returned by the bidder (along with the technical bid) duly signed by the same signatory who signed the bid, i.e. who is duly authorized to sign the bid and to make binding commitments on behalf of his company. Any bid not accompanied by Integrity Pact duly signed by the bidder shall be considered to be a non-responsive bid and shall be rejected straightway;
- xi) **Role/ Functions of IEMs:** The Monitors would not be subject to instructions by the representatives of the parties and should perform their functions neutrally and independently. They would review independently and objectively, whether and to what extent parties have complied with their obligations under the Integrity Pact. For this purpose, they would have access to all contract documents/ books of accounts of the bidders in case of any allegation of violation of any provisions of the Integrity Pact or payment of commission, whenever required. The IEMs will have the option to participate in such meetings among the parties related to the project provided such meetings could have an impact on the contractual relations between the parties. Ideally all IEMs of an organization should meet once every two months to take stock of ongoing tendering process. The IEMs would examine all complaints received by them and give their recommendations/ views to the designated officer of the Procuring Entity, at the earliest. The Monitors would also inform the Procuring Entity, if they notice or have reason to believe, a violation of the Integrity Pact. They may also send their report directly to the Central Vigilance Commission, in case of suspicion of serious irregularities requiring legal/ administrative action. At least one IEM would be invariably cited in the NIT. However for ensuring the desired transparency and objectivity in dealing with the complaints arising out of any tendering process, the matter should be examined by the full panel of IEMs, who would look into the records, conduct an investigation, and submit their joint recommendations. The recommendations of IEMs would be in the nature of advice and would not be legally binding. IEMs may not be equated with consultants in the Procuring Entity. Their role is independent in nature and the advice once tendered would not be subject to review. The role of the Chief Vigilance Officer (CVO) of Procuring Entity shall remain unaffected by the presence of IEMs. A matter being examined by the IEMs can be separately investigated by the CVO, if a complaint is received by him or

directed to him by the CVC. As per para 5.13 of CVC OM No. 05/01/22 issued vide letter No. 015/VGL/091 dated 25.01.2022, in the event of any dispute between the management and the contractor relating to those contracts where Integrity Pact is applicable, in case, both the parties are agreeable, they may try to settle dispute through mediation before the panel of IEMs in a time bound manner. If required, the organizations may adopt any mediation rules for this purpose. In case, the dispute remains unresolved even after mediation by the panel of IEMs, the organization may take further action as per the terms & conditions of the contract.

2.4 Debarment of Suppliers/ contractors/ consultants/ service providers

2.4.1 Registration of suppliers/ contractors/ consultants/ service providers and their eligibility to participate in Procurement Entity's procurements is subject to compliance with Code of Integrity for Public Procurement and good performance in contracts. Rule 151 of General Financial Rules (GFR), 2017 states the following regarding the 'Debarment from Bidding':-

- i. A bidder shall be debarred if he has been convicted of an offence-
 - (a) under the Prevention of Corruption Act, 1988; or*
 - (b) 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 a public procurement contract.**
- ii. A bidder debarred under sub-section (i) or any successor of the bidder shall not be eligible to participate in a procurement process of any procuring entity for a period not exceeding three years commencing from the date of debarment. Department of Commerce (DGS&D) will maintain such list which will also be displayed on the website of DGS&D as well as Central Public Procurement Portal.*
- iii. A procuring entity may debar a bidder or any of its successors, from participating in any procurement process undertaken by it, for a period not exceeding two years, if it determines that the bidder has breached the code of integrity. The Ministry/Department will maintain such list which will also be displayed on their website.*
- iv. The bidder shall not be debarred unless such bidder has been given a reasonable opportunity to represent against such debarment*

2.4.2 Since, DGS&D had been wind up on 31.10.2017, PPD, DoE did consultations on the issue of Debarment with major procuring Ministries/ Departments and issued the following 'Debarment Guidelines' in suppression to all earlier instructions on this subject¹⁶.

2.4.3 Guidelines on Debarment of firms from Bidding

1. The guidelines are classified under following two types:-
 - i. In cases where debarment is proposed to be limited to a single Ministry, the appropriate Orders can be issued by that Ministry itself, thereby banning all its business dealing with the debarred firm.

¹⁶ Notified vide OM No. F.1/20/2018-PPD issued by Department of Expenditure dated 02.11.2021

- ii. Where it is proposed to extend the debarment beyond the jurisdiction of the particular Ministry i.e. covering to all central Ministries/ Departments, the requisite Orders shall be issued by Department of Expenditure (DoE), Ministry of Finance (MoF).

Definitions

- i. Firm: The term 'firm' or 'bidder' has the same meaning for the purpose of these Guidelines, which includes an individual or person, a company, a cooperative society, a Hindu undivided family and an association or body of persons, whether incorporated or not, engaged in trade or business.
- ii. Allied firm: All concerns which come within the sphere of effective influence of the debarred firms shall be treated as allied firms. In determining this, the following factors may be taken into consideration:
 - a) Whether the management is common;
 - b) Majority interest in the management is held by the partners or directors of banned/ suspended firm;
 - c) Substantial or majority shares are owned by the banned/ suspended firm and by virtue of this it has a controlling voice.
 - d) Directly or indirectly controls, or is controlled by or is under common control with another bidder.
 - e) All successor firms will also be considered as allied firms.

The terms "banning of firm", 'suspension', 'Black-Listing' etc. convey the same meaning as of "Debarment".

2. Debarment by a Single Ministry/ Department

Orders for Debarment of a firm(s) shall be passed by a Ministry/ Department/organizations, keeping in view of the following:

- i. A bidder or any of its successors may be debarred from participating in any procurement process for a period not exceeding two years.
- ii. Firms will be debarred if it is determined that the bidder has breached the code of integrity as per Rule 175 of GFRs 2017. (Refer to para 3.2 of this Manual for further reading on Code of Integrity).
- iii. A bidder can also be debarred for any actions or omissions by the bidder other than violation of code of integrity, which in the opinion of the Ministry/Department, warrants debarment, for the reasons like supply of sub-standard material, non-supply of material, abandonment of works, sub-standard quality of works, failure to abide "Bid Securing Declaration" etc.
- iv. It shall not be circulated to other Ministries/ Departments. It will only be applicable to all the attached/ subordinate offices, Autonomous bodies, Central Public Sector Undertakings (CPSUs) etc. of the Ministry/ Department issuing the debarment Order.
- v. The concerned Ministry/ Department before issuing the debarment order against a firm must ensure that reasonable opportunity has been given to the concerned firm to represent against such debarment (including personal hearing, if requested by firm).
- vi. Secretary of Ministry/Department may nominate an officer at the rank of Joint Secretary/Additional Secretary as competent authority to debar the firms.
- vii. Ministry/ Department that issued the order of debarment can also issue an Order for revocation of debarment before the period of debarment is over, if there is adequate justification for the same. Ordinarily, the revocation of the Order before expiry of

debarred period should be done with the approval of Secretary concerned of Ministry/Department.

viii. The Ministry/Department will maintain list of debarred firms, which will also be displayed on its website.

ix. Debarment is an executive function and should not be allocated to Vigilance Department.

3. It is possible that the firm may be debarred concurrently by more than one Ministry/ Department. Ministries/ Departments at their option may also delegate powers to debar bidders to their CPSUs, Attached Offices/ Autonomous Bodies etc. In such cases, broad principles for debarment in para 2 as above are to be kept in mind. Debarment by such bodies like CPSUs etc. shall be applicable only for the procurements made by such bodies. Similarly, Government e-Marketplace (GeM) can also debar bidders up to two years on its portal. In case of debarments done by CPSUs, revocation of the debarment orders before expiry of debarred period should be done only with the approval of Chief Executive Officer of concerned CPSUs etc.

4. Debarment across All Ministries/ Departments

i. Where a Ministry/ Department is of the view that business dealings with a particular firm should be banned across all the Ministries/ Departments by debarring the firm from taking part in any bidding procedure floated by the Central Government Ministries/ Departments, the Ministry/ Department concerned, should after obtaining the approval of the Secretary concerned, forward to DoE a self-contained note setting out all the facts of the case and the justification for the proposed debarment, along with all the relevant papers and documents. DoE will issue the necessary orders after satisfying itself that proposed debarment across all the Ministries/ Departments is in accordance with Rule 151 of GFRs, 2017. This scrutiny is intended to ensure uniformity of treatment in all cases.

ii. The firm will remain in suspension mode (i.e. debarred) during the interim period till the final decision taken by DoE, only in the Ministry/ Department forwarding such proposal.

iii. Ministry/ Department before forwarding the proposal to DoE must ensure that reasonable opportunity has been given to the concerned firm to represent against such debarment (including personal hearing, if requested by firm). If DoE realizes that sufficient opportunity has not be given to the firm to represent against the debarment, such debarment requests received from Ministries/ Departments shall be rejected.

iv. DoE can also give additional opportunity, at their option, to firm to represent against proposed debarment. DoE can also take suo-moto action to debar the firms in certain circumstances.

v. No contract of any kind whatsoever shall be placed on the debarred firm, including its allied firms by any Ministries/ Departments/ Attached/Subordinate offices of the Government of India including autonomous body, CPSUs etc. after the issue of a debarment order.

vi. DoE will maintain list of such debarred firms, which will be displayed on Central Public Procurement Portal.

5. Revocation of Orders

- i. An order for debarment passed shall be deemed to have been automatically revoked on the expiry of that specified period and it will not be necessary to issue a specific formal order of revocation.
 - ii. A debarment order may be revoked before the expiry of the Order, by the competent authority, if it is of the opinion that the disability already suffered is adequate in the circumstances of the case or for any other reason.
6. **Other Provisions (common to both types of debarment)**
- i. No contract of any kind whatsoever shall be placed to debarred firm including its allied firms after the issue of a debarment order by the Ministry/ Department. Bids from only such firms shall be considered for placement of contract, which are neither debarred on the date of opening of tender (first bid, normally called as technical bid, in case of two packet/two stage bidding) nor debarred on the date of contract. Even in the cases of risk purchase, no contract should be placed on such debarred firms.
 - ii. If case, any debar firms has submitted the bid, the same will be ignored. In case such firm is lowest (L-1), next lowest firm shall be considered as L-1. Bid security submitted by such debarred firms shall be returned to them.
 - iii. Contracts concluded before the issue of the debarment order shall, not be affected by the debarment Orders.
 - iv. The Debarment shall be automatically extended to all its allied firms. In case of joint venture/ consortium is debarred all partners will also stand debarred for the period specified in Debarment Order. The names of partners should be clearly specified in the "Debarment Order".
 - v. Debarment in any manner does not impact any other contractual or other legal rights of the procuring entities.
 - vi. The period of debarment shall start from the date of issue of debarment order.
 - vii. The Order of debarment will indicate the reason(s) in brief that lead to debarment of the firm.
 - viii. Ordinarily, the period of debarment should not be less than six months.
 - ix. In case of shortage of suppliers in a particular group, such debarments may also hurt the interest of procuring entities. In such cases, endeavour should be to pragmatically analyze the circumstances, try to reform the supplier and may get a written commitment from the supplier that its performance will improve.
 - x. All Ministries/ Departments must align their existing Debarment Guidelines in conformity with these Guidelines. Further, bidding documents must also be suitably amended, if required.

2.4.4 Safeguarding Procuring Entity's Interests during debarment of supplier/ contractor/ consultant/ service provider:

Suppliers/ contractors/ consultants/ service providers are important assets for the procuring entities and punishing delinquent suppliers/ contractors/ consultants/ service providers should be the last resort. It takes lot of time and effort to develop, register and mature a new supplier. In case of shortage of suppliers/ contractors/ consultants/ service providers in a particular group of materials/equipment, such punishment may also hurt the interest of Procuring Entity. Therefore, views of the concerned department may always be sought about the repercussions of such punitive action on the continuity of procurements. Past records of performance of the supplier may also be given due weightage. In case of shortage of suppliers/ contractors/ consultants/ service providers and in cases of less serious

misdemeanours, the endeavour should be to pragmatically analyse the circumstances, reform the supplier and get a written commitment from the supplier that his performance will improve. If this fails, efforts should be to see if a temporary debarment can serve the purpose.

(Rule 151 of GFR 2017)

Chapter 3: Types of Contracts and Systems of Selection of consultants/ service providers

3.1 Types of Contracts

There are different basis for linking payments to the performance of services (called types of contracts) – each having different risks and mitigation measures. Bids are called and evaluated based on the type of contract. The choice of the type of contract should be based on Value-for-Money (VfM) with due regard to the nature of assignment. Adoption of an inappropriate type of contract could lead to a situation of lack of competition, contractual disputes and non-performance/failure of the contract.

Each type of contract is described briefly in subsequent paras, and criteria are suggested for their adoption along with risks and mitigation measures. Mostly used types of contracts are:

- i) Lump sum (Firm Fixed Price) contract;
- ii) Time based (Retainer-ship) contracts;
- iii) Percentage (Success Fee) contract;
- iv) Retainer-ship cum Success fee based contract;
- v) Indefinite delivery contract.

However, in case of Procurement/ Outsourcing of other (non-consulting) Services depending on the nature of services, can be either Lump-sum contracts, Time-based (Retainer-ship) contracts, or unit (item/ service) rate (say Taxi Service on per Km basis) based contract (as in case of Goods and Works) – or a mix of these. In certain uncertain but regularly needed services, indefinite delivery contracts, based on time or unit (item/ service) rates may be appropriate. Other types of contracts are not usual in procurement of other services.

3.2 Lump Sum (Firm Fixed Price) Contract

3.2.1 The lump sum (firm fixed price) contract is the preferred form of contract and under normal circumstances; the Procuring Entity shall use this form of contract. Consultant's proposal is deemed to include all prices - no arithmetical correction or price adjustments are allowed during evaluation. Lump sum consultancy contracts are easy to administer because there is fixed price for a fixed scope and payments are linked to clearly specified outputs/ milestones/ deliverables such as reports, documents, drawings, bills of quantities, software programs and so on. In view of Risks mentioned below this type of contracts are widely used for simple planning and feasibility studies, environmental studies, detailed design of standard or common structures, preparation of data processing systems, and so forth.

3.2.2 Lump Sum Contracts - Risks and Mitigations	
<i>Risk</i>	<i>Mitigation</i>
The quality and Scope of the Output/ deliverables is not linked to the payment. There may be tendency for the consultant/ service provider to cut corners on quality and	Lump sum service contracts should be used mainly for assignments in which the quality, scope and the timing of the required output of the consultants/ service providers are

scope of the output/ deliverables by saving on resources employed. Disputes may arise due to different possible interpretations of quality and scope of assignment.	clearly defined. The contract should include provision for evaluation of quality and scope of deliverables and certificate for its acceptability may be recorded. Payment should be made only against certificate of acceptance of deliverables.
Time over-run: As time is not linked to the payment. There may be tendency for the consultant/ service provider to save on deployment of resources which may result in time-over-run.	While the payments are not linked to time, the assignment should be monitored per month to ensure that the output per month is in line with planned and estimated time-line.

3.3 Time-Based (Retainer-ship) Contract

3.3.1 In Time-based (Retainer-ship) contracts payments are based on agreed hourly, daily, weekly, or monthly rates for staff (who in consultancy contracts are normally named, but not so in other services) and on reimbursable items using actual expenses and/or agreed unit prices. These are also called as retainer ship contracts, since the consultant/ service provider are retained for a pre-decided period. The rates for staff include salary, social costs, overhead, fee (or profit), and, where appropriate, special allowances. This type of contract is appropriate when Lump sum contract is not feasible due to difficulties in defining the scope and the length of services, either because the inputs required for attaining the objectives of the assignment is difficult to assess or because the services are tied up to activities by others for which the completion period may vary.

Because of risks and mitigations mentioned below, this type of contract is widely used for complex studies, supervision of construction, advisory services, and most training assignments etc.

3.3.2 Time-Based Contracts - Risks and Mitigations	
<i>Risk</i>	<i>Mitigation</i>
The quality and Scope of the Output/ deliverables as in Lump-sum Contracts, is not linked to the payment. There may be tendency for the consultant/ service provider to cut corners on quality, scope and timing of the output/ deliverables by saving on resources employed. Disputes may arise due to different possible interpretations of quality and scope of assignment.	The contract should include provision for evaluation of quality and scope of deliverables and certificate for its acceptability may be recorded. Payments should be released only against such certificates.
Performance in each time period is not linked to the payment. There may be tendency for the consultant/ service provider to use paid staff in a dilatory and un-productive manner.	Contracts need to be closely monitored and administered by the 'Procuring Entity' to ensure that the progress of assignment is commensurate with the time spent and that the resources for which payment is claimed have actually efficiently and productively been deployed on the assignment during the

	period. A system of monthly reporting of payouts and quantum of work achieved by the consultant/ service provider to CA should be instituted to enable supervision.
Time and Cost over-run is a major risk in Time-based contracts, as the payment is based on time and delay may result in unanticipated benefit to the consultant and the assignment may get delayed.	This type of contract should include an upper limit of total payments to be made to the consultants/ service providers for the assignment to safeguard against excessive prolonging of time and payments. After this limit is reached, or the period of completion is exceeded, CA should review justification for extension of the contract.

3.4 Percentage (Success/ contingency Fee) Contract

3.4.1 Percentage (Success/ Contingency Fee) contracts directly relate the fees paid to the consultant/ service provider to the estimated or actual project cost, or the cost of the goods procured or inspected. Since the payment is made after the successful realisation of objectives, it is also called success (or contingency) fee contract. The final selection is made among the technically qualified consultants/ service providers who have quoted the lowest percentage while the notional value of assets is fixed.

Due to Risks and mitigations discussed below, these contracts are commonly used for appropriate architectural services; procurement and inspection agents.

3.4.2 Percentage Contracts - Risks and Mitigations	
<i>Risk</i>	<i>Mitigation</i>
The quality and Scope of the Output/ deliverables as in Lump-sum Contracts, is not linked to the payment. There may be tendency for the consultant/ service provider to cut corners on quality and scope of the output/ deliverables by saving on resources employed.	The contract should include provision for evaluation of quality, scope and the timing of deliverables and certificate for its acceptability may be recorded. Payment should be made only against certificate of acceptance of deliverables.
Time over-run: As time is not linked to the payment. There may be tendency for the consultant/ service provider to save on deployment of resources which may result in time-over-run.	While the payments are not linked to time, the assignment should be monitored per month to ensure that the output per month is in line with planned and estimated time-line.
Bias against Economic solutions: Since the percentage payment is linked to the total cost of the project, in the case of architectural or engineering services, percentage contracts implicitly lack incentive for economic design and are hence	Therefore, the use of such a contract for architectural services is recommended only if it is based on a fixed target cost and covers precisely defined services.

discouraged.	
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3.5 Retainer and Success (Contingency) Fee Contract

3.5.1 In Retainer and Success (Contingency) fee contracts the remuneration of the consultant includes a retainer (time based, monthly payment) and a success fee (Percentage based), the latter being normally expressed as a percentage of the estimated or actual Project cost. Thus, this type of contract is a combination of Time Based and Percentage Contracts.

Due to risks and mitigations discussed below, Retainer and contingency fee contracts are widely used when consultants (banks or financial firms) are preparing companies for sales or mergers of firms, notably in privatization operations. It can also be used for assignments related to organisational restructuring/ change.

3.5.2 Retainer-ship and Contingency Fee Contracts - Risks and Mitigations	
<i>Risk</i>	<i>Mitigation</i>
All Risks as applicable to both Percentage Contracts and Time Based contracts are encountered in this case	Same mitigation strategies as in both Percentage and Time Based contracts may be adopted in this case.

3.6 Indefinite Delivery Contract (Price Agreement)

3.6.1 These contracts are used when Procuring Entity need to have “on call” specialized services, the extent and timing of which cannot be defined in advance. This is akin to the system of 'Rate Contracts' or framework contracts in the procurement of Goods. There is no commitment from Procuring Entity for the quantum of work that may be assigned to the consultant/ service provider. The Procuring Entity and the firm agree on the unit rates to be paid, and payments are made on the basis of the time/ quantum of service actually used. The consultant/ service provider shall be selected based on the unit rate quoted by them for providing the services.

These are commonly used to retain “advisers” or avail services 'on-call' - for example; expert adjudicators for dispute resolution panels, institutional reforms, procurement advice, technical troubleshooting, Document Management, Taxi Services, Temporary Manpower Deployment and so forth – normally over a period of a year or more.

3.6.2 Indefinite Delivery Contracts - Risks and Mitigations	
<i>Risk</i>	<i>Mitigation</i>
Risk of over-utilization: Indefinite Delivery Contracts are at risk of being over-utilized in excess of actual need since the scrutiny of service need may not be as intense as in case of other types of contracts.	<p>The need assessment of utilized services should be subject to some scrutiny, to ensure that there is no abnormal unexplainable trend in utilization.</p> <p>Such contracts need to be closely monitored and administered by the 'Procuring Entity' to ensure that the there is no indiscriminate or unwarranted usage and a maximum contract value may be laid down to keep control over usage and approval of CA may be obtained to extend it beyond such limit.</p>

3.6.2 Indefinite Delivery Contracts - Risks and Mitigations

<i>Risk</i>	<i>Mitigation</i>
	A system of monthly reporting of payouts and quantum of work achieved by the consultant/ service provider to CA should be instituted to enable supervision. In the report a monthly payout benchmark may be kept, above which the report may be required to be sent to a level above CA.
The quality and Scope of the Output/ deliverables as in Lump-sum Contracts, is not linked to the payment. There may be tendency for the consultant/ service provider to cut corners on quality, scope and timing of the output/ deliverables by saving on resources employed.	The contract should include provision for evaluation of quality and scope of deliverables and certificate for its acceptability may be recorded. Payments should be released only against such certificates.
Performance in each time period is not linked to the payment. There may be tendency for the consultant/ service provider to use resources in a dilatory and un-productive manner.	Contracts need to be closely monitored and administered by the 'Procuring Entity' to ensure that the progress of assignment is commensurate with the time spent and that the resources for which payment is claimed have actually efficiently and productively been deployed on the assignment during the period. A system of monthly reporting of payouts and quantum of work achieved by the consultant/ service provider to CA should be instituted to enable supervision.
Time and Cost over-run is a major risk in such contracts, as the output may not be achieved in the estimated time.	This type of contract should include an upper limit of total payments to be made to the consultants/ service providers to safeguard against excessive prolonging of time and payments. After this limit is reached, or the period of completion is exceeded, CA should review justification for extension of the contract.

3.7 Systems of Selection of service providers

3.7.1 Since the quality and scope of a consultancy assignment are not tangibly identifiable and consistently measurable, the technical and financial capability of consultants becomes an important though indirect determinant for quality and scope of performance. In such a situation value for money is achieved by encouraging wide and open competition among equally competent consultant. Thus, selection of consultants is Therefore, normally done in a two stage process. In the first stage, likely capable sources are shortlisted, if need be through an 'Expression of Interest' (EoI) through advertisement. On the basis of responses received, consultants meeting the relevant qualification and experience requirements for the given assignment are shortlisted for further consideration. The shortlist should include a

sufficient number, not fewer than three (3) and not more than eight (8) eligible firms. In the second stage, the shortlisted consultants are invited to submit their technical and financial (RfP) proposals generally in separate sealed envelopes. Evaluation of the technical proposal is carried out by evaluators without access to the financial part of the proposal. Financial proposals are opened after evaluation of quality.

3.7.2 The relative importance of Quality and Price aspects may vary from assignment to assignment depending on complexities/ criticality of quality requirements, internal capability of Procuring Entity to engage and supervise the assignment, as well as the value of procurements. Hence different systems of selection of consultants/ service providers are designed to achieve appropriate relative importance (weightage) of Quality and Price aspects. Decision on system of selection is normally preceded by an assessment of the capacity of the user to engage and supervise the implementation of proposed assignment. The selection method chosen depends to some extent on this assessment. Selection of system of selection also should take into account the likely field of Bidders.

3.7.3 The nomenclature of various selection methods below is in line with generally prevalent nomenclature and Therefore, varies slightly from the terms used in the 2006 version of Finance Ministry's 'Manual of Policies and Procedure of Employment of consultants'.

- i) Price based System - Least Cost Selection (LCS);
- ii) Quality and Cost Based Selection (QCBS);
- iii) Direct Selection: Single Source Selection (SSS)

3.7.4 Unlike Procurement of Consultancy Services, procurement of other services is done by a simpler process akin to those of procurement of Goods and Works. In procurement of other (non-consultancy) services normally system of selection used is lowest price (L-1) basis as in procurement of Goods/ works for technically responsive offers. Under very special circumstances Single Source Selection may also be used. However, in highly technical and complex services, where quality is important (say in studies like seismic surveys, airborne data acquisition etc) where use of QCBS system appears to be called for, it may be better handled as a consultancy contract.

3.7.5 It has become a practice among some procuring entities to routinely assume that open tenders which result in single bids are not acceptable, and to go for re-tender as a 'safe' course of action. This is not correct. Re-bidding has costs: firstly the actual costs of retendering; secondly the delay in execution of the work with consequent delay in the attainment of the purpose for which the procurement is being done; and thirdly the possibility that the re-bid may result in a higher bid¹⁷. Even when only one Bid is submitted, the process may be considered valid provided following conditions are satisfied:

- 1) The procurement was satisfactorily advertised and sufficient time was given for submission of bids.
- 2) The qualification criteria were not unduly restrictive; and

¹⁷As stated under para 11.8 of OM No.F.1/1/2021-PPD issued by Department of Expenditure dated 20.10.2021

3) Prices are reasonable in comparison to market values¹⁸

3.8 Price based System - Least Cost Selection (LCS)

3.8.1 In this method of selection, consultants/ service providers submit both a technical proposal and a financial proposal at the same time. Minimum qualifying marks for quality of the technical proposal are prescribed as benchmark (normally 75 (seventy five) out of maximum 100 (hundred)) and indicated in the RfP along with a scheme for allotting marks for various technical criteria/ attributes. *Alternatively, since in LCS selection, technical offers do not require be ranked (or adding of weighted technical score to financial score – as in QCBS selection), it would suffice in appropriately simple cases (please refer to para 6.2.2), if the evaluation criteria is only a fail/ pass criteria prescribing only the minimum qualifying benchmark. Thus, in LCS, a simplified evaluation criteria may also be used where instead of a marking scheme a minimum fail/pass benchmark of technical evaluation may be prescribed (i.e. must have completed at least two similar assignments; must have a turnover of at least Rs 10 (Rupees Ten) Crore etc). Any bidder that passes these benchmarks is declared as technically qualified for opening of their financial bids.* The technical proposals are opened first and evaluated and the offers who are qualifying as per these technical evaluation criteria will only be considered as technically responsive, and the rest would be considered technically nonresponsive and would be dropped from the list. Financial proposals are then opened for only eligible and responsive offers (Financial bids of other unresponsive bidders are returned unopened) and ranked. L-1 offer out of the responsive offers is selected on price criteria alone without giving any additional weightage to marks/ ranking of Technical proposal. *This system of selection is roughly the same as the price based selection of L-1 offer (among the technically responsive offers) in procurement of Goods/ Works.* In Finance Ministry's 2006, 'Manual of Policies and Procedure of Employment of consultants/ service providers', this is called QCBS, which is not the generally prevalent nomenclature. (Rule 193 of GFR 2017, also see para 6.9.1)

LCS is considered suitable for recruiting consultants/ service providers from firms in most assignments that are of a standard or routine nature (such as engineering design of non-complex works) where well established practices and standards exist. It is the simplest and the quickest system of selection and under normal circumstances, this method of evaluation shall be used as default since it allows for minimum satisfactory technical efficiency with economy. Justification must be provided if a selection method other than LCS is to be used.

3.8.2 Least Cost Selection - Risks and Mitigations	
Risk	Mitigation
Technical criteria may not be relevant to realization of quality of assignment.	Technical criteria selected should be relevant and proportional to the requirement of quality of assignment and the selection process should be rigorous enough to ensure that on one hand no technically

¹⁸ Notified under para 11.8 vide OM No.F.1/1/2021-PPD issued by Department of Expenditure dated 29.10.2021

3.8.2 Least Cost Selection - Risks and Mitigations

<i>Risk</i>	<i>Mitigation</i>
	unsatisfactory bids should be able to get past a loose criteria and on the other hand no technically satisfactory offer should get ruled out by tight criteria.
Marking Subjectivity: The scheme of marking or its application may be subjective.	It is important to lay down as objective a scheme of marking as possible. Cases where subjectivity is unavoidable (as in evaluation of methodology etc), a system of grading responses and their marking may be laid down in the bidding documents. Procuring Entity should also have a system of conciliation and moderation of widely disparate markings by different members of evaluation committee.

3.9 Quality and Cost Based Selection (QCBS)

3.9.1 In QCBS selection, minimum qualifying marks (normally 70-80 (seventy – eighty) out of maximum 100 (hundred) marks) as benchmark for quality of the technical proposal will be prescribed and indicated in the RfP along with a scheme for allotting marks for various technical criteria/ attributes. During evaluation of technical proposal, quality score is assigned out of the maximum 100 (hundred) marks, to each of the responsive bids, as per the scheme laid down in the RfP. The consultants/ service providers who are qualifying as per the technical evaluation criteria are considered as technically responsive, and the rest would be considered technically nonresponsive and would be dropped from the list. Financial proposals are then opened for only eligible and responsive offers and other financial offers are returned unopened to bidders. The Financial Proposals are also given cost-score based on relative ranking of prices, with 100 (hundred) marks for the lowest and pro-rated lower marks for higher priced offers. The total score shall be obtained by weighting the quality and cost scores and adding them. The weight given to the technical score may not be confused with the minimum qualifying technical score (though they may in some case be equal). For example, the weightage given to cost score may be 30% (thirty percent) and technical score may be given weightage of 70% (seventy percent, but should never be more than 80%). The ratio of weightages for cost and Technical score could also be 40:60 (forty: sixty) or 50:50 (fifty: fifty) etc. However, the weight for the “cost” shall be chosen, taking into account the complexity of the assignment and the relative importance of quality. The proposed weightings for quality and cost shall be specified in the RfP. The firm obtaining the highest total score shall be selected. *It may be noted that theoretically QCBS system with weight of 100% (hundred percent) for the ‘cost’ approximates the price based LCS system.* In Finance Ministry's 2006 'Manual of Policies and Procedure of Employment of consultants', this is called CQCCBS, which is not the generally prevalent nomenclature. This method of selection shall be used for highly technically complex and critical assignments where it is justifiable to pay appropriately higher price for higher quality of proposal. Table 3 provides a suggestive weighting for QCBS. (Rule 192 of GFR 2017, also see para 6.9.2)

Table 3. A suggestive weighting of scores for QCBS

Description	Remarks	Quality/Cost Weighting (%) in QCBS	Score in
High complex/downstream consequences/specialised assignments	Use QCBS with higher technical weightage	80/20	
Moderate complexity	Majority of cases will follow this range	75-65/ 35-25	
Assignments of a standard or routine nature such as auditors/procurement agents handling the procurement	Use of LCS is appropriate	60-50/40-50	

3.9.2 QCBS - Risks and Mitigations	
<i>Risk</i>	<i>Mitigation</i>
Inappropriate Selection of QCBS: There is a possibility that QCBS system is selected where LCS or other systems would have been more appropriate considering the quality requirements or the capability of Procuring Entity to monitor the assignment.	Selection of QCBS should be justified and applied only under circumstances mentioned above.
Weightage of Technical: Cost may not be proportional to quality requirements	Weightage different from 70:30 (seventy: thirty) should be adequately examined and justified.
Technical criteria may not be relevant to realization of quality of assignment.	Technical criteria selected should be relevant and proportional to the requirement of quality of assignment and the selection process should be rigorous enough to ensure that on one hand no technically unsatisfactory bids should be able to get past a loose criteria and on the other hand no technically satisfactory offer should get ruled out by tight criteria.
Marking Subjectivity: The scheme of marking or its application may be subjective.	It is important to lay down as objective a scheme of marking as possible. Cases where subjectivity is unavoidable (as in evaluation of methodology etc), a system of grading responses and their marking may be laid down in the bidding documents. Procuring Entity should also have a system

3.9.2 QCBS - Risks and Mitigations	
<i>Risk</i>	<i>Mitigation</i>
	of conciliation and moderation of widely disparate markings by different members of evaluation committee.

3.10 Direct Selection: Single Source Selection (SSS)

3.10.1 Under some special circumstances, it may become necessary to select a particular consultant/ service provider where adequate justification is available for such single-source selection in the context of the overall interest of Procuring Entity. In Finance Ministry's 'Manual of Policies and Procedure of Employment of consultants', this is called DNS, which is not the generally prevalent nomenclature. (*Rule 194 of GFR 2017, also see para 6.9.3*) The selection by SSS/ nomination is permissible under exceptional circumstance such as:

- i) tasks that represent a natural continuation of previous work carried out by the firm;
- ii) in case of an emergency situation, situations arising after natural disasters, situations where timely completion of the assignment is of utmost importance;
- iii) situations where execution of the assignment may involve use of proprietary techniques or only one consultant has requisite expertise;
- iv) At times, other PSUs or Government Organizations are used to provide technical expertise. It is possible to use the expertise of such institutions on a SSS basis;
- v) Under some special circumstances, it may become necessary to select a particular consultant where adequate justification is available for such single-source selection in the context of the overall interest of the Ministry or Department. Full justification for single source selection should be recorded in the file and approval of the competent authority obtained before resorting to such single-source selection.

Procuring Entity shall ensure fairness and equity, and shall have a procedure in place to ensure that:

- a) the prices are reasonable and consistent with market rates for tasks of a similar nature; and
- b) the required consultancy services are not split into smaller sized procurement.

3.10.2 All works/purchase/ consultancy contracts awarded on nomination basis should be brought to the notice of following authorities for information-

- a) The Secretary, in case of ministries/departments.
- b) The Board of directors or equivalent managing body, in case of Public Sector Undertakings, Public Sector Banks, Insurance companies, etc;
- c) The Chief Executive of the organisation where such a managing body is not in existence.
 1. The report relating to such awards on nomination basis shall be submitted to the Secretary/Board/Chief Executive /equivalent managing body, every quarter.
 2. The audit committee or similar unit in the organisation may be required to check at least 10% of such cases.

3.10.2	SSS - Risks and Mitigations
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Risk	Mitigation
Inappropriate Selection of SSS: There is a possibility that SSS system is selected where LCS or other systems would have been more appropriate considering the quality requirements or the capability of Procuring Entity to monitor the assignment. The assignment may be split into parcels to avoid competitive selection systems or to avoid obtaining higher level approvals for SSS.	Full justification for single source selection should be recorded in the file and approval of the competent authority (schedule of Procurement Powers – SoPP should severely restrict powers for SSS selection) obtained before resorting to such single-source selection. In direct selection, the Procuring Entity should ensure fairness and equity and the required consultancy/ other services are not split into smaller sized procurement to avoid competitive processes.
Cost may be unreasonably High: The single consultant/ service provider is likely to charge unreasonably high price.	Procuring Entity must have a procedure in place to ensure that the prices are reasonable and consistent with market rates for tasks of a similar nature. If necessary negotiations may be held with the consultants/ service providers to examine reasonableness of quoted price.

3.11 Fixed Budget – based Selection (FBS) for consultancy services :

3.11.1 GFRs 2017 provide three methods for selection/evaluation of consultancy proposals viz. Quality and Cost Based Selection (QCBS), Least Cost System (LCS) and Single Source Selection (SSS). The Fixed Budget Based Selection(FBS) method is hereby also allowed for selection of consultants. Under this method, cost of the consulting services shall be specified as a fixed budget in the tender document itself. FBS may be used when :

- (i) the type of consulting services required is simple and/or repetitive and can be precisely defined; and
- (ii) the budget can be reasonable estimated and set based on credible cost estimates and/ or previous selections which have been successfully executed; and
- (iii) the budget is sufficient for the consultant to perform the assignment.

3.11.2 Under FBS, the selection of the consultant shall be made by one of the following two methods :

- (i) By a competitive selection process, based only on quality, using specific marking criteria for quality in the manner indicated in Rule 192(i) of the GFR. The proposal with the highest technical score that meets the fixed budget requirement shall be considered for placement of contract.
- (ii) In cases of repetitive or multiple assignments, by empanelling suitable quality criteria. Thereafter, selection of a specific consultant for a specific assignment from such panel shall be based on overall considerations of public interest including timeliness, practicability, number of other assignments already given to that consultant in the past, etc. In such cases the budget for each assignment shall also be fixed by the procuring entity.

Chapter 4: Preparing for Procurement of Consultancy Services

4.1 Preparation of Terms of Reference (ToR)

4.1.1 ToR is akin to Description, Quantity and Technical Specification in Procurement of Goods. This is the first step in the selection of the consultants once a need has been identified. A ToR explains the purpose/ objectives of the assignment, scope of work, activities, tasks to be performed, respective responsibilities of the Procuring Entity and consultant, expected results, and deliverables of the assignment. ToR is important for an understanding of the assignment and its correct execution to ensure that the objectives of assignment are achieved. It reduces the risk for the Procuring Entity of unnecessary extra work, delays, and additional expenses of the Procuring Entity. In addition, it helps reduce for the bidders the risk of ambiguities during the preparation of bidder's proposals, contract negotiation, and execution of Consultancy.

4.1.2 Hence ToR should be comprehensive and unambiguous. However, it should not be too detailed and inflexible, so that competing consultants may be in a position to propose their own methodology and staffing. Bidders shall be encouraged to comment on the ToR in their proposals. The ToR shall include:

- i) Procuring Entity's organisation background and Project background;
- ii) Purpose and Service Outcomes Statement of the assignment; (refer to chapter 1)
- iii) Detailed scope of work Statement including schedule for completing the assignment;
- iv) Expected requirement of key professionals and kind of expertise;
- v) Capacity-building programme and transfer of knowledge, if any;
- vi) Deliverables - List of reports (or documents, data, maps, surveys, designs, drawings), schedule of deliveries, and period of performance;
- vii) Background material, Data, reports, records of previous surveys, and so on, available and to be provided to the consultant;
- viii) Facilities such as local conveyance, office space, office machines, secretarial assistance, utilities, local services, etc., which would be provided to the consultant by the Procuring Entity;
- ix) Institutional and organisational arrangement; and
- x) Procedure for review of the work of consultant after award of contract

4.1.3 A template for developing a ToR is given at Annexure 4. It should cover following aspects:

- i) **Detailed Scope of Work**

As part of the ToR, at its simplest, the 'Detailed Scope of Work ' will contain the type and volume of activity to be undertaken and the time-frame of activity involved to achieve the Purpose and Service Outcomes as envisage in the 'Brief proposal and Justification of the Services' (refer chapter 1). Starting from end-outcomes backwards, the process to achieve the outcomes is broken down into a discrete number of interrelated tasks, which the consultant will have to undertake. In consultancy Services, the 'Detailed Scope of Work' should describe only the activities, not the approach or methodology by which the results are to be achieved, since these are the

task of the consultants. However, suggestions may be provided on the approach or the methodology that the consultants could or should use to execute the assignment. After the tasks are identified, a logical sequencing of the tasks must be determined. Usually a simple bar chart (or Gantt-chart) is the best way to illustrate required outputs over time and their relationship to each other. The 'Detailed Scope of Work ' contains such a sequence of tasks over a timeline and also tangible outputs and activities such as reports, workshops, or seminars.

ii) **Expected requirement of key professionals and kind of expertise**

Except in very complex Consultancies, it is desirable to not to distinguish the tasks of individual experts but instead to prepare a longer and more detailed description of what the Consultancy team, as a whole, will provide without splitting up tasks. These are generally known as “activity based” ToR as opposed to “position-based” ToR. The ToR would list a range of tasks without regard to who will have the responsibility to undertake them. In most of the cases, where the number of experts is small, the work to be done is not clearly defined, and a degree of flexibility is required— this is acceptable. In Consultancy services, Key professionals are usually named and their credentials carry weightage in technical evaluation.

iii) **Deliverables and Reports Requirements**

The assignments deliverables and reporting should be clearly specified. In particular, for inception and progress reports, there should be a balance between keeping the Procuring Entity well informed and not forcing consultants to spend an excessive amount of time preparing minor reports. The ToR should indicate the format, frequency, and content of reports as well as the number of copies, the language, and the names of the prospective recipients of the reports. For all major reports, an executive summary is recommended as a separate section. Depending on the assignment, the following reports are usually required;

- a) **Inception Report:** This report should be submitted about six weeks after the commencement date. Any major inconsistency in the ToR, staffing problems, or deficiency in Procuring Entity’s assistance that have become apparent during this period should be included. The inception report is designed to give the Procuring Entity confidence that the assignment can be carried out as planned and as agreed upon in the contract, and should bring to its attention major problems that might affect the direction and progress of the work.
- b) **Progress Reports:** These reports keep the Procuring Entity regularly informed about the progress of the assignment. They may also provide warnings of anticipated problems or serve as a reminder for payment of invoices due. Depending on the assignment, progress reports may be delivered monthly or bimonthly. For feasibility studies and design assignments, delivery of progress reports at two-month intervals is satisfactory. For technical assistance and implementation supervision, for instance, construction, progress reports are best submitted monthly. Progress reports may include a bar chart showing details of progress and any changes in the assignment schedule. Photographs with time-stamping are a quick and easy way of conveying the status of a project, and their use in progress

reports should be encouraged. For technical assistance services, progress reports also serve as a means of setting out the work program for the following months. Each team member usually contributes to the preparation of the monthly report.

- c) **Interim Reports:** If the assignment is phased, interim reports are required to inform the Procuring Entity of preliminary results, alternative solutions, and major decisions that need to be made. Since the recommendations of an interim report may affect later phases of the assignment and even influence the results of the project, the Procuring Entity should discuss the draft interim reports with consultants in the field. The Procuring Entity should not take more than 15 (fifteen) days to review and approve draft interim reports.
 - d) **Final Report:** The final report is due at the completion of the assignment. The Procuring Entity and consultants should discuss the report while it is still in draft form. The consultants alone are responsible for their findings; although changes may be suggested in the course of the discussions, consultants should not be forced to make such changes. If the consultants do not accept comments or recommendations from the Procuring Entity, these should be noted in the report. The consultants should include in the report the reasons for not accepting such changes.
- iv) Background material, records of previous surveys etc. available and to be provided to the consultant. This would vary from project to project, but transparency demands that such information should be transparently and equitably shared with all prospective bidders.
 - v) Facilities such as local conveyance, office space, secretarial assistance etc., which can be provided to the consultant. This aspect has a great bearing on the cost that will be quoted by the bidders. This can have implications in vitiating the selection process either way – a facility to be provided may not get declared or a declared facility may not be provided ultimately. So, great care and reality check is necessary, while preparing this statement.
 - vi) **Procedure for review of the consultancy after award of contract**

In consultancy services, the Consultancy Monitoring Committee (CMC), and procedure for review and approval of work of the consultant after the award of contract should also be declared and adhered to.

(Rule 185 of GFR 2017)

4.2 Estimating Costs, Setting the Budget, and Seeking Approval

Preparation of a well-thought-through cost estimate is essential if realistic budgetary resources are to be earmarked.

- i) **Categories:** Costs shall be divided into two broad categories: (a) fee or remuneration (according to the type of contract used); and (b) reimbursable costs. Depending on the nature of the assignment, cost estimates may be prepared either in local currency or with a combination of local plus foreign currencies. Cost estimate should provide for forecast of inflation during the period of assignment.
- ii) **Estimated Resources:** The cost estimate shall be based on the Procuring Entity's assessment of the resources needed to carry out the assignment:
 - a) Staff time

- b) logistical support (City, National and International Travels/ Trips and durations), and
 - c) physical inputs (for example, vehicles, laboratory equipment)
 - d) Miscellaneous (Support services, contingencies and Profit element, taxes and duties)
- iii) **Rates:** Costs are normally estimated using unit rates (staff remuneration rates, reimbursable expenses) and quantities (exceptionally some items may be estimated on the lump-sum basis or percentage basis – Contingencies and support services). Rates of payment should be identified (including applicable taxes if any) in local and foreign currency for Staff Time, Logistics Costs and Costs of various physical inputs/ support services.
- iv) **Staff Costs:** The estimate of staff cost is based on an estimate of the personnel time (staff-months or staff-hours) required for carrying out the assignment taking into account the time required by each expert, his or her billing rate, and the related direct cost component. In general, staff remuneration rates include basic salary, social charges, overheads, fees or profit and allowances. It is useful to prepare a bar chart indicating the duration of each main activity (work schedule) and time to be spent by different members of the consultancy team (staffing schedule) distinguishing tasks to be carried out by foreign and local consultants. Due consideration should be given to the expected breakdown of a consultant's time in the home office and client's countries and away from home office allowance.
- v) **Logistic Costs:** Number of trips required should be estimated as required to carry out various activities. Travel costs may be included for city travel, National and International travel and stay.
- vi) **Physical Inputs Costs:** Assessment of such costs would depend on the technical requirements of equipment.
- vii) **Miscellaneous costs:** Support services may be taken as a percentage of staff costs. Contingencies and Profit elements are usually taken as a percentage of the total cost of the Consultancy. To this would be added the taxes and duties likely to be incurred by the consultants.

4.2.2 Although assignments vary in size, length and nature, it is possible to make a cost estimate by breaking down the assignment's activities into the following cost categories:

- i) Professional and support staff;
- ii) Travel, Hotel, and transport;
- iii) Mobilisation and demobilisation;
- iv) Office rent, Furniture/ Equipment, supplies, Utilities, IT equipment and communication;
- v) Assignment related surveys, training programmes;
- vi) Translation, report printing;
- vii) Contingencies: miscellaneous, insurance, shipping; and
- viii) Indirect local taxes and duties in connection with carrying out the services.

A mismatch between the cost estimate and the ToR is likely to mislead consultants on the desired scope, depth, and details of service required, and this could lead to serious problems during contract negotiations or during implementation of the assignment.

4.3 Finalizing and Approval of the ToR

The scope of the work described in the ToR shall be compatible with the available budget. The most important step is to determine whether all tasks required to achieve the desired output have been included in the ToR. The next step is to determine whether adequate budget has been allocated to implement the ToR as designed. Since the budget may be fixed or limited, a series of iterations may be required before a final, acceptable ToR is formulated. CA's (Competent Authority) approval may be taken for the ToR before proceeding ahead. After administrative approval provision may be made in the Budget or if that is not feasible, additional confirmation at the time of seeking Administrative approval may be taken from the CA for inclusion in the Revised Estimate stage of Budget. Procurement may be initiated only after such budgetary provisions/ confirmations.

4.4 Developing a Procurement Plan

The Consultancy may be part of a larger project/ works in which there be other components of work, Goods or services. Once a project or a program is identified, the Procuring Entity needs to develop synchronised procurement plan for all the various components of the project/programme. This will also require planning of the sequence and contents of the different components including consultancy, adoption of the most appropriate method of selection and type of contract, and ensuring that consultant selection is initiated and completed to meet the overall requirements of project implementation. For example, if a consultant is required for a large road project construction supervision, the entire sequence of preparation of the feasibility report, detailed design and bidding document, time required for inviting bids for construction work, and award of contract has to be taken into account so that the construction supervision consultant is mobilised before the award of the construction contract.

4.5 e-Procurement

4.5.1 Electronic procurement (e-procurement) is the use of information and communication technology (specially the internet) by the buyer in conducting procurement processes with the vendors/ contractors for the acquisition of goods (supplies), works and services aimed at open, non-discriminatory and efficient procurement through transparent procedures. It is now mandatory for Ministries/ Departments to receive all bids through e procurement portals in respect of all procurements. A generic description of how e-Procurement is conducted is given in Appendix 3.

4.5.2 Ministries/ Departments which do not have a large volume of procurement or carry out procurements required only for day-to-day running of offices and also have not initiated e-procurement through any other solution provider so far may use e-procurement solution developed by NIC. Other Ministries/ Departments may either use e-procurement solution developed by NIC or engage any other service provider following due process.

4.5.3 These instructions will not apply to procurements made by Ministries/ Departments through Government e-Marketplace (GeM).

4.5.4 In individual cases where national security and strategic considerations demands confidentiality, Ministries/ Departments may exempt such cases from e-procurement after seeking approval of concerned Secretary and with concurrence of Financial Advisers.

4.5.5 In case of tenders floated by Indian Missions abroad, Competent Authority to decide the tender, may exempt such case from e-procurement.

(Rule 160 of GFR 2017)

Chapter 5: Shortlisting Stage in Procurement of Consultancy Services

5.1 Shortlisting of qualified consultants – Expression of Interest (Eol)

5.1.1 Due to inherent complexities of evaluation of physically non-measurable scope and quality standards of consultancy proposals, it is too time consuming and expensive for the Procuring Entity to invite (as well for the Consultancy firms to prepare) and evaluate proposals from all consultants who want to compete. Therefore, instead of publicly inviting all interested bidders to present their bids; the consultant selection process is based on obtaining limited number of proposals from a short list of qualified firms that, in the Procuring Entity's view of experience, are capable and can be trusted to deliver the required services at the desired level of quality.

5.1.2 In Procurement of Consultancy, these considerations can be best addressed through unrestricted competition among qualified shortlisted firms or individuals in which selection is based on the quality of the proposal and, where appropriate, on the cost of services to be provided. Hence Procurement of Consultancy needs to be done in a two stage process. In the first stage of procurement, the qualified firms are shortlisted transparently. In the second stage Request for Proposals (RfP) containing Technical and Financial Bids is invited from such shortlisted bidders to select the winning bidder. Care should be taken to avoid formation of unreasonable qualification criteria prior to shortlisting of consultants that may lead to restricted participation.

Unlike Procurement of Consultancy Services, procurement of other (non-consultancy) Services is done by a simpler process akin to those of procurement of Goods and Works. It is normally done in a Single Stage (RfP) Process. In procurements above Rs 10 (Rupees Ten) Lakhs, it should normally be an advertised RfP. For procurement below Rs 10 (Rupees Ten) Lakhs, RfP can be issued to a selected shortlist of likely service providers.

5.1.3 (Rule 183 (ii) of GFR 2017) For procurement above Rs 25 (Rupees Twenty-five) Lakhs shortlisting is done in an openly advertised competitive shortlisting process called Expression of Interest (Eol), giving equal opportunity to all interested bidders to be considered for shortlisting. Under Eol the "Request for Expression of Interest" (REol) is advertised on Central Public Procurement Portal (CPPP) at www.eprocure.gov.in and on Government E-Market (GeM). An organisation having its own website should also publish all its advertised tender enquiries on the website. The advertisements for invitation of tenders should give the complete web address from where the bidding documents can be downloaded. A complete ToR should be ready before requesting Eol. Attention of known reputed consultants may also be separately drawn wherever possible. The advertisement must include, among other things, the last date of submission of Eol, how to get/ download copy of the Eol document including ToR, contact information of the Procuring Entity with the name of contact person, and so on. In case it is felt that likely consultants may not be available in India, the Eol process may be done on Global Tender Enquiry (GTE) process, by sending REol notice to foreign embassies in India and Indian embassies in relevant countries.

5.1.4 **No Global Tender Enquiry (GTE) up to Rs. 200 crores**¹⁹ shall be invited or such limit as may be prescribed by the Department of Expenditure from time to time. In exceptional cases where the Ministry or Department feels that there are special reasons for inviting GTE, for tenders below such limit, it may record its detailed justification and seek prior approval for relaxation from the Competent Authority specified by the Department of Expenditure.

- i) The proposal for approval shall be submitted by Administrative Ministry with the concurrence of Financial Advisor and approval of Secretary concerned. The proposals submitted by individual offices/ organisation (e.g. autonomous bodies, Central Public Sector Undertakings and subordinate offices of Central Government etc.) will not be entertained.
- ii) The proposals shall be submitted along with duly filled format²⁰ (placed at Annexure-2D).

5.1.5 Before sending the proposals for approvals of the Global Tenders, following is to be ensured:-

- i) Domestic open tender must be floated to identify the domestic manufacturers/ service providers for the items/ services for which approval is being sought for issuance of Global Tenders. In case, if the Ministry/ Department has not floated a domestic open tender after 15.05.2020 for the items to be procured through GTE, such proposals will not be entertained. The proposal must contain the details of domestic open tenders, issued after 15.05.2020. These details shall cover tender number, date of opening, number of offers received, details of offers received, reasons why domestic suppliers were not considered etc.
- ii) The proposal must contain the details of deliberations with DPIIT/ relevant industrial bodies for identification of domestic manufacturers/ service providers.
- iii) The 3/5-year procurement plan as mandated by Public Procurement (Preference to Make in India) (PPP-MII) order issued by DPIIT must be published on website, before forwarding proposals for the purpose of procurement through GTE. Web-link of published procurement plan should be provided in proposal.

5.1.6 **Exemptions/ Clarifications**

- a) For procurement of specialised equipments required for research purposes, and spares and consumables, for such equipments up to Rs. 200 crore for the use of Educational and Research Institutes, Secretary of Ministry/ Department concerned shall be the competent authority to approve issue of Global Tender Enquiries for such requirements subject to fulfilment of conditions as laid down in para 5.1.7 below. The equipment should be of specialized nature required for research purposes and not the routine equipment used in offices²¹.
- b) On procurement of spare parts of the equipments/ Plants & Machinery etc. on nomination basis from Original Equipments Manufacturers (OEMs) or Original Equipment Suppliers (OES) or Original Part Manufacturers (OPMs) as no competitive tenders are invited in such cases²².

¹⁹Rule 161 of GFR, 2017 Amended vide DoE OM No. F.12/17/2019-PPD dated 15.05.2020.

²⁰Issued by Cabinet Secretariat vide ID No. 213/2/1/2020-C.A.IV dated 06.10.2020

²¹Notified vide OM No. 4/1/2021-PPD issued by Department of Expenditure dated 11.06.2021)

²²Notified vide OM No. 12/17/2019-PPD issued by Department of Expenditure dated 29.10.2020

- c) On procurement of services like Annual Maintenance Contract (AMC) and auxiliary/ add-on components for existing equipments/ Plant & Machinery etc. , which are procured from OEM/ OES/ OPM on nomination basis, as no competitive tenders are invited in such cases²³.
 - d) Where procuring entities need to issue GTEs to fulfil contractual commitments/ obligations entered by them before 15.05.2020 i.e. bid has been submitted by them to their clients before 15.05.2020. similarly, where procuring entities need to issue GTEs in view of existing collaboration agreements entered by them with foreign suppliers before 15.05.2020²⁴.
 - e) Based on the reference received from Ministry of Health & Family Welfare, GTE can be floated for 128 Medical Devices (placed at Annexure-2E). The exemptions is provided for such items till 31.03.2023. MoHFW will review domestic availability of these items at the end of 2022, keeping in view the Production Linked Incentive (PLI) scheme etc. launched by Department of Pharmaceuticals in Medical Devices and other relevant factors, in consultation with Department of Expenditure²⁵.
 - f) For projects funded by Multilateral Development Banks (MDBs like The World Bank, Asian Development Bank etc.)/ Bilateral Funding Agencies (BFAs), where the procurement is governed by the conditions negotiated in the loan agreement, and where the project executing agencies from time to time further award works to various Autonomous Bodies (ABs)/ Central Public Sector Enterprises (CPSEs) etc., the Secretary of the Ministry/ Department responsible for execution of such project shall be the Competent Authority for approval for issuance of GTEs by such Autonomous Bodies/ CPSEs etc²⁶.
 - g) Exemption to semiconductor..
- 5.1.7 [Refer to para 5.1.6 (a) above]
- 5.1.7.1 Educational, Research institutions and other units will make full efforts towards reducing of imports in following manner. This will result in substantial effects both within the institutions and also through impact on the eco-system:-
- a) Identification of equipment being procured time and again from abroad, and help developing them in India by identifying potential manufacturers and providing them technical help and expertise for developing the equipment. This programme will be coordinated by the Empowered Technology Group (constituted by Cabinet and chaired by the Principal Scientific Advisor (PSA).
 - b) Efforts to promote technology transfer through agreements or to encourage technological collaboration with foreign manufacturing in India at the Start-ups set up in Research Parks.
 - c) Sharing and updating of information about the availability of research equipment across various Indian Institutes on a single portal (the I-STEM²⁷ portal has been developed for this purpose) so that those can be utilized by the needy institutes.

²³Notified vide OM No.F.4/1/2021-PPD issued by Department of Expenditure dated 01.09.2021

²⁴Notified vide OM No. 4/1/2021-PPD issued by Department of Expenditure dated 12.03.2021

²⁵Notified vide OM No. F.4/1/2021-PPD issued by Department of Expenditure dated 06.01.2022

²⁶Notified vide OM No. F.7/12/2021-PPD-I issued by Department of Expenditure dated 27.07.2021

²⁷<https://www.istem.gov.in/>

- d) Without compromising quality, Institutes should indicate alternative/ equivalent technical specifications that could suit their requirement, so that there are more chances of local manufacturers participate in the tendering process.
- e) Regular interaction between academia and Indian industry organizations at the level of the institution about the requirement of equipment of foreign origin and for encouraging the domestic manufacturing.
- f) Regular requirement of proprietary/ non-proprietary research consumables may be assessed and domestic alternatives are explored for use.
- g) A national level programme for indigenous development of scientific equipment be initiated by the Office of PSA.
- h) Without compromising quality, institutes should be flexible with specifications so that domestic manufactures are encouraged to meet requirements.

5.1.7.2 **Guidelines for resorting to GTE**

- a) Market assessment should be done by the concerned institution, as certified by the Head of the Institution. Only after no Indian manufacturer is found, a GTE should be issued.
- b) In case no Indian manufacturer/ suppliers are found, procurement may be done, through GTE, subject to compliance of provisions of GFR and requirement of procurement through GeM.
- c) DEAN (R&D) or an appropriate authority within the institute will issue certificates as per para 5.1.7.3 below, before inviting GTE. As a reporting matter in the Board of Governors, such certificates should be tabled, and also shared with Office of the PSA, DPIIT and concerned Administrative Ministry.
- d) The information about the procurement of equipment should be shared across various Educational and Research Institutes, through the I-STEM portal, already established for this purpose by the PSA's office. This will allow the equipment to be used by other institutions too, for research purposes.
- e) Analyze the equipment being procured time and again from abroad, and help developing them in India by identifying potential manufacturers and providing them technical assistance and expertise for developing the equipment. Half yearly reports on this action to be shared by the Institutes with the Office of the PSA, DPIIT and concerned Administrative Ministry/ A national level scheme will also be initiated by the Office of PSA for indigenous development of scientific equipment.
- f) Preference to local suppliers over foreign supplier as per the existing Government of India guidelines, should be observed as applicable.

5.1.7.3 **Certificates to be issued**

- a) Confirmation of non-availability in India of particular equipment/ consumables of foreign origin through GeM and other sources.
- b) Certification that locally available alternatives with equivalent specifications are not suitable for research purposes.
- c) The non-availability of such equipment for research purposes with nearby research institutes or within the institute.
- d) Certification of the requirement of proprietary items of foreign origin for research purposes (where applicable).

5.1.8 Adequate time should be allowed for getting responses from interested consultants. The Procuring Entity shall make available copies of the EoI document to the interested consultants in hard copies as well as on its website.

5.1.9 (Rule 183 (i) of GFR 2017) In procurements of consultancy services below Rs 25 (Rupees Twenty five) Lakhs, shortlisting is done without a formal published Expression of Interest (Eol), akin to a Limited Tender Enquiry (LTE) process. To start with, the preparation of a long list of potential consultants/ service providers may be done on the basis of formal or informal enquiries from other Ministries or Departments or Organisations involved in similar activities, Chambers of Commerce & Industry, Association of consultancy firms etc. The Procuring Entity should scrutinise the preliminary long list of likely contractors as identified above and shortlist the prima facie eligible and capable contractors from the long list. The number of consultants in this moderated long-list should not be less than three. In case sufficient consultants cannot be located, then the responses may be called from lesser number of consultants, but not less than three in any case, after taking CA's approval. To smoothen this shortlisting of consultants for projects below Rs 25 (Rupees Twenty five) Lakhs, Procuring entities who do frequent procurement of consultancy services, may consider preparation of a Panel of qualified consultants, after evaluation of their credentials, on the lines of registration of vendors in procurement of goods. If the complexity of the project so justifies, a formal Eol may be advertised as in above, even for procurements below Rs 25 (Rupees Twenty five) Lakhs, with the approval of CA.

5.1.10 Empanelment of contractors: Public authorities may empanel/ register contractors of those specific goods and services which are required by them regularly. Performance of such empanelled contractors should be reviewed periodically. The list of registered contractors shall be updated on a regular basis. The category/ class of contractors may be upgraded/ downgraded or contractors may be de-listed based on their performance. Empanelment of contractors shall be done in a fair and equitable manner, preferably online after giving due publicity²⁸.

5.1.11 The Eol document shall contain following sections:

i) Letter of Invitation:

It shall include a copy of the advertisement whereby consultants are invited to submit their Eol.

ii) Instructions to the consultants

It may include instructions regarding nature of job; submission requirement; requirement of bid processing fees; if any; last date of submission; place of submission; and any related instruction;

iii) Description of Services - Brief Purpose and Scope of Work

This may include brief purpose/objective statement; Service Outcomes Statement; broad scope of work including Time-frames; inputs to be provided by the Procuring Entity; and expected deliverables of the assignment. This may also include the place of execution of the assignment. The request for Eol shall not include the assignment ToR, The consultants may also be asked to send their comments on the objectives and scope of the work or service projected in the enquiry.

²⁸ Notified under para 9.3 vide OM No.F.1/1/2021-PPD issued by Department of Expenditure dated 29.10.2021

iv) **Qualification Criteria**

This may clearly lay down the qualification criteria which shall be applied by the Procuring Entity for short listing the consultants. The REoI should ask for sufficient information so that the Procuring Entity may evaluate the consultant's capabilities and eligibility to undertake the assignment. Information should include: (a) core business and years in business; (b) qualifications in the field of the assignment; (c) technical and managerial organisation of the firm; and (d) general qualifications and number of key staff. In addition, the consultants should indicate information relating to their eligibility and any conflict of interest that they know may impact objective performance and impartial advice for their services. Consultants should not be asked about their approach to the services or to submit any curricula vitae of key personnel, because these documents will be dealt with in the RfP. No legal documents such as certificates of incorporation of the firm, powers of attorney, financial statements, or translations of standard brochures should be requested. Given the often-large number of submissions, the advertisement should stress the importance of brevity of the information to be sent.

A sample format for seeking an EoI is given at *Annexure 6*.

5.2 Short List of consultants

5.2.1 The Procuring Entity shall evaluate the consultants for shortlisting, inter-alia, based on their past experience of handling similar types of projects, strength of their man power and financial strength of the firm. For example, it is important to find out if the firm: (i) is a small specialised firm or a large firm with access to a pool of expertise; (ii) has been in business for an extended period and has a track record in the field of assignment and in the region; and (iii) has appropriate certification in in-house quality control [firm adheres to the requirement of International Organization for Standardization (ISO)] as relevant to the task and has an ethics code in place.

5.2.2 It is important for the Procuring Entity to hire consultants who have a reputation for integrity and impartiality rooted in independence from third parties. It is seen that the process of shortlisting is one of the most difficult and time-consuming tasks in the selection process of a consultant. This could be eased by writing a clear Description of Service (objectives and Scope) and shortlisting criteria.

5.2.3 Finally, if the same firm is considered for concurrent assignments (for example, a construction supervision consultant for different stretches/packages of rehabilitation/reconstruction of a road contract), the Procuring Entity shall assess the firm's overall capacity to perform multiple contracts before including it in more than one short list. However this needs to be pre-declared in the EoI documents.

5.2.4 It is seen that the process of shortlisting is one of the most difficult and time consuming tasks in the selection process of a consultant. The short list of firms is required for the selection of consultancy services in a competitive process with a minimum of three (*Rule 184 of GFR 2017*) and generally not more than eight.

5.2.5 The Procuring Entity may assign scores to the response of each consultant based on weightages assigned to each of the criteria in the EoI. Each criterion may be sub-divided into sub-criteria, if called for. Normally, the weightages shown in Table 1 may be used for such

an evaluation (this is just an indicative criterion to assist the evaluators. The criteria and their weightage may be changed as per the need of Procuring Entity).

Table 2. Qualification criteria and their weightages

SI. No.	Criteria	Weightage	
	Sub-criteria	Criteria Total	Sub-criteria
1	Past experience of the consultant (track record)	60%	
	<ul style="list-style-type: none"> • Number of years' relevant experience • Past experience of studies of similar nature • Past experience in carrying out <ul style="list-style-type: none"> • Studies in the related sector • Studies carried out in the region 		20% 50% 20% 10%
2	General profile of qualification, experience and number of key staff (not individual CVs)	25%	
	<ul style="list-style-type: none"> • Qualifications • Relevant experience 		30% 70%
3	Overall financial strength of the consultant in terms of turnover, profitability and cash flow (liquid assets) situation	15%	
	Turnover figure for Last three Years.		50%
	Net Profit Figure for Last three years		50%
	Totals	100%	

5.2.6 The Procuring Entity shall short list all the consultants who secure the minimum required marks [normally 75% (seventy five percent)]. The minimum qualifying requirement shall be specified in the EoI document.

In EoI, simplified evaluation criteria can also be used, instead of marking schemes as mentioned above. A fail-pass, minimum benchmark in each criteria/ sub-criteria can be specified e.g. Must have past experience of at least two similar projects; key professionals must have at least seven years' experience and must have Master's Qualification in relevant field; Firm must have a turnover of at least Rs 10 (Rupees Ten) Crores and so on. Any firm which passes these benchmarks is declared as qualified.

5.2.7 However this exercise of scoring is not merely for disqualification of firms below a threshold, but to establish the relative strengths and weaknesses of the applicants, in order to arrive at a robust short list of qualified consultants who have the required experience and qualifications to deliver the required services at the desired level of quality.

5.2.8 The short lists shall normally comprise at least three firms but not more than eight (to avoid inordinate delays in evaluation of subsequent RfP). The short list may comprise only national consultants (firms registered or incorporated in the country), for small assignments

and indicated in the EoI. This situation is applicable where qualified national firms are available at a competitive cost or if the nature of the assignment is such that a foreign consultant's inclusion is not justified (for example, a training or outreach to be carried out in local language) or if foreign consultants have not expressed any interest. RfP documents would be issued only to the shortlisted consultants.

5.2.9 The evaluation committee may submit its EoI Evaluation report to CA for approval. Tender Committee format at Annexure 6 can be mutatis-mutandis used for this purpose.

5.2.10 It is also noted that while selecting consultants, some procuring entities are keeping the minimum qualifying turnover at the level of 5-10 times of the estimated cost of the consultancy work. This, prima facie, appears high. Higher qualification criteria increase the likelihood of adequate experience/ capacity, but reduce the competition; if set unduly high they may increase the cost without any improvement in quality. **It is suggested that the criteria should be fixed on a reasonable basis while drafting tender documents and such higher minimum qualifying turnover should be kept only, if adequately justified²⁹.**

5.3 Shortlisting – Risks and Mitigation	
Risks	Mitigation
Conflict of interest situations: It is possible that conflict of interest situations are not reported or declared by the participating consultants (or sometimes by members of the evaluation committee).	These situations need to be dealt with by signing declarations in specified formats both at the EoI bid stage as also in the technical proposal (and by CEC members before undertaking the evaluation of proposals).
Qualifications leasing: Local Bidders with insufficient qualifications may show association with well qualified (foreign or local) consultants, just to use their qualification documents to get the contract. These well-qualified consultants lease their qualification – but do not or only minimally contribute experience or key personnel at the execution stage.	This issue needs to be dealt with from the EoI stage by very clearly identifying the qualified applicant and putting on record/ contract the guaranteed contribution from the partner with qualification.

²⁹ Notified vide OM No.F.18/13/2020-PPD issued by Department of Expenditure dated 13.07.2020

Chapter 6: Selection of consultants by Competitive Process

6.1 The evaluation process

The selection process for consultants generally includes the following steps:

- i) Preparation and issuance of the Request for Proposals (RfP);
- ii) Pre-proposal meeting;
- iii) Receipt of proposals;
- iv) Evaluation of technical proposals: consideration of quality;
- v) Public opening of financial proposals;
- vi) Evaluation of financial proposals;
- vii) Selection of the winning proposal;
- viii) Negotiations with the selected bidder, if required; and
- ix) Award of the contract to the selected firm.

6.2 Preparation and Issuance of the Request for Proposals (RfP)

6.2.1 The Request for Proposals (RfP) is the bidding document in which the technical and financial proposals from the consultants are obtained. For procurement of Consultancy Services, the RfP is sent only to the short listed consultants. *In procurement of other (non-consultancy) Services, since the procurement is done without EoI, RfP is advertised, except in case when value of procurement is less than Rs 10 (Rupees Ten) Lakhs.* It contains the following sections:

- i) A letter of invitation (LoI);
- ii) Information to consultants (ITC) and data sheet (which contains assignment specific information);
- iii) Terms of Reference (ToR);
- iv) List of key experts required for the assignment;
- v) Requirement of qualifications and experience of the firm and key experts;
- vi) Criteria of proposal evaluation and selection procedure;
- vii) Standard formats for the technical proposal;
- viii) Standard formats for the financial proposal; and
- ix) Proposed form of the contract, including General Conditions of Contract and Special Conditions of Contract;
- x) Proposed procedure to be followed pertaining to mid-term review of the progress of the work and review of the final draft report.

The Procuring Entity shall use the applicable standard RfP with minimal changes as necessary to address project-specific issues. The Procuring Entity may use e-Procurement platform to issue RfP.

6.2.2 Simplified Technical Proposal: In LCS system of evaluation, since the technical scores are not ranked or weighted and added to Financial Scores, it would suffice if instead of a detailed marking scheme for the criteria/ sub criteria, minimum fail-pass qualifying benchmarks are laid down for each criteria/ sub criteria. For such assignment technical evaluation can be carried out by following a simplified procedure for evaluation of technical quality and only a Simplified Technical Proposal (STP, instead of a Full Technical Proposal - FTP) may be called for and indicated in the data sheet of the RfP document. STP should be

used. when the assignment is: (i) unlikely to have significant downstream impact; (ii) of a routine nature where ToR already defines details of tasks to be performed and required output and approach, methodology, organisation and staffing could be evaluated without use of sub criteria; and (iii) that characteristics of work do not require further detailed evaluation of the consultant's experience (e.g. engagement of accountants, auditors, consultant engineers etc). STP reduces the time and cost required to prepare the proposal and could be evaluated faster by the Evaluation Committee. For example following parameters can be used:

- i) Minimum experience including number of assignments handled by the firm similar to the area of assignment;
- ii) Turnover and other financial parameters of the firm, if required;
- iii) Minimum educational qualifications of each of the key professionals;
- iv) Minimum requirement of experience of the key professionals in an area similar to the proposed assignment.

All the firms which meet the minimum qualifying standards/ criteria so prescribed will stand technically qualified for consideration of their financial bids.

6.2.3 Letter of Invitation (Lol)

The Letter of Invitation (Lol) shall state the intention of the Procuring Entity to enter into a contract for the provision of consultancy services, details of the Procuring Entity, and date, time, and address for submission of proposals.

6.2.4 Instructions to consultants (ITC)

The Instructions to consultants (ITC) shall consist of two parts: (1) standard information; and (2) assignment specific information. The assignment specific information is added through the data sheet. The ITC contains all necessary information that would help the consultants prepare responsive proposals, and shall bring in as much transparency as possible to the selection procedure by providing information on the evaluation process and by indicating the evaluation criteria and factors and their respective weights and minimum passing quality score. Standard information includes clauses relating to the procedure of bid submission, relating to pre-bid meeting, for seeking clarifications, and so on. The assignment/job specific information will be prepared separately and include the date and time of bid submission, contact address, qualification criteria, method of selection, evaluation process, factors of evaluation and their respective weights, and so on.

Since cost is part of the selection criterion the ITC shall not indicate the budget (except in case of Fixed Budget System of selection), but shall indicate the expected input of key professionals (staff time). Consultants, however, shall be free to prepare their own estimates of staff time necessary to carry out the assignment. The ITC shall specify the proposal validity period [normally 60 (sixty) days].

6.2.5 Standard Formats for Technical and Financial Proposals

- i) The standard formats for technical proposals include those specified for FTP or STP:
 - a) Technical proposal submission form (including declaration on conflict of interest, eligibility, following Code of Integrity in Public Procurement - CIPP);
 - b) For a JV, a Lol or copy of existing agreement, as applicable;

- c) Power of attorney (in case of a JV, lead member to be authorised);
 - d) consultant's organisation and experience (for FTP only);
 - e) Comments and suggestions on ToR, counterpart staff and facilities to be provided by the client(for FTP only);
 - f) Description of approach and methodology and work plan for performing the assignment;
 - g) Work schedule and planning for deliverables; and
 - h) Team composition, key expert's inputs, attached CVs.
 - i) Format for Comments/ modifications suggested on proposed form of contract.
- ii) The standard formats for a financial proposal include:
- a) Financial proposal form;
 - b) A summary sheet of the cost to be quoted by the Bidder;
 - c) Remuneration payable; and
 - d) Reimbursable expenses

6.2.6 Important Provisions of RfP/ Contracts

- i) **Currency:** Under normal circumstances, all the contracts should be based on Indian Rupees only. RFPs shall clearly state that firms may express the price for their services, in the currency specified in RfP. If RfP allows proposals in any other currency, the date and the exchange rate (normally date of opening of the Technical Bid) for converting all the bid prices to Indian Rupees shall be indicated in RfP.
- ii) **Price Adjustment:** In case the duration of the contract is expected to exceed 18 (eighteen) months for a time-based contract or an Indefinite delivery contract, a price adjustment provision for the remuneration rate should be included in the contract based on the Consumer Price Index in the country. Lump-sum contracts shall not generally be subject to price adjustment except for small value multi-year contracts (for example, for auditors). Short-term contracts where the delivery period does not extend beyond 18 (eighteen) months should normally be concluded with a firm and price fixed by inviting tenders accordingly. However, even for shorter deliveries, the price adjustment [or Price Variation Clause (PVC)] may be stipulated for items with inputs (raw material, man power, etc.), prone to short-term price volatility - especially for critical or high value services – otherwise there is a possibility of the contract failing or the purchaser having to pay a higher price if prices fall.

Where it is decided to conclude the contract with a variable price, an appropriate clause incorporating, inter-alia, a suitable price variation formula should also be provided in the tender documents, to calculate the price variation between the base level and scheduled delivery date. It is best to proactively provide our own PVC in the tender document to discourage different bidders quoting different formulae and different base dates, which may lead to problems on bringing their prices on a common comparable footing.

The variations are to be calculated periodically by using indices published by Governments/ chambers of commerce/London Metal Exchange / any other neutral and fair source of indices. Suitable weights are to be assigned to the applicable elements,

that is, fixed overheads and profits, material and man power in the price variation formula.

The following are important elements of PVC:

- a) The price agreed upon should specify the base date, that is, the month and year to which the price is linked to enable variations being calculated with reference to the price indices prevailing in that month and year;
- b) The price variation formula must also stipulate a minimum percentage of variation of the contract price, only above which the price variation will be admissible (for example, where the resultant increase is lower than, say, two per cent of the contract price, no price adjustment will be made in favour of the supplier);
- c) The price variation clause should provide for a ceiling on price variations, particularly where escalations are involved. It could be a percentage per annum or an overall ceiling or both;
- d) Where advance or stage payments are made there should be a further stipulation that no price variations will be admissible on such portions of the price, after the dates of such payment;
- e) Where deliveries are accepted beyond the scheduled delivery date subject to levy of liquidated damages as provided in the contract. The LD (if a percentage of the price) will be applicable on the price as varied by the operation of the PVC;
- f) No upward price variation will be admissible beyond the original scheduled delivery date for defaults on the part of the supplier. However, a downward price variation would be availed by the purchaser as per the denial clause in the letter of extension of the delivery period;
- g) Price variation may be allowed beyond the original scheduled delivery date, by specific alteration of that date through an amendment to the contract in cases of force majeure or defaults by Government;
- h) Where contract execution depends on imported (subject to customs duty and foreign exchange fluctuations) and/or locally sourced goods/ works/ services (subject to excise duty and other duties and taxes), the percentage and element of duties and taxes included in the price should be specifically stated, along with the selling rate of foreign exchange element taken into account in the calculation of the price of the imported item;
- i) The clause should also contain the mode and terms of payment of the price variation admissible; and
- j) The buyer should ensure a provision in the contract for the benefit of any reduction in the price in terms of the PVC being passed on to him.
- k) An illustrative PVC clause is available in Annexure 2F.
- l) Care should be exercised in contracts providing for price variation to finalise the price before final payment is made, after obtaining data and documents in support of claims for escalation, if any. Where no such claims are submitted

by the suppliers, an examination of whether there has been a downward trend in the cost, which the contractor may not bring out, is required. At any rate, an undertaking should be obtained from the contractor to the following effect in case it becomes necessary to make the final payment before he has submitted the required data/documents related to the PVC:

“It is certified that there has been no decrease in the price of price variation indices and, in the event of any decrease of such indices during the currency of this contract, we shall promptly notify this to the purchaser and offer the requisite reduction in the contract rate.”

- m) Notwithstanding the above formalities, it should be appreciated that it is in the interest of the purchaser to be vigilant about downward variation and it is, therefore, the basic responsibility of the purchase officers to make sure that the benefits of downward variation, wherever it occurs, are fully availed of.
- iii) **Payment Provisions:** Payment provisions, including amounts to be paid, schedule of payments, and payment procedures, shall be indicated in RfP and also in the draft contract. Payments may be made at regular intervals (as under time-based contracts) or for agreed outputs (as under lump sum contracts).
Ordinarily, payments for services rendered or supplies made should be released only after the services have been rendered or supplies made. However, it may become necessary to make advance payments for example in the following types of cases :-
 - a) Advance payment demanded by firms holding maintenance contracts for servicing of Air- conditioners, computers, other costly equipment, etc.
 - b) Advance payment demanded by firms against fabrication contracts, turn-key contracts etc.

Such advance payments should not exceed the following limits :

- 1) Thirty per cent. of the contract value to private firms;
- 2) Forty per cent. of the contract value to a State or Central Government agency or a Public Sector Undertaking; or
- 3) in case of maintenance contract, the amount should not exceed the amount payable for six months under the contract.

Ministries or Departments of the Central Government may relax, in consultation with their Financial Advisers concerned, the ceilings (including percentage laid down for advance payment for private firms) mentioned above. While making any advance payment as above, adequate safeguards in the form of bank guarantee etc. should be obtained from the firm.

- iv) **Bid Securities (Rule 170 of GFR 2017):** Normally in procurement of consultancy services, it is not a practice to ask for Bid Security. However Procuring Entity has the option of requiring a bid security in time-critical procurements. When used, to safeguard against a bidder's withdrawing or altering its bid during the bid validity period in the case of advertised or limited tender enquiry, Bid Security (also known as Earnest Money) is to be obtained from the bidders except Micro and Small Enterprises (MSEs) as defined in MSE Procurement Policy issued by Central Purchase Organisation or the concerned Ministry of Department or Startups as

recognized by Department of Industrial Policy & Promotion (DIPP)³⁰. The bidders should be asked to furnish bid security along with their bids. Amount of bid security should ordinarily range between two percent to five percent of the estimated value. The amount of bid security should be determined accordingly by the Ministry of Department and indicated in the bidding documents. The bid security may be accepted in the form of Insurance Surety Bonds³¹, Account Payee Demand Draft, Fixed Deposit Receipt, Banker's Cheque or Bank Guarantee from any of the Commercial Banks or payment online in an acceptable form, safeguarding the purchaser's interest in all respects. The bid security is normally to remain valid for a period of 45 (forty-five) days beyond the final bid validity period. Bid security should be released to unsuccessful bidders once the contract has been signed with the winning consultant at the earliest after expiry of final bid validity and latest on or before the 30th day after the award of the contract. However, in case of two packet or two stage bidding Bid securities of unsuccessful bidders during first stage i.e. technical evaluation etc should be returned within 30 days of declaration of result of first stage i.e. technical evaluation etc³². In exceptional cases, in place of a Bid security, Procuring Entities after seeking approval of the competent authority may consider asking Bidders to sign a Bid securing declaration accepting that if they withdraw or modify their Bids during the period of validity, or if they are awarded the contract and they fail to sign the contract, or to submit a performance security before the deadline defined in the request for proposals (RFP) document, they will be suspended for the period of time specified in the request for proposals document from being eligible to submit Bids/Proposals for contracts with the Procuring Entity.

- a). **Performance Security (Rule 171 of GFR 2017)**: To ensure due performance of the contract, performance security [or Performance Bank Guarantee (PBG) or Security Deposit (SD)] is to be obtained from the successful bidder awarded the contract. Performance security should be for an amount of five (5) to ten (10) per cent of the value of the contract as specified in the bid documents [The value has been reduced to three (3) percent till 31.03.2023. Refer to para 6.1.2 (iv) (d) below]. Performance security may be furnished in the form of Insurance Surety Bond³³, account payee demand draft, fixed deposit receipt from a commercial bank, bank guarantee issued/confirmed from any of the commercial bank in India, or online payment in an acceptable form, safeguarding the purchaser's interest in all respects. In case of GTE tenders, the performance security should be in the same currency as the contract and must conform to Uniform Rules for Demand Guarantees (URDG 758) – an international convention regulating international securities³⁴.

³⁰ Notified vide OM No.F.20/2/2014-PPD(Pt.) issued by Department of Expenditure dated 25.07.2017

³¹ Notified vide OM No.F.1/1/2022-PPD issued by Department of Expenditure dated 02.02.2022

³² Notified vide OM No. F.1/2/2022-PPD issued by Department of Expenditure dated 01.04.2022

³³ Notified vide OM No. F.1/1/2022-PPD issued by Department of Expenditure dated 02.02.2022

³⁴ A set of rules developed by the International Chamber of Commerce first adopted in 1992. The latest version URDG 758 provides a framework for harmonising international trading practices and establishes agreed-upon rules for independent guarantees and counter-guarantees among trading partners for securing payment and performance in worldwide commercial contracts.

Submission of Performance Security is not necessary for a contract value upto Rupees 1 (one) lakh.

Bank guarantees, either received in physical form or electronic form, should be verified for its genuineness following prescribed method for the same and the Organisations should do due diligence on genuineness of the Bank Guarantees before acceptance of the same

- b). Performance Security is to be furnished by a specified date (generally 14 (fourteen) days after notification of the award) and it should remain valid for a period of 60 (sixty) days beyond the date of completion of all contractual obligations of the supplier, including warranty obligations.
- c). The performance security will be forfeited and credited to the procuring entity's account in the event of a breach of contract by the contractor. It should be refunded to the contractor without interest, after he duly performs and completes the contract in all respects but not later than 60 (sixty) days of completion of all such obligations including the warranty under the contract. Return of Bid/ Performance Securities should be monitored by the senior officers and delays should be avoided. If feasible, the details of these securities may be listed in the e-Procurement Portal, so make the process transparent and visible.
- d). On account of the COVID-19 pandemic, that caused slowdown in economy, it is decided to reduce Performance Security from existing five to ten percent to three (3) percent of the value of the contract for all existing contracts till 31.03.2023. However, the benefit of the reduced Performance Security will not be given in the contracts under dispute wherein arbitration/ court proceedings have been already started or are contemplated. All tenders/ contracts issued/ concluded till 31.03.2023 should also have the provision of reduced Performance Security. In all contracts, where Performance Security has been reduced to three percent, the reduced percentage shall continue for the entire duration of the contract and there should be no subsequent increase of Performance Security even beyond 31.03.2023. Similarly, in all contracts entered into with the reduced percentage of Performance Security of three percent, there will be no subsequent increase in Performance Security even beyond 31.03.2023. Where, there is compelling circumstances to ask for Performance Security in excess of three percent as stipulated above, the same should be done only with the approval of the next higher authority to the authority competent to finalise the particular tender, or the Secretary of the Ministry/ Department, whichever is lower. Specific reasons justifying the exception shall be recorded³⁵.
- e) As per Rule 172 (1) of General Financial Rules (GFRs) 2017, ordinarily payment for services rendered or supplies made should be released only after the services have been rendered or supplies have been made. The rule further provides for advance payment in case of maintenance contracts and

³⁵Notified vide OM No.F.9/4/2020-PPD issued by Department of Expenditure dated 30.12.2021

fabrication contracts keeping adequate safeguards in the form of obtaining Bank Guarantees (BGs) from the firms.

- f) The Government of India has recently approved a revamped Reform based and Results Linked Power Sector scheme, in which installation of smart pre-paid meters will be done across the country. Advance payment towards electricity usage by Government office through pre-paid metering is central to the envisaged reforms process. Government Departments can make advance payments to authorized DISCOMS for pre-paid metered electricity without insisting on any BGs. However, proper accounting of all the payments must be made³⁶.
- v) **Proposed form of contract:** The contract includes accepted ToR methodology, general and specific conditions of contract, etc. wherever possible, the Procuring Entity shall use the Standard Form of Contract. The general conditions of contract shall include all such conditions which are common in nature and not project specific. Such conditions include clauses pertaining to sub contracting, methods of payment, termination and extension of contracts, arbitration, variation in quantities, indemnity and insurance, force majeure, conflict of interest, compliance to local laws and taxes and duties etc. The project specific conditions include clauses relating to the assignment in hand. These clauses should be carefully developed to protect the interest of the Procuring Entity.vi)**Conflict of Interest:** The consultant shall not receive any other remuneration from any source in connection with the same assignment except as provided under the contract. Consultants assisting a client in privatisation of public assets shall neither purchase nor advise purchasers of such assets. Similarly, consultants hired to prepare ToR for an assignment shall not be hired for the assignment in question and shall not be in a conflict of interest situation as described in the RfP/contract.
- vii) **Professional Liability:** The consultant is expected to carry out its/his assignment with due diligence and in accordance with the prevailing standards of the profession. As the consultant's liability to the Procuring Entity will be governed by the applicable law, the contract need not deal with this matter unless the parties wish to limit this liability. If they do so, they should ensure that: (a) there must be no such limitation in case of the consultant's gross negligence or wilful misconduct; (b) the consultant's liability to the Procuring Entity may, in no case, be limited to less than a multiplier of the total value of the contract to be indicated in the RfP and special conditions of contract (the amount of such limitation will depend on each specific case); and (c) any such limitation may deal only with the consultant's liability toward the Procuring Entity and not with the consultant's liability toward third parties.
- viii) **Staff Substitution of Key Professional:** During an assignment where key professionals are named in the contract, if substitution is necessary (for example, because of ill health or because a staff member proves to be unsuitable, or the member is no longer working with the consultant), the consultant shall propose other staff of at least the same level of qualifications for approval by the Procuring Entity. The RfP/contract must specifically make provision for terms and conditions under which the staff can be replaced, about the remuneration to be paid, and so on.

³⁶Notified vide OM No.F.1/8/2021-PPD issued by Department of Expenditure dated 29.07.2021

- ix) **Applicable Law and Settlement of Disputes:** The contract shall include provisions dealing with the applicable law, which should be the law applicable in India and the forum for the settlement of disputes – applicable Arbitration Clause and procedures.
- x) **Training or Transfer of Knowledge:** If the assignment includes an important component of training or transfer of knowledge to the Ministries/ department staff, the ToR shall indicate the objectives, nature, scope, and goals of the training programme, including details on trainers and trainees, skills to be transferred, timeframe, and monitoring and evaluation arrangements. The cost of the training programme shall be explicitly stated in the consultant's contract and in the budget for the assignment.

(Rule 186 of GFR 2017)

xi) **Tender Documents**³⁷ :

- a) The tender document is the fundamental document in the public procurement process as after award of the contract it becomes part of the contract agreement. All necessary provisions governing the contract should be clearly provided in the tender document. Examples are technical specifications, drawings, commercial terms and conditions including time period, inspection, payment terms, obligations of the procuring entity and the suppliers timeframe/ milestones, tax implications, compliance framework for statutory and other norms, dispute resolution. Provisions/ clauses in the tender document should be clear to avoid differences in interpretation and possible time overrun, cost overrun and quality compromises. Model Tender Documents³⁸ issued by the DoE may be used, with due customisation.
- b) In tenders containing General Conditions of Contract (GCC), additional/ special conditions to be incorporated in the tender document, shall be need based and specific. The GCCs should not be altered and changes, if any, in conditions of contract should only be made through the Special Conditions of Contract.
- c) Procuring entities may issue instructions regarding appropriate delegation of authority for variations and changes in the scope of the contract.
- d) Provision of price variation, wherever considered appropriate, as well as methodology for calculation of the same shall be clearly stipulated in the tender document.
- e) Technical and Financial eligibility Criteria for the bidders are important in the public procurement process. They shall be clear and fair, having regard to the specific circumstances of the procurement. Appropriate parameters should be prescribed in the eligibility criteria for bidders, to enable selection of the right type of bidders in public interest, balancing considerations of quality, time and cost.
- f) Open online tendering should be the default method to ensure efficiency of procurement. Public authorities should also keep the experience criteria broad based so that bidders with experience in similar nature of items/ goods can participate.
- g) Pre-bid conference may be conducted for large value tenders by Procuring Entities. The Place and time of pre-bid conferences should be mentioned in the tender document and/

³⁷ Notified under para 12 vide OM No.F.1/1/2021-PPD issued by Department of Expenditure dated 29.10.2021

³⁸ Model Tender Document for Procurement of Non-Consultancy Services issued by Department of Expenditure dated 20.10.2021

or publicized through the website of the procuring entity and/ or through newspaper publication.

6.3 Pre-proposal Meeting

- i) In all cases of large value or complex assignments, a pre-proposal meeting may be prescribed in the RfP. The date and time for such a meeting should normally be after 15 to 30 (fifteen to thirty) days of issue of the RfP and should be specified in the RfP itself. During this meeting, the scope of assignment, responsibilities of either parties or other details should be clearly explained to the prospective bidders so that there is no ambiguity later at the time of submission of technical/financial bids. Where some significant changes are made in the terms/scope of the RfP as a result of the pre-bid meeting or otherwise considered necessary by the Procuring Entity, a formal corrigendum to the RfP may be issued, to all bidders. In such cases, it should be ensured that, after issue of the corrigendum, reasonable time (not less than 15 (fifteen) days) is available to the bidders to prepare/submit their bids. If required, the time for preparation and submission of bids may be extended, suitably.
- ii) Pre-Notice Inviting Tender (NIT) Conference: In complex and innovative procurement cases or where the procuring entity may not have the required knowledge to formulate tender provisions, a pre-NIT conference may help the procuring entity in obtaining inputs from the industry. Such conferences should be widely publicised so that different potential suppliers can attend³⁹.

6.4 Receipt of Proposal

The Procuring Entity should allow enough time to the bidders to prepare their proposals. The time allowed shall depend on the assignment, but normally shall not be less than four weeks and not more than three months. In cases where participation of international consultants is contemplated, a period of not less than eight weeks should normally be allowed. If necessary, the Government Ministry/ Department shall extend the deadline for submission of proposals. The technical and financial proposals shall be submitted at the same time. To safeguard the integrity of the process, the technical and financial proposals shall be submitted in separate sealed envelopes, kept in an outer sealed envelope. The technical bids will be opened immediately after closing of receipt of technical bids by the Consultancy Evaluation Committee (CEC). The financial proposals shall remain sealed and shall be opened publicly only for those firms that have qualified technically. Any proposal received after the closing time for submission of proposals (Late Bids) shall not be considered (*Rule 188 of GFR 2017*) and shall be returned unopened. Report of Bid-opening may be prepared as per Annexure 5. It may be noted that as per guidelines, now all procurement are to be done through e-Procurement. (Rule 187 of GFR 2017).

6.5 Consultancy Evaluation Committee (CEC)

6.5.1 For all cases having financial implications of more than Rs. 10 (Rupees Ten) lakh, a Consultancy Evaluation Committee (CEC), comprising of normally three members including Financial Adviser or his representative and a representative of the user, shall be constituted

³⁹ Notified under para 9.2 vide OM No.F.1/1/2021-PPD issued by Department of Expenditure dated 20.10.2021

as per SoPP, in order to carry out the consultant selection procedure. The CEC should not be very large as it may slow down the evaluation process. However, suitable domain/technical experts may be included in the committee to render assistance in evaluation of the bids. No member of CEC should be reporting directly to any other member of the CEC. The CEC shall be responsible for all aspects and stages of the consultant selection, that is, evaluation of EoI, shortlisting of consultants, deciding TORs, issuance of RfP, evaluation of technical and financial proposals, negotiations and final selection of the consultant. There no need to constitute any other committee for technical evaluation, preliminary evaluation, etc. Even in case of selection of a consultant by direct negotiations having financial implications more than Rs. 10 (Rupees Ten) lakh, the CEC shall negotiate with the consultant on technical and financial aspects. (separate committees may be constituted for separate assignments).

6.5.2 The representative of the user Department will work as a convener of the CEC. He shall distribute the RfP to the CEC members and request them to familiarize themselves with the characteristics and requirements of the assignment, the selection procedures, and the evaluation criteria and sub-criteria. The convener of the CEC should also call meeting of the CEC members to review any questions they may have on the evaluation principles, procedures, and objectives etc.

6.5.3 Technical proposals for consultancy services are an intellectual product. Their evaluation must be based on individual professional judgement of competent evaluators and should not be reduced to a purely arithmetical exercise. The difficulty is to ensure that this judgement is not exercised in an unreasonable or arbitrary manner. It is important that subjectivity, implicit to any individual professional judgement, be complemented by transparency, consistency, and fairness. The individual evaluator entrusted with the evaluation, when required, should be able to explain to the satisfaction of a qualified reviewer from the higher authority or to enforcement agencies the reason for his/her scoring and recommendation. One way to achieve this objective is by adopting a rating/ grading system for evaluation of the criteria and sub-criteria (if so specified in the RfP) in the technical proposals.

6.5.4 After the review meeting, the CEC meets again to define the grades of the rating system to be adopted for scoring the technical proposals (if not detailed in the RfP), according to the criteria and sub criteria set out in the Data Sheet. To discourage subjectivity and avoid the use of points and fractions of points, the rating system provides a few grades (from three to four) for each criterion and sub-criterion. Minimum qualifying marks or relative qualifying method for quality of the technical proposal will be prescribed and indicated in the RfP. The grading system must be defined before the technical proposals are opened to prevent bias (or perceived bias) occurring because of the CEC's knowledge of the opened proposal contents. It is recommended that the evaluation and scoring of technical proposals be carried out only after defining the grading system. Otherwise, CEC members would have to assign a level of responsiveness of the proposals to each of the different criteria and sub criteria without guidance and support from predefined grades. This could easily distort the evaluation for the following main reasons:

- i) Evaluators may differ, even widely, in their definition, understanding, or interpretation of the same criterion and also because of their subjective experience and understanding of the ToR;
- ii) Disparities in evaluators' relative generosity or severity in judgment and ratings can easily be magnified by the lack of common definitions of the requirements to be considered for each criterion and sub-criterion;
- iii) Large differences in scores caused by inadequate understanding of the ToR or improper use of the evaluation criteria and sub-criteria are difficult to reconcile and explain.

6.5.5 Before starting the evaluation, the CEC members should ensure that they

- i) have no conflict of interest;
- ii) understand the rating and scoring system;
- iii) have been provided with evaluation worksheets; and
- iv) Agree on how to evaluate the proposals.

6.5.6 After the rating system has been defined and proposals have been opened, the evaluation process can begin. Members of the CEC should not engage in any communication with short-listed firms from the date of their appointment to the date on which the contract is awarded.

6.5.7 Precise and exact markings of criteria and sub-criteria specified in technical evaluation (especially of unquantifiable criteria e.g. evaluation of Methodology) may neither be feasible nor warranted, especially when there is bound to be variation among marks by different members of CEC. Instead of assigning marks over the full range of attributes, it is more appropriate to divide the range into 4-5 slabs of ratings. A possible example of rating could be:

Rating	Assessment	Detailed Evaluation, in case of unquantifiable Criteria	Marks
A	Very Good	The service providers have outstanding, advanced expertise in specific problem areas of the assignment that can promise an excellent execution of the assignment. The service providers' staff includes top experts in the field of the assignment. The service providers are considered world-class specialists in the approaches and methodologies dealing with specific issues in the assignment. The service providers operate according to well-established Quality Management (ISO 9002 etc.) Procedures.	Full Marks
B	Good	The service providers have extensive experience in the field of the assignment and have worked in Regions and Sectors with similar physical and institutional conditions, including similar critical issues. Permanent staff are adequate and highly qualified to cover the requirements of the assignment. The service providers have experience with advanced approaches and methodologies for dealing with the specific	80% of full Marks

Rating	Assessment	Detailed Evaluation, in case of unquantifiable Criteria	Marks
		requirements of the assignment.	
C	Satisfactory	The service providers have experience in the field of assignments similar to the one being considered, but have not dealt with critical issues specific to it (such as, for instance, delicate social or environmental issues). The service providers are experienced in the use of standard approaches and methodologies required for the assignment. The service providers' permanent staff are adequate.	60% of full Marks
D	Unsatisfactory	The service provider has experience which is not considered adequate for the quality needed by the Project.	30% of full Marks
E	Not Relevant	The service provider' experience has no or little relevance to the Project under consideration.	10% of full Marks

6.5.8 The evaluation of the proposals shall be carried out in two stages: at the first stage evaluation of responsiveness and technical proposals is taken up. Evaluators of technical proposals shall not have access to the financial proposals until the technical evaluation is concluded as the envelope containing the financial proposal is not opened till the technical evaluation is complete. The financial proposal of only such bidders will be opened which obtain minimum qualifying marks/standards prescribed for the technical proposal. The evaluation shall be carried out in full conformity with the provisions of the RfP.

6.5.9 CEC duties are to be discharged personally by the nominated officers. They may take help of their subordinate officers by way of reports/ evaluations, but they would still be answerable for such decisions. CEC members cannot co-opt or nominate others to attend deliberations on their behalf. CEC deliberations are best held across the table and not through circulation of notes.

All members of the CEC should resolve their differences through personal discussions instead of making to and fro references in writing. In cases where it is not possible to come to a consensus and differences persist amongst CEC members, the reasons for dissent of a member should be recorded in a balanced manner along with the majority's views on the dissent note. The final recommendations should be that of the majority view. However, such situations should be rare. The Competent Authority (CA) can overrule such dissent notes after recording reasons for doing so clearly. His decision would be final.

In cases where the CA does not agree with the majority or unanimous recommendations of the CEC, he should record his views and, if possible, firstly send it back to CEC to reconsider along the lines of the tender accepting authority's views. However, if the CEC, after considering the views of the CA, sticks to its own earlier recommendations, the CA can finally decide as deemed fit, duly recording detailed reasons. He will be responsible for such decisions. However, such situations should be rare.

(Rule 189 of GFR 2017)

6.6 First Stage of Evaluation: Consideration of Responsiveness

Each member of the CEC should first read all proposals, without scoring them. This first review helps determine whether the proposals are free of significant omissions or deviations from the ToR or other key requirements of the RfP; it also allows CEC members to assess the overall clarity of the proposals and identify elements that will require special attention in the evaluation. Proposals without earnest money (bid security), unsigned and incomplete (i.e. when the required bid formats have not been submitted), not responding to the ToR fully and properly and those with lesser validity than that prescribed in the RfP will be summarily rejected as being non-responsive, before taking up the appraisal of the technical proposal for evaluation of quality. CEC shall evaluate each proposal on the basis of its responsiveness to the ToR. A proposal shall be considered unsuitable and shall be rejected at this stage if it fails to comply with important aspects as described in the RfP. A technical proposal containing any material financial information shall also be rejected

6.7 Evaluation of the Quality – Technical Proposals

6.7.1 In the second stage evaluation process CEC members shall apply the criteria and sub-criteria set forth in the Data Sheet. Each proposal should be judged on its own merits and assigned an absolute - not comparative - grade. A comparative evaluation would single out the best proposal on a relative scale, but still could leave the Procuring Entity with a poor proposal. Instead, the evaluation should measure absolute quality scored against predefined criteria and sub-criteria. The Procuring Entity shall evaluate each technical proposal taking into account criteria as prescribed in the RfP: (a) the consultant's relevant experience for the assignment; (b) the quality of the methodology proposed; (c) the qualifications of the key staff proposed; and (d) capability for transfer of knowledge (if relevant). Each of the technical proposals will be evaluated for the criteria prescribed in the RfP by awarding marks so as to make the total maximum technical score of 100 (one hundred). The criteria and weightage to each criteria or sub-criteria would depend on the requirements of each case and may be fixed objectively. A model scheme of maximum/minimum marks in terms of percentage is, however, proposed in Table 2.

Table 3. A model scheme of maximum/minimum marks in terms of percentage

Rated Criteria	Range of Percentage for Score
1.Consultantcy firm’s Specific Experience	5-10%
2. Methodology	20-50%
3. Qualification and relevant experience of Key Staff	30-60%
4.Transfer of Knowledge*	0-10%
Overall	100 %

*Note: * If this criterion is not required, the marks can be adjusted against some other criteria. The weight given to the firm’s experience can be relatively modest, since this criterion has already been taken into account when short listing the consultant. More weight shall be given to the methodology in the case of more complex assignments (for example,*

multidisciplinary feasibility or management studies). Evaluation of only the key personnel is recommended. Since key personnel ultimately determine the quality of performance, more weight shall be assigned to this criterion if the proposed assignment is complex. The CEC shall review the qualifications and experience of proposed key personnel in their curricula vitae, which must be accurate, complete, and signed by an authorized official of the consultant and the individual proposed. The experience criteria mentioned in point 1 in the table above holds true for Consultancy Firm and not for an individual consultant.

6.7.2 The CEC shall normally divide the above criteria mentioned in Table 2 into sub-criteria. However, the number of sub criteria should be kept to the minimum that is considered essential. For example, methodology Criteria can be sub-divided into sub-criteria as:

- i) understanding of ToR (30% weightage);
- ii) acceptability and detailing of methodology and work plan (50% weight);
- iii) innovation, if it is important (20% weightage);

The criteria for suitability of the key professionals for the assignment can also be divided into:

- a) Educational qualifications (20% weightage),
- b) Professional experience in the required area of assignment (80% weight).

As mentioned in para 6.2.2 earlier, in LCS, a simplified evaluation criteria laying down minimum qualifying fail-pass benchmarks for each criteria/ sub criteria (instead of marking schemes) may also be used in appropriate cases. All offers that pass the qualifying benchmarks are declared as technically qualified and their financial bids are opened.

6.7.3 CEC members should carry out the evaluation independently and score the proposal based on the rating criteria.

6.7.4 The CEC evaluation should be based on the proposal as submitted. Under no circumstances can the CEC request information or clarifications that may change the proposals. Issues to be clarified with the selected consultant will have to be discussed during negotiations. Individual evaluators' results are recorded on pre-established worksheets. After each member has independently rated all criteria and sub-criteria, it is good practice to read each proposal again to ensure that scores reliably reflect the quality of the proposal.

6.7.5 Next, the CEC should conduct a joint review and discuss the merits of individual evaluations and scores. Some evaluators tend to be generous while others will be rigid in their judgment and ratings. Such disparity does not matter, provided each evaluator is consistent and differences in scores are not too large. Large differences should be reviewed and explained; because they often are caused by improper or inaccurate use of the rating system. Reconciling differences that are considered too large by the CEC may result in members revising some of their ratings and scores. As such, any changes should be recorded. If a discussion is needed to reach a final decision, an independent party should prepare minutes. Finally the scores given by different members may be averaged out. During the meeting, the CEC should also comment on the strengths and weaknesses of all proposals that have met the minimum technical score indicated in the RfP. This will help identify any elements in the winning proposal that should be clarified during negotiations.

6.7.6 Eventually, for each of the technical proposals, the CEC should calculate the average of the scores allocated to each criterion by all members, establish the technical ranking of the proposals, identify the best, and propose it for award. The evaluation also establishes whether a proposal passes the minimum qualifying mark (or technical score, normally 75 (seventy five)) provided for in the RfP. If one or more proposals fail to meet the minimum qualifying mark, both individual and joint assessments must be carefully reviewed and justified. Short-listed consultants are usually discouraged when their proposals are rejected, particularly when they are only a few points below the minimum mark; therefore, the Procuring Entity should be prepared to debrief consultants to explain the evaluation of their proposals.

6.7.7 At the end of the technical evaluation process, the CEC shall prepare a technical evaluation report of the "quality" of the proposals recording the scores given to each criterion and sub-criterion, as well as explain the decisions and take the competent authority's (CA) approval. For each proposal, the report also should substantiate the results of the evaluation and indicate technical weaknesses or deviations from the terms set out in the RfP and comment on their acceptability. This committee shall record in details the reasons for acceptance or rejection of the bids analysed and evaluated by it. The CA may ask the CEC to explain the report, but should not request that scores be changed. It should review the CEC's evaluation of each proposal (on technical, contractual, and other aspects). The CA should decide how any acceptable deviation in each proposal should be handled during negotiations, in case that proposal is ranked first. The technical evaluation report is a confidential document, and its contents shall not be disclosed. All records relating to the evaluation, such as individual mark sheets, shall be retained until completion of the project and its audit. A sample format for preparation of technical evaluation report and financial evaluation report including award recommendation to the competent authority is given at Annexure 6.

6.7.8 Only consultants qualifying as per the technical evaluation criteria will be considered as eligible for the consultancy assignment. All the firms which meet the minimum qualifying standards/criteria so prescribed will stand technically qualified for consideration of their financial bids.

6.8 Evaluation of Cost

6.8.1 After evaluation of quality has been completed, the Procuring Entity shall notify those consultants whose proposals did not meet the minimum qualifying standard or were considered non-responsive to the RfP and/or ToR, indicating that their financial proposals will be returned unopened after completing the selection process. In case of QCBS, the Procuring Entity shall simultaneously notify the consultants that have successfully satisfied the qualifying standard or where marks have been awarded, the minimum qualifying marks, and indicate the date and time set for opening the financial proposals. In such a case, the opening date shall not be later than three weeks after the notification date. The financial proposals shall be opened publicly in the presence of representatives of the technically qualified consultants who choose to attend. The Evaluation Committee demonstrably verifies that the financial proposals have remained sealed and then opens them. The name of the consultant, quality scores, and proposed prices shall be read aloud and recorded when the financial proposals are opened. No modification to financial proposals is permitted. The Procuring Entity shall prepare the minutes of the public opening. Format at Annexure 5 may

be used for this purpose. When electronic submission of proposals is used, this information shall be posted online.

6.8.2 For a time-based contract, any arithmetical errors shall be corrected and prices shall be adjusted if they fail to reflect all inputs that are included in the respective technical proposals. For a lump-sum contract, the consultant is deemed to have included all prices in its/his financial proposal so neither arithmetical correction nor any other price adjustment shall be made. For QCBS, the proposal with the lowest offered total price shall be given a financial score of 100 % (one hundred per cent) and other financial proposals given scores that are inversely proportional to their prices. This methodology shall be specified in the RfP document

6.8.3 For the purpose of comparing proposals, the costs shall be converted to Indian Rupees as stated in the RfP. The CEC shall make this conversion by using the BC selling exchange rates for those currencies as per the exchange rate quoted by an official source, for example, the State Bank of India. The RfP shall specify the source of the exchange rate to be used and date of the exchange rate to be taken for comparison of costs. This date shall be the date of opening of technical bids

6.8.4 For the purpose of evaluation, the total cost shall include all taxes and duties for which the Procuring Entity makes payments to the consultant and other reimbursable expenses, such as travel, translation, report printing, or secretarial expenses as indicated in the RfP document

6.8.5 When using QCBS, the scores of quality and cost scores shall be weighted appropriately and added to determine the most advantageous proposal.

(Rule 190 of GFR 2017)

6.8.6 An Abnormally Low Bid is one in which the Bid price, in combination with other elements of the Bid, appears so low that it raises material concerns as to the capability of the Bidder to perform the contract at the offered price. Procuring Entity may in such cases seek written clarifications from the Bidder, including detailed price analyses of its Bid price in relation to scope, schedule, allocation of risks and responsibilities, and any other requirements of the bids document. If, after evaluating the price analyses, procuring entity determines that the Bidder has *substantially failed* to demonstrate its capability to deliver the contract at the offered price, the Procuring Entity may reject the Bid/Proposal. However it would not be advisable to fix a normative percentage below the estimated cost, which would be automatically be considered as an abnormally low bid. Due care should be taken while formulating the specifications at the time of preparation of bid document so as to have a safeguard against the submission of abnormally low bid from the bidder.

6.9 Selection of the winning consultant

Before a final award is announced, the technical and financial credentials of the selected bidders/ consultant should be crosschecked to the extent feasible.

6.9.1 LCS Selection

Under the LCS procedures, the financial proposals will be ranked in terms of their total evaluated cost. The least cost proposal will be ranked as L-1 and the next higher and so on

will be ranked as L-2, L-3 etc. The least cost proposal (L-1) will be considered for award of contract. The CEC will put up a report on financial evaluation of the technically qualified consultants to the competent finance authority along with the recommendation that the least cost proposal (L-1) can be approved/ invited for negotiation and for final award of contract.

6.9.2 QCBS Selection (*Rule 192 of GFR 2017*)

Under QCBS selection, the technical proposals will be allotted weightage of 70% (Seventy per cent) while the financial proposals will be allotted weightages of 30% (Thirty per cent) or any other respective weightages as declared in the RfP (Example, 60:40, 50:50, but not greater than 80%). The proposed weightages for quality and cost shall be specified in the RfP. Proposal with the lowest cost may be given a financial score of 100 (Hundred) and other proposals given financial scores that are inversely proportional to their prices w.r.t. the lowest offer. Similarly, proposal with the highest technical marks (as allotted by the evaluation committee) shall be given a score of 100 (Hundred) and other proposals be given technical score that are proportional to their marks w.r.t. the highest technical marks. The total score, both technical and financial, shall be obtained by weighing the quality and cost scores and adding them up. On the basis of the combined weighted score for quality and cost, the consultant shall be ranked in terms of the total score obtained. The proposal obtaining the highest total combined score in evaluation of quality and cost will be ranked as H-1 followed by the proposals securing lesser marks as H-2, H-3 etc. The proposal securing the highest combined marks and ranked H-1 will be invited for negotiations, if required and shall be recommended for award of contract. In the event two or more bids have the same score in final ranking, the bid with highest technical score will be H-1

In such a case, an Evaluated Bid Score (B) will be calculated for each responsive Bid using the following formula, which permits a comprehensive assessment of the Bid price and the technical merits of each Bid:

$$B = \frac{C_{low}}{C} X + \frac{T}{T_{high}} (1 - X)$$

where

C = Evaluated Bid Price

C_{low} = the lowest of all Evaluated Bid Prices among responsive Bids

T = the total Technical Score awarded to the Bid

T_{high} = the Technical Score achieved by the Bid that was scored best among all responsive Bids

X = weightage for the Price as specified in the BDS

The Bid with the best evaluated Bid Score (B) among responsive Bids shall be the Most Advantageous Bid

As an example, the following procedure can be followed. In a particular case of selection of consultant, it was decided to have minimum qualifying marks for technical qualifications as 75 (Seventy five) and the weightage of the technical bids and financial bids was kept as 70:

30 (Seventy: Thirty). In response to the RfP, three proposals, A, B & C were received. The technical evaluation committee awarded the following marks as under:

A: 75 Marks

B: 80 Marks

C: 90 Marks

The minimum qualifying marks were 75 (Seventy five) thus, all the three proposals were found technically suitable. Using the formula T/T_{high} , the following technical points are awarded by the evaluation committee:

A: $75/90 = 83$ points

B: $80/90 = 89$ points

C: $90/90 = 100$ points

The financial proposals of each qualified consultant were opened after notifying the date and time of bid opening to the successful participants. The price evaluation committee examined the financial proposals and evaluated the quoted prices as under:

A: Rs.120.

B: Rs.100.

C: Rs.110.

Using the formula C_{low}/C , the committee gave them the following points for financial proposals:

A: $100/120 = 83$ points

B: $100/100 = 100$ points

C: $100/110 = 91$ points

In the combined evaluation, thereafter, the evaluation committee calculated the combined technical and financial score as under:

Proposal A: $83 \times 0.30 + 83 \times 0.70 = 83$ points.

Proposal B: $100 \times 0.30 + 89 \times 0.70 = 92.3$ points

Proposal C: $91 \times 0.30 + 100 \times 0.70 = 97.3$ points.

The three proposals in the combined technical and financial evaluation were ranked as under:

Proposal A: 83 points: H-3

Proposal B: 92.3 points: H-2

Proposal C: 97.3 points: H-1

Proposal C at the evaluated cost of Rs.110 (Rupees One hundred and ten) was, therefore, declared as winner and recommended for negotiations/approval, to the competent authority.

6.9.3 SSS selection

The Single Source in case of SSS selection shall be called for further negotiation, if need be, after opening and evaluation of its financial proposals.

6.10 Negotiations and Award of Contract

6.10.1 In the Consultancy Services contract, the accepted ToR and methodology etc are laid down in form of 'Description of Service'. Therefore, before the contract is finally awarded, discussions may be necessary with the selected bidder to freeze these aspects, especially when, it is discouraged during evaluation of technical proposals to seek clarifications on these matters. However such technical discussions do not amount to negotiations in the sense, the word is used in Procurement of Goods and Works. However in Procurement of Consultancy, this discussion is termed as Negotiations, since these discussions may have some financial ramifications at least for the bidder. Negotiations are not an essential part of the selection process. In many cases, however, it is felt necessary to conduct negotiations with the selected consultant for discussions of the ToR, methodology, staffing, government ministry/department's inputs, and special conditions of the contract. These discussions shall not substantially alter (or dilute) the original ToR or terms of the offer, lest the quality of the final product, its cost, and the initial evaluation be vitiated. The final ToR and the agreed methodology shall be incorporated in "Description of Services," which shall form part of the contract.

6.10.2 Financial negotiations shall only be carried out if, due to negotiations, there is any change in the scope of work which has a financial bearing on the final prices or if the costs/cost elements quoted are not found to be reasonable. In such negotiations, the selected firm may also be asked to justify and demonstrate that the prices proposed in the contract are not out of line with the rates being charged by the consultant for other similar assignments. However, in no case such financial negotiation should result in an increase in the financial cost as originally quoted by the consultant and on which basis the consultant has been called for the negotiations. If the negotiations with the selected consultant fail, the Procuring Entity shall cancel the bidding procedure and re-invite the bids.

6.10.3 The name of the successful bidder along with details of costs, and so on, shall be posted on the departmental website after award of work to the successful bidder has been made and communicated to him in writing.

6.11 Rejection of All Proposals, and Re-invitation

The government ministry/department will have the right to reject all proposals. However, such rejections should be well considered and normally be in cases where all the bids are either substantially in deviation to the ToR or considered unreasonably high in cost and, if in the latter case, the lowest qualified bidder during negotiations fails to reduce the costs to a reasonable level. If it is decided to re- invite the bids, the ToR should be critically reviewed/modified so as to address the reasons of not receiving any acceptable bid in the earlier Invitation for bids.

6.12 Confidentiality

Information relating to evaluation of proposals and recommendations concerning awards shall not be disclosed to the consultants who submitted the proposals or to other persons not officially concerned with the process, until the award of contract is notified to the successful

firm, except that after technical evaluation, the overall technical score shall be informed to all consultants for each criterion or sub-criterion, if any, as required by RfP document.

6.13 RfP, Evaluation and Award Stage – Risks and Mitigation	
<i>Risks</i>	<i>Mitigation</i>
<i>No key expert proposed from the main qualified partner in JV:</i> It is seen that though the shortlisting and contract is won by a JV on the basis of qualifications of the main qualified partner firm, but no key experts (nor team leader) are proposed from that firm. As consultancy assignment is an intellectual product, the effective contribution of the qualified partner firm can only come from experts (in particular the team leader) who have worked for sufficient time with the main qualified consultant.	RfP should specify that the team leader proposed should have worked for a sufficient number of years (say, two to three years) with the main qualifying firm. If this is not complied with it could be a ground for the proposal being termed as non-responsive.
<i>Request for substitution of key experts at the time of contract negotiation:</i> After the firm is invited for negotiation, it asks for substitution of key staff in the contract. This is an unacceptable practice unless the selection process is unreasonably delayed.	Any request for substitution should be examined very closely and agreed only if permitted by the RfP
<i>Presence of one or more unsigned CVs in technical proposal:</i> If a proposal contains one or more unsigned CVs, it should be scrutinised carefully. It can be that the CV is used without permission or commitment from the concerned key expert.	If few CVs are not signed by the key expert, the evaluation should be carried without considering these unsigned CVs and, if this firm is still a winner, clarification may be sought at the negotiation stage for resolution. In no case substitution of such key experts be agreed to at the contract negotiation stage. If most of the CVs are not signed by the respective proposed key experts, the proposal should be termed as non-responsive and rejected at the technical evaluation stage.

Chapter 7: Special Types of Engagements

7.1 Single Source Selection (SSS)

7.1.1 Selection of consultants/ service providers through direct negotiations does not provide the benefits of competition in regard to quality and cost, lacks transparency in selection, and could encourage unacceptable practices. The reasons for SSS and selection of a particular consultant must be recorded and approved by the CA as per the delegation of powers laid down at in DPFR/SoPP, prior to single tendering. Powers of procurement of SSS must be severely restricted. Therefore, single-source selection shall be used only in exceptional circumstance, where it is inescapable over competitive selections as discussed in sub-paras below.

7.1.2 When in a Project, continuity for downstream work is essential, the initial RfP shall outline this prospect, and, if practical, the factors used for the selection of the consultant/ service provider should take the likelihood of continuation into account. Continuity in the technical approach, experience acquired, and continued professional liability of the same consultant/ service provider may make continuation with the initial consultant/ service provider preferable to a new competition subject to satisfactory performance in the initial assignment. For such downstream assignments, the Procuring Entity shall ask the initially selected consultant/ service provider to prepare technical and financial proposals on the basis of ToR furnished by the Procuring Entity, which shall then be negotiated.

7.1.3 If the initial assignment was not awarded on a competitive basis or if the downstream assignment is substantially larger in value, a competitive process shall normally be followed in which the consultant/ service provider carrying out the initial work is not excluded from consideration if it expresses interest.

7.1.4 For selecting a consultant/ service provider under this method, the Procuring Entity should prepare a full justification and take the approval of the competent authority as per the Annexure 2B: Delegation of Powers.

7.1.5 While selecting the consultant/ service provider under this method, the Procuring Entity shall ensure that the consultant/ service provider has the requisite qualification and experience to undertake the assignment. Normally the Procuring Entity shall adopt the same short listing criteria as applied to similar assignments while evaluating the EoI.

7.1.6 As per CVC guidelines, its CFA's (Competent Financial Authority) responsibility to ensure that a statement of all selections by nominations, every month are to be reported to Secretary/ Head of Ministry/ Department.

7.2 Selection of Individual consultants/ service providers

7.2.1 Individual consultants/ service providers are normally employed on assignments for which

- i) Teams of personnel is not required;
- ii) No additional outside professional support is required, and
- iii) The experience and qualifications of the individual are the paramount requirement.

7.2.2 The procedures for selecting individual consultants/ service providers are similar to, but much simpler than, those for selecting teams of consultants/ service providers from a firm. Process of selection of Individual consultants/ service providers entails:

- i) Preparing a Consultancy and other services package including the ToR, time frame, number of person-months, budget, EoI Short-listing criteria and getting it approved by the CA;
- ii) **Advertising:** Advertisement in such case should be given on Central Public Procurement Portal (CPPP) at www.eprocure.gov.in and on Government E-Market (GeM). An organisation having its own website should also publish all its advertised tender enquiries on the website. The advertisements for invitation of tenders should give the complete web address from where the bidding documents can be downloaded.
- iii) **Method of Selection:** They shall be selected through comparison of qualifications of at least three candidates among those who have expressed interest in the assignment or have been approached directly by the Procuring Entity. Candidates who are already employed with the Procuring Entity shall meet all relevant qualifications and shall be fully capable of carrying out the assignment. Capability is judged on the basis of academic background, experience, and, as appropriate, knowledge of the local conditions, such as local language, culture, administrative system, and government organisation. Selection will be carried out by the CEC which will award marks for educational qualifications and experience and select the most suitable candidate for the assignment. The CEC may also interview candidates and award marks for their performance in the interview and recommend the remuneration to be paid.
- iv) **Direct Negotiation:** Individual consultants/ service providers may be selected on a direct negotiation basis with due justification in exceptional cases such as: (a) tasks that are a continuation of previous work that the consultant/ service provider has carried out and for which the consultant/ service provider was selected competitively; (b) emergency situations resulting from natural disasters; and (c) when the individual is the only consultant/ service provider qualified for the assignment. Individual consultants/ service providers may be (among others) independent consultants/ service providers; consultants/ service providers recruited from firms; or consultants/ service providers recruited from academic, government, or international agencies.
- v) **Staff or Associates of Consultancy/ service provider Firms:** If the candidate is permanent staff or associates of a Consultancy firm the conflict of interest provisions described in these guidelines shall apply to the parent firm.

7.3 Selection of Specialized Agencies/ Institutions

7.3.1 From time to time, Ministries/ Departments may need to recruit a specialized agency or institution to undertake a specific task for which it is particularly well suited. Such agencies may be Government/ Semi-Government Agencies, Universities or Professional Institutions.

7.3.2 In some cases, the agency or institution has access to special expertise or special backup and support facilities that make it worthwhile considering recruitment on an SSS basis. In such cases, there must be full justification that the use of SSS is in the best interests of Procuring Entity.

7.3.3 In cases, of Government and semi-Government Agency SSS would be an appropriate method of recruitment.

7.3.4 Individual consultants/ service providers recruited from agencies and institutions may be selected in the same way as any other independent consultants/ service providers.

7.4 Selection of Nongovernmental Organizations (NGO)

7.4.1 Nongovernmental organizations (NGOs) may be if they express interest, if the Procuring Entity finds their qualifications satisfactory. Short lists for assignments typically attributed to NGOs because they, for example, emphasize experience in community participation and in-depth local knowledge may comprise NGOs entirely. In this case, QCBS should be followed, and the evaluation criteria of proposals should reflect the NGO-unique qualifications, such as the following:

- i) History of work with grassroots communities and evidence of satisfactory performance;
- ii) Familiarity with participatory development approaches and low-cost technologies;
- iii) Experienced staff conversant with the cultural and socioeconomic dimensions of beneficiaries;
- iv) Committed leadership and adequate management;
- v) Capacity to co-opt beneficiary participation

7.4.2 Procuring Entities may select NGOs using SSS, provided the approvals and procedures laid down for the same are followed. For example, SSS may be adopted to hire a local NGO for a very small assignment in a remote area where only one NGO is available and competition is impractical.

7.5 Procurement Agents

Procurement agents (PAs) may be hired by the Procuring Entity to assist in carrying out procurement, to provide advice, or a combination of both. When PAs are specifically used as “agents” handling the procurement of specific items and generally working from their own offices, they are paid a percentage (either fixed or inversely proportional) of the value of the procurements handled or a combination of a percentage and a fixed fee. In such cases, they are selected under QCBS, with cost being given a weight of up to 50 (fifty) percent. If the weight of the cost element adopted were as high as 50 (fifty) percent, financial considerations would dominate the selection, creating the risk of an unacceptably lower service quality. In such cases, it is essential to ensure that the quality threshold in the evaluation is set sufficiently high. When PAs provide only advisory services for procurement or act as “agents” for a whole project in a specific Unit of Procuring Entity, they are usually paid based on the staff-months of effort provided, and they shall be selected following the appropriate procedures for other Consultancy assignments using QCBS and time-based contracts, as specified for other Consultancy assignments.

7.6 Inspection Agents

Procuring Entities may hire inspection agents to inspect and certify goods before shipment or on arrival in the Procuring Entity country. The inspection by such agents usually covers the quality and quantity of the goods concerned and the reasonableness of the price. Inspection agents are selected using QCBS, with cost being allocated a weight of up to 50 (fifty) percent. Payment is usually based on a percentage of the value of goods inspected and certified.

It has been brought to the notice of Department of Expenditure that in the contracts signed with suppliers by some of the Ministries/ Departments have clauses of pre-inspection at the firm's premises, where there is a provision that the suppliers or the vendors will pay for the travel, stay, hospitality and other expenses of the Inspecting officials. This is not in keeping with need to safeguard the independence of the inspecting teams. Such provisions in contracts need to be discouraged, so that Inspections are not compromised. Necessary steps may be taken to strictly avoid such provisions in the contracts with suppliers/ vendors⁴⁰.

7.7 Financial Advisors

7.7.1 Procuring Entities may hire financial institutions to implement two main types of assignment:

- i) in the preparation of studies and financial Consultancy; or
- ii) As advisers on financial restructuring, M&A or demerger etc.

7.7.2 In the first case, the advisers can be selected under any of the methods described in this chapter (that is, whichever is considered most suitable, depending on the scope of work of the assignment). In the second case, QCBS shall be adopted, whereby the RfP specifies technical evaluation criteria similar to those relevant to standard Consultancy assignments. The financial proposal would include two distinct forms of remuneration:

- i) a lump-sum retainer fee to reimburse the consultant/ service providers for services made available; and
- ii) A success fee, which is either fixed or preferably expressed as a percentage of the value of the privatization transaction.

7.7.3 Depending on the type of activity under 7.7.1 and the circumstances of the Procuring Entity, the RfP specifies the relative weights assigned in the financial evaluation to the retainer and to the success fee, respectively. In some cases, the Procuring Entity offers a fixed retainer fee, and the consultant/ service providers must compete only on the success fee as a percentage of the value of the privatization transaction. For QCBS (notably for large contracts), cost may be given a weight higher than recommended for standard assignments (such as 30 (thirty) percent), or the selection may be based on LCS selection. The RfP shall specify clearly how proposals will be presented and how they will be compared. Success fees are most appropriate when it is relatively easy to measure results in meeting the Procuring Entity's objective (successful sale of assets) and when the success is at least partly related to the efforts of the consultant/ service providers involved. Therefore, success fees are more likely to be adopted at the transaction stage, because by that time the Procuring Entity's objective is to maximize revenue.

7.8 Auditors

Auditors typically carry out auditing tasks under well defined ToR and professional standards. They shall be selected according to LCS system, with cost as a selection factor.

⁴⁰ Notified vide OM No.F.11/13/2017-PPD issued by Department of Expenditure dated 24.10.2017

7.9 Public competition for Design of symbols/logos

7.9.1 Certain Ministries/Departments are required to conduct competitions for the design of logos/symbols for their use, which should be conducted in a transparent, fair and objective manner. Following guidelines shall be followed by all Ministries/ Departments as well as their attached/ subordinate offices and the autonomous bodies/ organizations controlled by them, while conducting public competitions for design of symbols/ logos for their use:

- i) Design competitions should be conducted in a transparent, fair and objective manner;
- ii) Wide publicity should be given to the competition so as to ensure that the information is accessible to all possible participants in the competition. This should include publication on the web site of the Ministry/ Department/ PSU/organization concerned, as also the Central Public Procurement Portal. The existing e-publishing module can be utilized;
- iii) Provisions of any applicable laws, including the Official Languages Act and the Emblems and Names (Prevention of Improper Use) Act, should be kept in view while conducting the competition;
- iv) A detailed Competition Notice should be drawn up and made public. The notice should, inter alia, details on the following:
 - a) The objectives of the design competition and the key features expected in the proposed design;
 - b) Qualification criteria, if any, for participation in the competition;
 - c) The process of evaluation and evaluation criteria - whether it would be single or multi stage (for symbols/ logos intended to represent a drive/project/ entity of National Importance, it may be decided to have the selection through public voting. If so, the modalities should be clearly specified).
 - d) The manner of submission of entries and the format/ details etc. expected with the design;
 - e) Whether multiple designs can be submitted by one participant;
 - f) The last date and time for submission;
 - g) Details of entry fees, if any and the manner of submission of the same;
 - h) Expected date for announcement of results and the manner in which the results will be intimated;
 - i) The number of prizes to be awarded and the amount payable for the successful design(s).
 - j) It may be clearly stipulated that the intellectual property rights of the successful design(s) would rest with the sponsoring agency. The status of the unsuccessful designs and whether it is intended to return them should be indicated clearly.
 - k) If the selection is to be done by a jury of experts nominated for the purpose, the composition of the jury may also be notified.

7.9.2 Once the completion is over and the winning entry selected, this again should be notified in the public domain. If the selection has been by a jury of experts nominated for the purpose, the composition of the jury may be notified.

7.9.3 It is evident that every competition would have distinct features and therefore, the aforesaid guidelines should be used as a general principle while preparing the detailed procedure/rules for each such competition.

(Rule 196 of GFR 2017)

Chapter 8: Monitoring Consultancy/ Other services Contract

8.1 Monitoring of the Contract

The ministry/department awarding the contract should be involved throughout in monitoring the progress of the assignment so that the output of the assignment is in line with the Procuring Entity's objectives laid down in the Contract. Suitable provision for this should be made in the contracts which should also take care of the need to terminate/ penalize the contractor or to suspend payments till satisfactory progress has not been achieved. A Contract Monitoring Committee (CMC) shall be formed by the Procuring Entity to monitor the progress. The Procuring Entity should also designate a counterpart Project Manager with adequate technical qualification, managerial experience, and power of authority as the nodal person to interact with the consultant/ service provider's team. A system of reporting may be developed so that a statement covering all ongoing consultancies/ Services contracts may be submitted within the Department in detail and from each Department in summary form to the Ministry, so as to enable Management by Exception based on various Risk and Mitigation strategies pointed out at relevant process milestones in this manual. (Rule 195 of GFR 2017)

8.2 Contract Monitoring Committee – (CMC)

The Procuring Entity shall constitute a CMC comprising at least three members at the appropriate level, including the user's representative, after the selection procedure is over for monitoring the progress of the assignment. If considered appropriate, the Procuring Entity may select all or any of the members of CEC as members of CMC. The Procuring Entity may also include individual experts from the government/private sector/ educational/research institute or individual consultant/ service providers in the CMC. The cost of such members, if any, shall be borne by the Procuring Entity. The CMC shall be responsible for monitoring the progress of the assignment, to oversee that the assignment is carried out as per the contract, to assess the quality of the deliverables, to accept/reject any part of assignment, to levy appropriate liquidated damages or penalty if the assignment is not carried out as per the contract and if the quality of services is found inferior and for any such deficiency related to the completion of the assignment.

For the assignments which are very complex and/or are of highly technical nature, the Procuring Entity may decide to appoint another qualified consultant/ service provider to assist the CMC in carrying out its functions. Monitoring the progress of Assignment entails following activities:

- i) Issuing the notice to proceed;
- ii) Review of the inception phase;
- iii) Deciding on possible modifications to scope of work and issuing contract variations;
- iv) Monitoring progress of assignment, Monitoring that key experts are actually employed; reports and their review including review of draft final report and the final report to ensure that assignment (whether time-based or lump-sum) is completed in accordance with the contract;
- v) Billing, payment and monitoring the expenditure vis-à-vis progress;

- vi) Resolving problems faced by consultants/ service providers and dealing with disputes and arbitration;
- vii) Terminating services prior to the end of the contract; and
- viii) Release of final payment and guarantees (if any) and closing the contract;
- ix) Post contract evaluation.

8.3 Issuing Notice to Proceed - consultant/ service provider's Mobilisation

A notice to proceed is required to initiate consultancy/ other services. It is normally issued as soon as possible after the contract has been signed. After the issuance of the notice to proceed, the contract normally commences upon the arrival of the consultant/ service provider or the Consultancy team's members at the premises for the Procuring Entity, if so required under the description of services. The Procuring Entity and the consultant/ service provider agree on the detailed content of inception, progress and final report.

Before issuing notice to proceed, the Procuring Entity and the consultant/ service provider should check the following:

- i) Supervising/monitoring arrangements (including CMC) are in place;
- ii) Procuring Entity's counterpart staff (including counterpart project manager) are nominated and are available;
- iii) Facilities to be provided by the Procuring Entity as per the contract are ready for use by the consultant/ service provider;
- iv) All parties involved in the assignment (users, security team and other relevant departments) are informed;
- v) All JV members and key experts needed at the beginning of the assignment are effectively participating in the assignment as required by the Contract;
- vi) Guarantees and advance payments are implemented;
- vii) Data and background information are made available; and
- viii) All authorisations (if needed) are provided.

8.4 Consultancy Services - Review of Inception Phase:

For more complex consultancies, the work is divided into phases, of which one of the most critical is the inception phase. The inception phase covers the submission and review of the work plan with the Procuring Entity, and the initiation of the field work. It is common for an inception report to be prepared to cover the consultant/ service provider's experience and observations during this period, and often a workshop or seminar is held to discuss it. Resulting from the factual study of ground situation by the consultants/ service providers, following issues will need resolution at end of the inception phase:

- i) Overall Scope of Work;
- ii) Work Plan and Staffing Schedule;
- iii) Specific Terms of Reference;
- iv) Access to Professional and Logistic Support;
- v) Working Arrangements and Liaison

8.5 Reporting of Progress

The timing, nature, and number of reports that the consultant/ service provider should provide are normally contained in the Consultancy and other services contract. If the assignment is of a routine nature over a long period (for example, implementation

supervision), then monthly, quarterly, and annual progress reports may be required. On the other hand, if the assignment is to prepare a study or to implement a particular task, a more specific type of reporting may be required. This could entail, besides the inception report mentioned above, interim or midterm reports, design reports, reports at the end of each phase of the work, a draft final report, and a final report. These may be provided in a number of media and formats but normally will entail hard and soft copy versions. The production or acceptance of various reports is often used as a milestone for payments. CMC should review the reports as they are produced (in final report draft final report is also reviewed), to provide feedback, and to monitor the implementation progress of the assignment. Shortcomings in the quality of the work produced or deviations from the implementation schedule should be brought to the immediate attention of the CA, so that they can be addressed at the earliest opportunity.

8.6 Monitoring a Time-based Contract

As indicated earlier, the performance of a time-based contract may depend on the progress in other contracts (for example, the progress of a construction supervision contract depends on the progress of a construction contract). In such situations, the mobilisation and demobilisation of resources/ key experts and time employed by them should be mobilised and monitored carefully as it is possible that the contract period and the total amount under the contract are spent fully and construction work being supervised is not even half complete. These situations could lead to claims and disputes.

8.7 Monitoring a Lump-sum Contract

As Lump-sum contract is based on output and deliverables, it important that the quality of draft reports is checked carefully before release of stage payment as subsequent dispute after completion of the task could lead to disputes. In this form of contract, if there are extra additional services, there should be timely amendment to the contract to reflect these increases and to regulate payment. In general, in a lump-sum contract, the increase should not be more than 10-15 (ten to fifteen) per cent.

8.8 Unsatisfactory Performance

Poor performance may involve one or more particular staff from the consultant/ service provider's team, or the whole team or non-participation by the main qualifying JV member. Based on the provisions of the contract, the Procuring Entity will advise the consultant/ service provider to take the necessary measures to address the situation. Poor performance should not be tolerated; therefore, the consultant/ service provider should act quickly to comply with a reasonable request to improve the performance of the team or to replace any particular staff member who is not performing adequately. If the consultant/ service provider fails to take adequate corrective actions, the Procuring Entity may take up the issue with the top management of the consultant/ service provider and issue notice to rectify the situation and finally consider terminating the contract.

8.9 Delays

Consultancy and other services may be delayed for a variety of reasons. The consultant/ service provider should notify the Procuring Entity and explain the causes of such delays. If

corrective action requires extra work and the delay cannot be attributed to the consultant/ service provider, the extra work should be reimbursed in accordance with the contract.

8.10 Issuing Contract Variations

8.10.1 The formal method of making and documenting a change in the Consultancy and other services contract is through a contract variation. Contract variations are issued when there are agreed-upon changes in the scope of work, personnel inputs, costs, timing of the submission of reports, or out-of-pocket expenditures. There are few Consultancy and other services contracts of any type that do not require a contract variation at one time or another. Normally, these relate to changes that have a cost implication, but when there is a significant change in the timing of an activity or a particular output, these should also be recorded through a contract variation. Normally, the request for contract variation is prepared by the consultant/ service provider or Consultancy/ service provider firm and submitted to the Procuring Entity. If the variation entails an increase in the contract amount by more than 10% (ten percent), CA's (Competent Authority) prior approval is required. Post contract variation carried out in the form of an amendment shall be published by the purchaser on the same e-procurement portals/Websites that were used for publication of the original tender enquiry

8.10.2 To take care of any change in the requirement during the contract period of IT Projects as well, there could be situations wherein change in the scope of work becomes necessary. These situations should be dealt with objectivity and fairness and should not be considered to unduly push the vendor to undertake work or take risks which was not explicitly communicated in the tender document. At the same time the vendor should not consider this as an opportunity to unduly charge the Procuring Entity due to lack of available options. Generally, the value of the change request should not be more than plus/minus 15 (Fifteen) per cent. The RfP document should contain detailed mechanism through which such change requests would be carried out. A 'Change Control Board' may be constituted by the Procuring Entity including experts from academics and industry to consider and approve the proposed change requests. The decisions of this board (both technical as well as financial) should be considered as final.

8.11 Substitution of Named Key Personnel

8.11.1 One common type of variation involves a substitution of key personnel identified by name in the contract. Sometimes a change of personnel is unavoidable because of resignation, illness, accident, inadequate performance, or personality conflict. The contract must specifically make provision for terms and conditions under which the staff can be replaced, about the remuneration to be paid etc. When personnel are to be replaced, certain factors need to be considered:

- i) Any replacement should be as well qualified or better qualified than the person being replaced;
- ii) The remuneration should not be more than that was agreed upon for the person being replaced;
- iii) The consultant/ service provider should bear all costs arising out of or incidental to the replacement (such as airfares for the substitute expert).

8.11.2 Substitution of key personnel during execution of consultancy contract:

- i) Quality in consultancy contracts is largely dependent upon deployment and performance of key personnel, during execution of the contract.
- ii) The following conditions should be incorporated in tender documents for procurement of consultancy services:
 - a) Substitution of key personnel can be allowed in compelling or unavoidable situations only and the substitute shall be of equivalent or higher credentials. Such substitution may ordinarily be limited to not more than 30% of total key personal, subject to equally, or better, qualified and experienced personnel being provided to the satisfaction of the procuring entity.
 - b) Replacement of first 10% of key personnel will be subject to reduction of remuneration. The remuneration is to be reduced, say, by 5% of the remuneration which would have been paid to the original personal, from the date of the replacement till completion of contract.
 - c) In case of the next 10% replacement, the reduction in remuneration may be equal to (say) 10% (ten percent) and for the third 10% replacement such reduction may be equal to (say) 15% (fifteen percentage). In case such percentages are not relevant, or for some other practical considerations, for a particular contract, the procuring entity may formulate a suitable mechanism following the above logic, which should be specified in the tender documents.
- iii) Public authorities may make use of IT enabled systems at the designated place of deployment to ensure presence of key personnel as for the schedule of deployment.

8.12 Billing and Payments

8.12.1 Payment is made to the consultant/ service provider based on a schedule agreed on in contract, often based on certain milestones or outputs. The consultant/ service provider submits an invoice to the Procuring Entity detailing the expenditures for personnel and out-of-pocket items. The Procuring Entity then reviews the documentation and forwards it to Paying Authority for ultimate payment. In normal practice, if any item needs further scrutiny before the Procuring Entity can approve payment, payment of undisputed items will be made. But payment of any disputed items will be withheld until the circumstances are clarified.

8.12.2 The terms and conditions of such payments are set out in the contract wherein the amount of advance payment is specified, as are the timing of the payment and the amount of advance payment security to be provided by the Consultancy firm. The advance payment is set off by the Procuring Entity in equal instalments against monthly billing statements until it has been fully set off. Once an advance has been provided, requests for any additional advance are not considered until the consultant/ service provider liquidates the previous advance. The advance payment security is then released. In some contracts there may be provision for mobilization fee to be paid.

8.13 Disputes and Conflicts

8.13.1 Disputes between the consultant/ service provider and the client may arise for a number of reasons. This could relate to technical and administrative matters such as interpretation of contract, payment for services or substitution of key experts – all of which

should be dealt with promptly and amicably between the contracting parties in terms of contract provisions. They may be the result of delays prompted by weaknesses on the part of the consultant/ service provider or the Procuring Entity; by a lack of funds; by delays in getting key approvals, data, or information; or by causes beyond anyone's control such as natural disasters. They may be the result of deviations from the Scope of Work or work plan by the consultant/ service provider or out-of-course requests for deviations by the Procuring Entity.

8.13.2 All reasonable efforts should be made to avoid disputes in the first place; both parties should attempt to deal with problems as they arise on a mutually constructive basis. (This may include the repatriation of consultant/ service provider staff if necessary or a change in the personnel of the Procuring Entity's CMC) If this is not possible, GCC sets clear procedures for dealing with disputes. This entails provision of a notification of dispute by one party to the other, and provision for a mutual resolution at higher levels of authority within the consultant/ service provider and the Procuring Entity. Finally, if the dispute cannot be amicably settled between the consultant/ service provider and the Procuring Entity, then provision is made for arbitration under the Arbitration Clause. The award decreed by arbitration tribunal is binding.

8.13.3 Arbitration and dispute resolution

- i). During operation of the contracts, issues and disputes arising due to lack of clarity in the contract become the root cause of litigation. Litigation has adverse implications on the timelines and overall cost of the project. Before resorting to arbitration/litigation, the parties may opt for mutual discussion, mediation, and Conciliation for the resolution of disputes.
- ii). Arbitration /court awards should be critically should be critically reviewed. In cases where there is a decision against government / public sector enterprise (PSE), the decision to appeal should not be taken in a routine manner, but only when the case genuinely merits going for the appeal and there are high chances of winning in the court/ higher court. There is a perception that such appeals etc. are sometimes resorted to postpone the problem and defer personal accountability. Casual appealing in arbitration / court cases has resulted in payment of heavy damages / compensation / additional interest cost, thereby causing more harm to the exchequer, in addition to tarnishing the image of the Government.
- iii). The Organisation should monitor the success rate of appealing against arbitration awards. There should be a clear delegation to empower officials to accept arbitration / court orders. A special board / committee may be set up to review the case before an appeal is filed against an order. Arbitration /court awards should not be routinely appealed without due application of mind on all facts and circumstances including realistic probability of success. The board / committee or other authority deciding on the matter shall clarify that it has considered both legal merits and the practical chances of success and after considering the cost of, and rising through, litigation / appeal / further litigation as the case may be, it is satisfied that such litigation / appeal / further litigation cost is likely to be financially beneficial compared to accepting the arbitration / court award.
- iv). Statistics have shown that in cases where the arbitration award is challenged, a large majority of cases are decided in favour of the contractor. In such cases, the amount becomes payable with the interest, at a rate which is often far higher than the

government's cost of funds. This results in huge financial losses to the government. Hence, in aggregate, it is in public interest to take the risk of paying a substantial part of the award amount subject to the result of the litigation, even if in some rare cases of insolvency etc. recovery of the amount in case of success may become difficult. Instructions have been issued in this matter in the past, but have not been fully complied with. (v) The only circumstances in which such payment need not be made is where the contractor declines, or is unable, to provide the requisite bank guarantee and/or fails to open an escrow account as required. Persons responsible for not adhering to are liable to be held personally accountable for the additional interest arising, in the event of the final court order going against the procuring entity

- v). The only circumstances in which such payment need not be made is where the contractor declines, or is unable, to provide the requisite bank guarantee and/or fails to open a escrow account as required. Persons responsible for not adhering to are liable to be held personally accountable for the additional interest arising, in the event of the final court order going against the procuring entity⁴¹.

8.13.4 Arbitration Awards

- i) In cases where the Ministry/ Department has challenged an arbitral award and, as a result, the amount of the arbitral award has not been paid, 75% of the arbitral award (which may include interest up to date of the award) shall be paid by the Ministry/ Department to the contractor/ concessionaire against a Bank Guarantee (BG). The BG shall only be for the said 75% of the arbitral award as above and not for the interest which may become payable to the Ministry/ Department should the subsequent court order require refund of the said amount.
- ii) The payment may be made into a designated Escrow Account with the stipulation that the proceeds will be used first, for payment of lenders' dues, second, for completion of the project and then for completion of other projects of the same Ministry/ Department as mutually agreed/ decided. Any balance remaining in the escrow account subsequent to settlement of lenders' dues and completion of projects of the Ministry/ Department may be allowed to be used by the contractor/ concessionaire with the prior approval of the lead banker and the Ministry/ Department. If otherwise eligible and subject to contractual provisions, retention money and other amounts withheld may also be released against BG.]⁴²

8.14 Force Majeure

8.14.1 A Force Majeure (FM) means extraordinary events or circumstance beyond human control such as an event described as an act of God (like a natural calamity) or events such as a war, strike, riots, crimes (but not including negligence or wrong-doing, predictable/seasonal rain and any other events specifically excluded in the clause). An FM clause in the contract frees both parties from contractual liability or obligation when prevented by such events from fulfilling their obligations under the contract. An FM clause

⁴¹ As notified under para 16.1 to 16.5 of OM No.F.1/1/2021-PPD issued by Department of Expenditure dated 29.10.2021

⁴²New rule 227A of GFR, 2017 notified vide OM No. F./1/9/2021-PPD issued by Department of Expenditure dated 29.10.2021.

does not excuse a party's non-performance entirely, but only suspends it for the duration of the FM. The firm has to give notice of FM as soon as it occurs and it cannot be claimed ex-post facto. There may be a FM situation affecting the purchase organisation only. In such a situation, the purchase organisation is to communicate with the supplier along similar lines as above for further necessary action. If the performance in whole or in part or any obligation under this contract is prevented or delayed by any reason of FM for a period exceeding 90 (ninety) days, either party may at its option terminate the contract without any financial repercussion on either side.

8.14.2 Notwithstanding the punitive provisions contained in the contract for delay or breach of contract, the supplier would not be liable for imposition of any such sanction so long as the delay and/or failure of the supplier in fulfilling its obligations under the contract is the result of an event covered in the FM clause.

8.15 Terminating Services Prior to End of Contract

8.15.1 At times, a decision is taken to terminate a contract prior to its conclusion and the completion of the Consultancy and other services assignment. This may be for various reasons, for example:

- i) **Termination due to External factors:** External factors (like natural disasters) which are beyond the control of the consultant/ service provider or the Procuring Entity;
- ii) **Termination for convenience:** The Procuring Entity may also terminate a contract for convenience for reasons like shortage of budget;
- iii) **Termination due to breach of contract:** Failure/ inability of one party or the other.

8.15.2 In some cases, termination is the optimal choice; in others, it is detrimental to the overall intent of the assignment. This implies a missed opportunity and a waste of the funds already expended on the assignment. For these reasons, termination should be avoided if possible, even if this means a considerable re-staffing of the Consultancy team.

8.15.3 Termination may be initiated by any party. Termination must be undertaken within the terms of the contract document. These provide for a notice period of 30 (thirty) days, the payment by the Procuring Entity of any legitimate outstanding fees and costs to the consultant/ service provider, and the payment of legitimate costs to wind-up the Consultancy/ other service team (unless the termination was occasioned by the default of the consultant/ service provider).

8.15.4 The CMC would indicate which of the final billings by the firm are eligible for payment and which are not. In case of dispute over what is or is not a legitimate expense, eligible for payment, the dispute mechanism described above is invoked and, if it is not possible to resolve the matter amicably, the issue is submitted for arbitration. The contract will remain valid until the arbitration decision is made.

8.16 Concluding the Assignment

The contract is normally considered closed on the day after the completion date listed in the contract. Any expenditure incurred after the completion date are unlikely to be paid. It is therefore, important, under all types of assignments, for the consultant/ service provider to request an extension of the completion date if it appears that additional items will need to be billed after the completion date. The consultant/ service provider should submit the final

claim promptly after completing the assignment. The standard consultant/ service provider contract states that the claim must be submitted within 60 (sixty) days of completion

8.17 Monitoring of Consultancy Contracts – Risks and Mitigation

Risks	Mitigation
<p>Substitution of key experts in implementation: When the contract progresses, over a period of time, the request for substitution of key staff is made by the firm citing reasons of non-availability, health, and so on.</p>	<p>The Procuring Entity needs to deal with such requests strictly in terms of contract provisions which permit substitution of key experts in exceptional circumstances such as “death or medical incapacity”. Substitution of a person “of equivalent or better qualification and experience” should receive utmost scrutiny and compliance, as diluting such a provision leads to loss of quality of work and a serious integrity issue. Such substitution should not give any undue financial benefit to the contractor.</p>
<p>Cost overruns in time-based contracts: Time and Cost over-run is a major risk in Time-based contracts, as the payment is based on time and delay may result in unanticipated benefit to the consultant and the assignment may get delayed.</p>	<p>This type of contract should include an upper limit of total payments to be made to the consultants/ service providers for the assignment to safeguard against excessive prolonging of time and payments. After this limit is reached, or the period of completion is exceeded, CA should review justification for extension of the contract. One of the ways to prevent cost overruns in time based contract is to require Procuring Entitys acquire contract management capacity to manage consultants contract before contract is signed. It is Procuring Entity’s mandate to monitor consultant’s contracts and also to request consultants to keep producing progress reports and highlighting the status of their contract as it reaches milestones such as 50% and 80% progress. Procuring Entity must careful authorise mobilisation and demobilisation of key experts, and examine the time sheets and other reimbursable expenditures.</p>

Chapter 9: Procurement (Outsourcing) of Other (Non-consultancy) services

To make this chapter self-contained and complete some of the relevant paras are repeated wherever required. Any circumstances which are not covered in this manual for procurement of non-consulting services, the Procuring Entity may refer to Manual of Policies and Procedures for Procurement of Goods and not to the provisions for procurement of consulting services.

9.1 Applicability of this Chapter to Procurement (Outsourcing) of Other (Non-consultancy) Services

9.1.1 “Other services” (including the term ‘Non-consultancy services’ in certain contexts) are defined by exclusion as services that cannot be classified as Consultancy Services. Other services involve routine repetitive physical or procedural non-intellectual outcomes for which quantum and performance standards can be tangibly identified and consistently applied and are bid and contracted on such basis. It may include small works, supply of goods or consultancy service, which are incidental or consequential to such services. Other services may include transport services; logistics; clearing and Forwarding; courier services; upkeep and maintenance of office/ buildings/ Estates (other than Civil & Electrical Works etc.); drilling, aerial photography, satellite imagery, mapping and similar operations etc.

9.1.2 The term “Outsourcing of Services” implies deployment of outside agencies on a sustained long-term (for one year or more) for performance of other services which were traditionally being done in-house by the employees of Ministries/ departments (Security Services, Horticultural Services, Janitor/ Cooking/ Catering/ Management Services for Hostels and Guest Houses, Cleaning/ Housekeeping Services, .Errand/ Messenger Services, and so forth). There may be Human Resources and administrative issues involved in ‘outsourcing’ which are beyond the scope of this manual, but nevertheless need to be addressed. Besides outsourcing, other services also include procurement of short-term stand-alone services.

9.1.3 If the other services involve construction, fabrication, repair, maintenance, overhaul, renovation, decoration, installation, erection, excavation, dredging, and so on, of Civil assets, then it should be handled on the lines of procurement of Works. In case of fabrication, repair, maintenance, overhaul, renovation, decoration, installation, erection and so on, of mechanical, electrical or ICT assets – e.g. Annual Maintenance Contracts or installation/ commissioning of Machinery and Plant and so on, it may be handled on the lines of Procurement of Goods.

9.1.4 Any circumstance which is not covered in this chapter for procurement of non-consulting services, the Procuring Entity may refer to the Manual of Policies and Procedures for Procurement of Goods.

9.1.5 It is possible that, depending on the nature and complexity of the assignment, a task could be dealt with either as a consultancy or non-consultancy service. In essence, if the intellectual and advisory part of services dominates (and the physical part is incidental), the selection needs to be dealt with in Consultancy mode. For example, if the task is looking at

the condition of a dam (for dam safety) by physically inspecting a dam through underwater observation, this task is collection of data using technologies and photography, but the actual analysis is an intellectual and advisory task and is the crux of the assignment. Therefore, the entire task needs to be dealt with as selection of a consultant.

9.1.6 For sake of simplicity, this Manual of Policies and Procedure for the Procurement of Consultancy and other services is written from the point of view of procurement of Consultancy Services. This Chapter now covers the Outsourcing/ Procurement of Other (non-consultancy) Services, and points out areas where policies and procedures are different for such outsourcing/ procurements.

9.2 Authorities competent to procure Consultancy and other services and their Purchase Powers

Authorities competent to procure (outsource) Other (Non-consultancy) Services and their Purchase Powers is covered in para 1.4 in Chapter 1.

9.3 When is Procurement/ Outsourcing of Other (Non-consultancy) Services justified

In the interest of economy, efficiency and to provide more effective delivery of public services, GFR, 2017 permits Ministries/ Departments to procure/ outsource auxiliary and support services. Approval of the competent authority should be obtained before engaging service providers. We may justify need for Procurement of other services on consideration of:-

- i) Economy, Speed and efficiency and more effective delivery of public services relating to additional requirement/ commitment/ usage of:
 - a) Staff/ Management/ Organization;
 - b) Technological and Material Resources;
 - c) Money, and
 - d) Time/ Speed of execution
- ii) An administrative policy decided by the Ministry/ Department to outsource specific (class of) services;

9.4 Principles for Public Procurement of other (non-consultancy) services:

9.4.1 Other principles of Public Procurement as mentioned in Para 1.6 in chapter-1, are also equally applicable to Procurement of other services. Additional principles of procurement needed to ensure value for money in of procurement of other services are to ensure:

- i) Services to be procured should be justifiable in accordance with Para 1.10 in Chapter-1;
- ii) In other (non-consultancy) services an Activity Schedule (a document covering well-defined scope of work/ description of services and the time frame for which services are to be availed of) should be consistent with the overall objectives of Procuring Entity;
- iii) Equal opportunity to all qualified service providers to compete should be ensured
- iv) Engagements should be economical and efficient; and

v) Transparency and integrity in the selection process (that is, proposed, awarded, administered, and executed according to highest ethical standards);

9.4.2 Period of Contract: A very short period of contract would require spending needless administrative time in repeating the exercise at short intervals while a very lengthy contract period may affect service quality. Therefore, in the normal course, the period of initial contract may be fixed normally for two years.

9.4.3 Extension of Contract: The clause of extension of contract beyond the period of two years may be for a further period of one year subject to the service provider providing satisfactory service. Thereafter fresh bidding for new tender for the said service may be undertaken. In all cases where the Service Provider has been levied a cumulative penalty of 5 percent of the total contract value, extension beyond the initial period of two years may not be considered.

9.4.4 Instances of Multiple L1s: In number of cases, especially non-consultancy services, usually multiple bidders emerge as L1. GeM provides following two options to choose the vendor to be engaged in case of multiple L1s:

- i) system determined vendor selection.
- ii) purchaser can select the vendor.

Multiple factors may weigh upon the decision of selecting the successful contractor. GeM system based selection could be more transparent, however, it takes away the discretion with purchaser to select a particular contractor, without any financial repercussion, on the basis of past experience in a particular department. On the other hand there may be instances where a procuring entity may be more comfortable with system based L1 selection method. Hence, the decision on the method of selection of successful contractor in case of multiple L1 may be left with the procuring entity. However, the method of selection of successful contractor in case of multiple L1 should be decided prior to issue of tender.

9.4.5 Past Experience: Bid documents may provide for a qualification criteria considering past experience. Normally past experience in supply of service at a particular station or to Central Government Ministries/ Departments is considered too restrictive. However, in case such restriction is considered essential the same may be provided for in the bid documents, duly recording reasons for such decisions on the file.

9.4.6 Housekeeping Services: In the case of Housekeeping/ cleaning services, GeM platform provides for Options based on (a) Floor Area wise cleaning and (b) Manpower. Usually, the floor area wise cleaning option is more cost effective. Accordingly, before a tender is floated, an exercise maybe undertaken to determine the option which is considered beneficial for the Government, duly recording reasons for such decision on file.

9.4.7 Hiring of manpower through contracts should be avoided to ensure no future legal problems as these employees may demand regularization afterwards. Even, if employed, there should be no direct correspondence with such people. Even I-cards should be issued indicating the person to be representative of the contractor (name of the contractor to be mentioned).

9.5 Types of Contracts in Other (Non-consultancy) Services

Procurement/ Outsourcing of other (non-consulting) Services depending on the nature of services can be either Lump-sum contracts, Time-based contracts, or unit (item/ service)

rate based contract (as in case of Goods and Works - say Taxi Service on Km basis). Or it can be a mix of these. For occasionally but continually needed services, indefinite delivery contracts, based on time or unit (item/ service) rates may be appropriate. Other types of contracts are not usual in procurement of other services.

9.6 System of Selection in Other (Non-consultancy) Services

9.6.1 Unlike Procurement of Consultancy Services, procurement of other services is done by a simpler process akin to those of procurement of Goods and Works. (*Rule 206 of GFR 2017*). It is normally done in a Single Stage (RfP) Process containing Technical and Financial bids. However in highly technical and complex services, where quality is important (say in studies like seismic surveys, airborne data acquisition etc) a pre-qualification (PQB) process may be done on the lines of procurement of Goods and Works.

9.6.2 In procurements above Rs 10 (Rupees Ten) Lakhs, it should normally be an advertised RfP. For procurement below Rs 10 (Rupees Ten) Lakhs, RfP can be issued to a selected shortlist of likely service providers. To start with preparation of a long list of potential service providers may be done on the basis of formal or informal enquiries from other Ministries or Departments or Organisations involved in similar activities, Chambers of Commerce & Industry, Association of consultancy firms etc. The Procuring Entity should scrutinise the preliminary long list of likely service providers as identified above and shortlist the prima facie eligible and capable service providers from the long list. The number of service providers in this moderated long-list should be more than three. To smoothen this shortlisting of service providers for projects below Rs 10 (Rupees Ten) Lakhs, Procuring entities who do frequent procurement of non-consultancy services, may consider preparation of a Panel of qualified service providers, after evaluation of their credentials, on the lines of registration of vendors in procurement of goods. (*Rule 201 of GFR 2017*)

9.6.3 In procurement of other (non-consultancy) services normally system of selection used is lowest price (L-1) basis among the technically responsive offers, as in procurement of Goods/ works. Under very special circumstances Single Source Selection may also be used. (*Rule 204 of GFR 2017*)

9.7 One Stop Government e-Marketplace (GeM)

9.7.1 An online marketplace (or e-commerce marketplace) is a type of e-commerce site where product or services are offered by a number of sellers and all the buyers can select the product/ services offered by any one of the seller, based on his own criteria. In an online marketplace, Purchaser's transactions are processed by the marketplace operator and then product/ services are delivered and fulfilled directly by the participating retailers. Other capabilities might include auctioning (forward or reverse), catalogues, ordering, posting of requirements by Purchasers, Payment gateways etc. In general, because online marketplaces aggregate products from a wide array of providers, selection is usually wider, availability is higher, and prices are more competitive than in vendor-specific online retail stores.

9.7.2 Ministry of Commerce have developed an online Government e-Market Place for common use goods and services. The procurement process on GeM is end to end from placement of supply order to payment to suppliers. This is to ensure better transparency and higher efficiency. All the process will be electronic and online. The Procurement of Goods

and Services by Ministries or Departments will be mandatory for Goods or Services available on GeM.

9.7.3 Products and services are listed on GeM by various suppliers as on other e-Commerce portals: The registration of suppliers on GeM is online and automatic based on PAN, MCA-21⁴³, Aadhar authentication etc. The suppliers offer their products on GeM and the Government buyer are able to view all the products as well as compare them. Tools of reverse bidding and e-auction are also available which can be utilised for the procurement of bulk quantities.

9.7.4 Demand Aggregation: The best prices to a user can be available if same requirement demands of various organizations are aggregated. This acts as an incentive for the supplier to quote their best price. For the same products, the demand of various Govt. Departments can be clubbed together and reverse auction done on the basis of aggregated demand which will provide the best prices to the Govt. Department.

9.7.5 Authority of procurement through GeM: Procurement through GeM has been authorised as per GFR, 2017 Rule 149:-

“Government e-Market Place (GeM): Government of India has established the Government e-Marketplace (GeM) for common use Goods and Services. GeM SPV will ensure adequate publicity including periodic advertisement of the items to be procured through GeM for the prospective suppliers. The Procurement of Goods and Services by Ministries or Departments will be mandatory for Goods or Services available on GeM. The credentials of suppliers on GeM shall be certified by GeM SPV. The procuring authorities will certify the reasonability of rates. The GeM portal shall be utilized by the Government buyers for direct on-line purchases as under⁴⁴

- i) Up to {Rs.25,000/-}⁴⁵ through any of the available suppliers on the GeM, meeting the requisite quality, specification and delivery period (in case of procurement of Automobiles only the ceiling of direct purchase will be Rs.30 lakh instead of Rs. 25,000/-⁴⁶);
- ii) Above Rs.25,000/- and up to Rs.5,00,000/- through the GeM Seller having lowest price amongst the available sellers (excluding Automobiles where current limit of 30 lakh will continue), of at least three different manufacturers, on GeM, meeting the requisite quality, specification and delivery period. The tools for online bidding and online reverse auction available on GeM can be used by the Buyer even for procurements less than Rs 5,00,000.
- iii) Above Rs.5,00,000/- through the supplier having lowest price meeting the requisite quality, specification and delivery period after mandatorily obtaining bids, using online

⁴³ Ministry of Corporate Affairs Project to fully automate all processes related to enforcement and compliance of the legal requirements under the Companies Act, 1956

⁴⁴ Amended vide DoE OM No. F.1/26/2018-PPD dated 02.04.2019.

⁴⁵ In case of procurement of Automobiles only, the ceiling of direct purchase will be Rs. 30,00,000/- instead of Rs. 25,000/-. Refer DoE OM No. F.1/26/2018-PPD dated 09.08.2021.

⁴⁶ Notified vide OM No. F.1/26/2018-PPD dated 9th August, 2021.

bidding or reverse auction tool provided on GeM (excluding Automobiles where current limit of 30 lakh will continue).⁴⁷

- iv) *The invitation for the online e-bidding/reverse auction will be available to all the existing Sellers or other Sellers registered on the portal and who have offered their goods/services under the particular product/service category, as per terms and conditions of GeM.*
- v) The above mentioned monetary ceiling is applicable only for purchases made through GeM. For purchases, if any, outside GeM, relevant GFR Rules shall apply.
- vi) The Ministries/Departments shall work out their procurement requirements of Goods and Services on either “OPEX” model or “CAPEX” model as per their requirement/suitability at the time of preparation of Budget Estimates (BE) and shall project their Annual Procurement Plan of goods and services on GeM portal within 30 (thirty) days of Budget approval.
- vii) The Government Buyers may ascertain the reasonableness of prices before placement of order using the Business Analytics (BA) tools available on GeM including the Last Purchase Price on GeM, Department’s own Last Purchase Price etc.
- viii) A demand for goods shall not be divided into small quantities to make piecemeal purchases to avoid procurement through L-1 Buying/ bidding/ reverse auction on GeM or the necessity of obtaining the sanction of higher authorities required with reference to the estimated value of the total demand.”

It may be noted that it is the responsibility of the Procuring Entity to do due diligence for ensuring reasonableness of rates.

9.7.6 GeM Portal: <https://gem.gov.in>. Detailed instructions for user organization registration, supplier registration, listing of products, terms and conditions, online bidding, reverse auction, demand aggregation, call centre, etc. are available on this portal.

9.7.7 Payment Procedure in GeM: The payment procedure in GeM is governed by O.M. No. F.26/4/2016-PPD dated 23rd January, 2020⁴⁸ issued by D/o. Expenditure, M/o. Finance, New Delhi. The following procedures are prescribed for making payments to the Sellers/ Service Providers in GeM which shall be complied and adhered to by all concerned for different type of contracts such as:

- a. Supply of Goods & Services
- b. Supply, Installation, Testing and Commissioning of Goods
- c. Supply, Installation, Testing, Commissioning of Goods and Training of operators and providing Statutory Clearances required (if any)

⁴⁷ Amended vide DoE OM No. F.1/26/2018-PPD dated 02.04.2019.[Accessible from <https://doe.gov.in/sites/default/files/Amendments%20in%20General%20Financial%20Rules%20%28GFR%29%202017.pdf>]

⁴⁸ Accessible from https://doe.gov.in/sites/default/files/Procedures%20for%20payments%20for%20Goods-Services%20to%20sellers-%20service%20providers%20in%20Government%20e-Marketplace%20%28GeM%29%20-%20through%20PFMS%20and%20by%20non-PFMS%20Agencies-Entities%20%28NPAE%29_1.pdf

- i) In respect of contracts for Supply of Goods, 100% payment including GST should be made after receipt and acceptance of Goods and generation of "Goods CRAC" (Consignee Receipt and Acceptance Certificate) subject to recoveries, if any, either on account of short supply and Liquidated Damages etc. for delay in supply.
- ii) In respect of contracts for Services, payment should be made as per periodicity defined in the contract i.e. Monthly, Quarterly or any other pre-defined payment periodicity. 100% payment including GST for the particular payment cycle should be made after receipt and acceptance of the Services and generation of "Service CRAC" (Consignee Receipt and Acceptance Certificate) subject to recoveries, if any, either on account of short supply, SLA (Service Level Agreement) deviations and Liquidated Damages for delay in supply etc.
- iii) In respect of contracts for Supply, Installation, Testing, Commissioning of Goods and Training of operators etc. the complete cost break-up indicating Basic price, GST, Installation and commissioning charges, Incidental Services, training etc. is to be indicated separately in the bid. In order to cater to installation intensive products, the different configurable payment terms will have to be incorporated in GeM functionalities (depending upon the quantum of installation and turnkey work required).
 - a. First Milestone - On delivery of goods: 80 to 90% payment (lower initial payment if installation scope is very extensive) of the basic price of Goods along with 100% GST on the Goods Price but excluding installation, testing and commissioning and other charges should be paid after receipt Goods and generation of "Delivery CRAC for initial payment". This will be issued after physical verification of quantity only but without commitment about quality or functionalities etc. which would be verified after installation/ commissioning etc. While creating the bid, Buyer shall have functionality to define the percentage of payment linked with delivery of Goods.
 - b. Second Milestone - On Acceptance after installation, testing and commissioning : Balance 10 % to 20% payment of the basic price of Goods and 100% charges for installation, testing and commissioning and other charges along with GST on these charges should be paid after installation and final Acceptance of Goods and generation of "Installation CRAC" to be issued by the End User/ Consignee. Recoveries, if any, either on account of short supply and Liquidated Damages etc. for delay in supply and I or installation etc. shall be made from the payment due under this milestone. While creating the bid, Buyer shall have functionality to define the deliverables in this milestone and the percentage of payment linked with this milestone.
 - c. Third (and subsequent) milestones - Payment of Incidental Costs: 100% Payment related to Incidental costs at consignee site towards Incidental Services (such as providing training, or other work/ service as per scope defined in the contract), to be paid on submission of "Final CRAC" by the End User / Consignee. While creating the bid, Buyer shall have functionality to define the deliverables in this milestone. In exceptional cases, Buyer may choose to split this milestone as required.

- iv) In case of contracts for Supply, Installation, Testing, Commissioning of Goods bundled with one or more Services such as Comprehensive Maintenance, Human Resource hiring for pre-defined time periods etc., the payments for Goods shall be governed by Para (iii) above while payment for Services shall be Governed as per Para (ii) above.
- v) In case of Milestone Based Payments, separate timelines / delivery periods for each milestone will be provided. In case of supply and installation contracts, the delivery period may be specified by filling up the blanks as under:
 - a. First Milestone - For delivery of goods at site:-----days/ months from date of issue of contract with provision for staggered / multiple delivery period for same consignee.
 - b. Second milestone - Installation, Testing and Commissioning etc. of goods: - days / months from the date of handing over of site complete in all respect as per contract.
 - c. Third (and subsequent) milestones - Incidental Services etc.: - days after installation and commissioning.
- vi) The payments on GeM are primarily categorized under two heads i.e. through PFMS or GeM Pool Account. The detailed instructions for both type of payment system are as under:

A. Payments through PFMS:

1. The Central Government Buyer i.e. the concerned Programme Division or Administrative Unit in a Ministry/ Department will place the Contract online after taking prior approval of the Competent Authority for procuring a particular Good or Service. Inter-alia, the Contract form will also contain the following fields including fields required for payment related processes:

- a). Administrative approval of the Competent Authority indicating the designation of the approving authority,
- b). Approval of Competent Financial Authority indicating designation of the officer;
- c). Whether IFD concurrence required? (Yes/No)
- d). If yes, then IFD Diary No. & Date
- e). Budget Head of Account and Year, Major/Minor/Sub-head/Detailed Head/Object Head as in Detailed Demands for Grants.
- f). Budget availability as on date (Yes/No)
- g). Amount (Contract Value) Rs (Budget to be blocked)
- h). If expenditure is committed for more than a year, the year-wise details (portal should generate a Liability Register for recording multi-year payment commitments, the format for which is prescribed in Rule 53 of the GFR)

2. When these fields are duly captured, the Buyer will be in a position to place the Contract online. The GeM portal will generate a Sanction Order and the Contract which will be digitally/e-signed by the Buyer. These documents duly digitally/e-signed by the Buyer will be made available online to the concerned DDO and PAO or Paying Authority as defined in the contract and Seller/ Service Provider. The DDO and PAO/Paying Authority shall have

access to the Contract online in order to ensure that the Bill is generated at the stage of payment in accordance with the contractual provisions.

3. The GeM portal will send the Sanction Order details to PFMS.

4. On issue of Sanction order and placing the Contract for goods, the full amount required from the relevant Budget Head should be blocked in the PFMS. In cases of Services, amount should be blocked for one payment cycle as defined in the contract. Before releasing payment for any cycle, the funds required for the next payment cycle should be blocked so as to ensure availability of payable funds for the next payment cycle. Blocked fund will be treated as accrued expenditure by PFMS for the financial year in question and it will not be withdrawn for any other purpose other than the one for which the amount is Blocked. In order to alleviate the operational issues as well as to ensure optimum utilization of available funds, the following additions⁴⁹ are made in para 4.17.7 (vi) (A) (4)

- a. The provision of fund blocking equivalent to full contract value is applicable only for contracts with delivery periods of up to 20 days. For contracts with longer delivery periods, fund blocking of appropriate amounts shall be initiated at a date 20 days prior to expected delivery date or on the date of invoice generation by the Seller in GeM whichever is earlier. In case of non-availability of required funds at that point of time, both buyer and seller shall be alerted, and the Buyer, the HoD, the DDO/ PAO and finally up to AS&FA of concerned Ministry/ Department shall be alerted by email and SMS by GeM. On failure in making available the required funds in the appropriate head of account within 10 days, seller has right to decline supply and to seek contract cancellation without any administrative action against the seller. Also, in such a case, any delay in delivery by the seller will also become exempt from the provision of Liquidated Damages.
- b. Functionality to un-block the blocked funds in exceptional cases/ emergency cases with some validations: Head of Department (HoD) of the organization on GeM can unblock certain % of blocked funds of a contract (may be upto 100%) with the approval of associated finance of the Ministry/ Department or the CPSE in exceptional cases/ emergency cases after giving a clear undertaking that he will ensure timely availability of funds and unblocking will not lead to delay payments to sellers. However, such unblocking will not allowed if the seller has already raised an invoice (before 1st March of Financial Year).
- c. **Funds for the relevant financial year should be blocked only if the delivery period is such that the delivery is scheduled before the 1st of March of that financial year.** If the delivery is scheduled in March of that financial year or scheduled in the next financial year then fund blocking is optional for buyer in current financial year and mandatory only in the next financial year in the 1st week of April.

5. Should it be necessary to amend the Contract, such Amendment in the Contract with due approval of the Competent Authority and acceptance of the Seller/Service Provider

⁴⁹ Notified vide OM No. F.6/18/2019.PPD issued by Department of Expenditure dated 29.12.2020

(wherever required) shall be made available to the Seller /Service Provider/DDO/PAO/Paying Authority on the GeM portal.

6. Similarly, in the event of complete/ partial cancellation of the Contract the information would be made available to the Seller/Service Provider, DDO and PAO on the GeM portal. In that event, funds so blocked earlier would be released to the extent of cancelled amount.

7. The Programme Division/Administrative Unit in the Ministries/Departments shall periodically review the blocked budget to ensure that funds are utilized within the same financial year.

8. The Performance Security (if any) would be obtained from the Seller/Service Provider as per Contract, and their details would be reflected on the GeM portal by the Buyer.

9. Provisional Receipt of Stores on GeM:

- a. On dispatch of Goods, the Seller would enter the Dispatch Details and date of Dispatch and will upload documentary evidence of Dispatch against each consignment on GeM Portal. All these documents and details shall be shown to the Consignee on his dashboard and shall also be notified to the consignee on his e-mail and on his registered mobile number.
- b. The Seller shall prepare an electronic Invoice, digitally/e-signed, on GeM portal and shall submit the same on-line to the Buyer. GeM portal will send an SMS/ email alert to the Buyer, on submission of Invoice. This Invoice will contain mode of dispatch of goods, dispatched/delivered quantity with date and all inclusive price claimed based on digitally/e-signed Contract. In case Services are procured, the required data as per Contract may be incorporated in the Invoice.
- c. After actual delivery of goods at consignee destination/ milestone achievement (such as completion of installation/ commissioning or training etc. as defined in the contract)/ service delivery, Seller would enter the actual date of delivery/ milestone achievement/ Service Log-sheet (as applicable) and will upload documentary evidence for the same duly digitally signed / e-signed. All these documents and details shall be shown to the Consignee on his dashboard and shall also be notified to the consignee on his e-mail and on his registered mobile number. In case of Services Contracts, the Service Provider will fill up the required data as per the contract (such as log sheets and /or Invoice etc duly digitally signed/ e-signed).
- d. Immediately upon above entry by Seller I Service Provider regarding delivery of goods/ milestone achievement/ service delivery, an alert will be flashed on the Dashboard of the consignee and an email and an SMS Alert will be sent to Consignee informing that consignee has to mandatorily acknowledge receipt of stores/ milestone achievement/ service delivery through generation of PRC on GeM. The Buyer/Consignee should receive the Goods/Services and issues an online Provisional Receipt Certificate (PRC), within 48 hours, on 'said to contain basis' on the GeM portal with his/her digital signature / e-sign, mentioning the date of Receipt. (From this date of receipt mentioned in PRC, the period of ten (10) days for consignee's/buyer's right of rejection and

return policy would be applicable unless otherwise specified in a particular contract)

- e. In case the consignee does not issue PRC within 48 hrs from entry of delivery of goods/ milestone achievement/ service delivery by Seller/ Service Provider, an alert will be flashed on the dashboard of the consignee and an email and an SMS Alert will be sent to Consignee and Buyer informing that consignee has to mandatorily acknowledge receipt of stores/ milestone achievement/ service delivery through generation of PRC on GeM.
- f. After expiry of 72 hrs. from the first alert, another alert will be flashed on the dashboard of the Consignee, Buyer including HoD and an email along with an SMS Alert to Consignee , Buyer, HoD informing that consignee has to mandatorily acknowledge receipt of stores/ milestone achievement/ service delivery through generation of PRC on GeM and if the time limit of 96 hrs expires from the date of delivery of goods/ milestone achievement/ service delivery as per entry made by Seller/ Service provider and if the consignee does not acknowledge receipt of stores/ milestone achievement/ service delivery by generating PRC or disputes the same by rejecting receipt, it would be presumed that goods have been delivered/milestone achievement / service delivery has been made to consignee and PRC will be auto generated by the system (Deemed PRC).
- g. However, if the consignee does not issue PRC within 96 hrs from delivery of goods/ milestone achievement/ service delivery as per entry made by Seller/ Service provider ,GeM System/Portal would auto generate unsigned PRC considering the date of delivery of goods/ milestone achievement/ service delivery as indicated by the seller as deemed date of receipt for issuance of PRC. GeM portal shall also send periodic notifications every 24 hrs. to the Consignee, Buyer and the HoD about issuance of auto generated Deemed PRC for next 48 hrs.
- h. In case the PRC is auto-generated, the consignee shall have the provision on GeM to respond back within 48 hrs, if the goods have not been received or short received recommending to cancel or amend/correct the date of receipt/ quantity in the auto-generated Deemed PRC. In case nothing is reported/ corrected by consignee on the system, it will be presumed that the consignee has nothing to say and the auto-generated Deemed PRC will be considered as final for all purposes.
- i. If it is found at any stage that seller/ service provider has sent/ uploaded wrong information on GeM, based on which PRC has been wrongly auto generated, the seller/ service provider will be dealt severely and should be debarred by GeM for three years.

10. Consignee Receipt and Acceptance of Stores on GeM:

After issue of PRC/ Deemed PRC, the system will start sending an alert on the Dashboard of the consignee and an email and an SMS Alert will be sent as per escalation matrix specified below to issue the CRAC within 10 days:

- a. Level 1 - Upto 3 days - Consignee

- b. Level 2-4 and 5th day - Consignee and Buyer
- c. Level 3 - 6 to 10th day - Consignee, Buyer, HOD

After verification including assessment of quality and quantity of goods /verification of completion of all deliverables defined in the milestone/ completion of service for the defined period, the Consignee(s) will issue an on-line digitally/e-signed Consignee's Receipt & Acceptance Certificate (CRAC) (Goods CRAC/Service CRAC/ Delivery CRAC/ Installation CRAC/ Final CRAC as the case may be) (within 10 days (unless otherwise specified in a particular contract) of date of receipt indicated in PRC/deemed date of receipt as indicated in Deemed PRC. The CRAC would clearly indicate the Order quantity/ milestone achievement/ service delivery, rejected quantity/ unacceptable milestone achievement /unacceptable service delivery (if any, with reasons for rejection including shortages/damaged/unaccepted quality), quantity/ milestone achievement/ service delivery accepted and cleared for payment. However, if the consignee does not issue CRAC within 10 days (unless some other time line is specified in a particular contract for issue of CRAC), on 11th day from the date of receipt/ deemed date of receipt of quantity/ milestone achievement / service delivery as indicated in PRC, GeM System/Portal would auto generate unsigned CRAC which, backed with digitally/e-signed PRC or deemed PRC based on Seller Evidence for the corresponding quantity/ milestone achievement/ service delivery shall be taken as deemed acceptance for payments in lieu of the requirement of digitally/e-signed CRAC. This will be made available on GeM to the Buyer/ Seller and also the concerned DDO (if applicable) and PAO/Paying Authority. The GeM portal would generate a unique serial number for CRAC relating to concerned DDO (if applicable) & PAO/Paying Authority, so that the payments are made seriatim.

In case the CRAC is auto-generated, the consignee shall have the provision on GeM to cancel or amend the auto-generated CRAC within 72 hrs, if the goods have not been accepted or found defective/ short received. In case nothing is corrected by consignee on the system, it will be presumed that the consignee has nothing to say and the auto-generated CRAC will be considered as final for all purposes including payments.

11. After generation of CRAC, the Buyer shall prepare 'Payment advice' on GeM Portal, indicating any contractual deductions such as penalties for violation of Service Level Agreement (as applicable)/Liquidated Damages for delayed supplies/ milestone achievement/ service delivery etc. which will be used by GeM portal to compute the net amount payable for the accepted quantity/milestone achievement/service delivery after factoring in the contractual deduction(s) and generate claims for payments digitally/e-signed by the Buyer. This claim for payment shall be made available to the DDO on GeM Portal and the requisite data will also be pushed online in the PFMS. DDO will log into PFMS and generate the Bill against the said claims and forward the same to the PAO/Paying Authority for payment, after deducting any statutory deductions including TDS as applicable.

12. It is obligatory to make payments without any delay for purchases made on GeM. In no case should it take longer than the prescribed timelines. The timelines after Consignee Receipt and Acceptance Certificate (CRAC) issued on-line and digitally/e-signed by consignee, will be two (2) working days for Buyer, one (1) working day for concerned DDO and two (2) working days for concerned PAO for triggering payment through PFMS for crediting to the supplier's account. In case of return of Bills by PAO/Paying authority, the discrepancies should be addressed by concerned Buyer/DDO within one working day and

thereafter on re- submission of Bill the PAO should also not take more than one (1) working day for triggering payment to the Seller/ service provider Any matter needing a resolution will be escalated to the next higher level in each agency (Buyer, DDO and PAO) where the matter should be resolved within 24 hours. In the entire process, time taken for payment should not exceed ten (10) days including holidays

13. After online pre-check of all relevant documents, PAO/Paying Authority shall debit the Government account, releasing the corresponding payment through PFMS/ to be credited into the bank account of the Seller/service Provider. The payment so released shall be credited to the Seller/Service Provider account within 24 hours (excluding public holidays), by the Bank. SMS alerts shall be sent to the Seller/Service Provider and Buyer after the payment is authorized by PAO and also after the confirmation of the payment by the Bank. The payment authorization as well as payment confirmation details shall be shared by PFMS on the GeM portal. The PAO/Paying Authority and DDO shall comply with the provisions of General Financial Rules for budget implementation.

14. In case of return of Bill, if necessary by PAO/Paying Authority, it should be made online with all queries/discrepancies/reasons for rejections indicated in one go with the approval of competent authority, to the DDO/Buyer for the needful corrections at their end.

15. The DDO shall also be responsible for issuing TDS certificate (as per Income Tax Act, 1961 amended from time to time) to the Seller after release of the payment to the Seller/Supplier. The DDO shall also be responsible for deduction of TDS on GST as per GST provisions and to deposit the same with the Govt, as per GST rules and issue Form GSTR 7A to the person whose TDS has been deducted.

16. GeM System/Portal would also have on-line provisions for generating supplementary Invoice(s) for claim/refund of statutory changes in Duties and taxes, if any, as above. A provision for all types of refunds/claims should be available on-line through PFMS.

17. In terms of the provisions of the Information Technology Act 2000 as amended from time to time, digitally/e-signed online documents generated on GeM shall be treated at par with ink-signed documents for release of payment to the Seller/Service Provider and no ink signed paper/documents shall be demanded/insisted.

18. The multi-year liabilities so created as referred to in Para 9.7.7 (vi) (A) (1) (h) above shall be reviewed regularly by the Programme Division/Administrative unit in consultation with the Financial Adviser. The consolidated information on the total committed liabilities, year-wise, shall be submitted by the Financial Adviser to the Budget Division, Department of Economic Affairs, Ministry of Finance for suitably reflecting in the Budget Estimates for the relevant financial year and in the Medium Term Expenditure Framework (MTEF).

19. For all contracts placed through GeM, the payment through PFMS to all Sellers/ Service Providers must be released online only against electronic bill generated on GeM. No offline payment should be made in such cases to avoid double payment. Only in exceptional cases such as non-availability of the GeM platform or long shutdown of internet services at Buyer location or similar force majeure conditions, such off-line payments can be resorted to subject to the condition that immediately after resolution of the problem, necessary entries would be made on-line in GeM portal to obviate the possibility of double payment.

B. Payment for Non-PFMS Agencies/ Entities (NPAE)

1. Non-PFMS Agency/ Entity (NPAE) is a Government of India (Gol) not using PFMS for its payments of transactions and having their own payment system for making payments against contracts placed for goods/services placed by the NPAE on GeM. All NPAE shall open & operate a special purpose account namely GeM Pool Account for the purpose of ensuring prompt payment to Seller/Service Provider of GeM who supply Goods/ Services to the NPAE through GeM.

2. Accordingly, all the Organisations/ Departments including CPSUs, Municipalities, Educational Institutions, Autonomous bodies, Societies, etc. not operating through PFMS shall be covered under these instructions. These organisations are hereby directed to open, operationalize and operate a GeM Pool Account (GPA) for all procurement. GPA is a special purpose bank account (interest bearing savings/current Account) opened, operated and controlled exclusively by each NPAE. GeM Pool Account shall be mandatory for all procurement irrespective of value. The GeM Pool Account shall be opened, operated and controlled exclusively and completely by the buyer entity/agency subject to certain restrictions on withdrawals of funds as explained in succeeding paragraphs .The Account shall carry interest applicable to savings/ current account. Such account shall be opened in any scheduled bank having already integrated the pool account with GeM.

3. The following are the core elements of GPA that should be incorporated during the opening and operations/ procurement stages:

- a. The NPAE will open the GPA (as a savings or current account) which will be utilized by buyer through the online integration of Bank with the platform owned and maintained by GeM SPV, as per Service Level Agreement (SLA), and solely for procurement of goods and services on GeM.
- b. The terms and conditions of procurement on GeM will be part of the operations agreement between the bank and the NPAE.
- c. The role of the bank will be limited to ensuring operations of the account on the instruction of the NPAE through the authorized NPAE nodal officer for GeM/ buyer.
- d. Real time details of all operations of the account will be shared by the bank, in a mutually accepted format (to be amended from time to time) with the NPAE, only through the GeM Platform.
- e. Once a sub-account/ transaction specific account is credited with an amount, the NPAE cannot withdraw this amount, apart from transfer to the designated Seller/Service Provider, till such a time that the transaction is live.
- f. Any withdrawal/transfer by the NPAE from this account, except for payment to the Seller I Service Provider, would be permitted in the following conditions.
 - a) Order cancellation
 - b) Order rejection
 - c) Refund

All the above situations would first be required to be enabled/ flagged on the GeM Platform for the NPAE to be able to act accordingly.

4. While procuring goods & services through GeM, the NPAEs should credit 100% of the projected Contract Value in case of Goods Contract in their GeM Pool Account before award of contract. In cases of Services, amount should be credited for one payment cycle as defined in the contract and before releasing payment for any cycle, the funds required for the next payment cycle should be credited so as to ensure availability of payable funds for the next payment cycle. Payment so credited will not be withdrawn for any other purpose other than the one for which the amount is credited into GeM Pool Account.
5. After placement of contract on GeM, the process for PRC and CRAC will be same for NPAE category also as indicated in Para 9.7.7 (vi) (A) (9) above regarding Provisional Receipt of Stores on GeM and Para 9.7.7 (vi) (A) (10) Consignee Receipt and Acceptance of Stores on GeM for PFMS Buyers.
6. After issue of CRAC, NPAE Nodal Officer shall issue an advice without delay to the bank to release actual amount payable to Seller/ Service Provider as per terms of contract from the GeM Pool Account. On authorization, the bank should transfer the prescribed amount to the Seller/Service Provider supplier mapped in the transaction.
7. In case of a Service level agreement (SLA) breach on the part of the NPAE in terms of payments to the Seller/Service Provider, GeM will intimate the buyer and bank of the same. Post such intimation, and non-action on the part of the NPAE with respect to payment transfer, bank will release payments for the delivery of goods at consignee destination/ milestone achievement (such as completion of installation/ commissioning or training etc. as defined in the contract)/ service delivery as notified in the terms and conditions of procurement on GeM to the Seller/ Service Provider mapped in the transaction. Such a provision is required to be incorporated in GPA and should be considered as a standing instruction from the NPAE to the bank. The residual amount cannot be withdrawn/ transferred by the NPAE, in such cases.
8. In case, even after 10 days of issue of Consignee receipt and acceptance certificate (CRAC)/ auto generated CRAC , the buyer has not initiated the payment process through the GeM platform, a payment trigger will be automatically generated for payment equivalent to 80% of the corresponding quantity/ milestone achievement/ service delivery deduced by the system as per CRAC. Simultaneously intimation will be sent to the HoD, buyer and NPAE Nodal officer for GeM, regarding the release of payment, at their risk and cost in line with the terms and condition (T&C) and SLA of procurement on GeM. The residual payment of 20% is to be processed by the buyer within 35 days after adjusting for any statutory deduction and damages, failing which after 35 days, the same will be released to the Seller/ Service Provider automatically through an alert to the bank by the GeM Platform, after statutory deductions and any system know deductions.
9. Unutilized funds after closure of the Contract and interest accrued on the credited amount will be at the disposal of nominated NPAE Nodal officer, who may advise banker for further action as deemed fit.
10. The Steering Committee on GeM of each Ministry should monitor the implementation of these instructions regarding operationalization of GeM Pool Account.
11. Ministries/ Departments of Government of India are accordingly requested to issue necessary instructions to all Non-PFMS Agencies/ Entities under their control.

- i) In case any Non PFMS Agency/ Entity decides with the approval of their Competent Authority to have integration of their on-line payment Systems with functionality for Blocking of Funds etc. as per PFMS system of payments, the Payment procedures outlined for PFMS in Para 9.7.7 (vi) (A) shall be mutatis mutandis applicable to them.
- ii) Currently, for unlocking of funds, especially during the fag end of the financial year, buyers need to send emails etc. to GeM. Thereafter, GeM manually unlocks the payments. GeM will automate this whole process.

9.7.8 It is mandatory for a buyer to generate a “GeM Availability Report and Past Transaction Summary” (GeMAR&PTS)⁵⁰ with a unique ID on GeM portal using his login credentials on GeM for procurement outside GeM (for example for procurement through Central Public Procurement Portal). The Past Transaction Summary will be provided, where available. “GeMAR&PTS” shall be a pre-requisite for arriving at a decision by the competent authority for procurement of required goods and services by floating a bid outside GeM and its unique ID would be required to be furnished on the publishing portal along with the tender proposed to be published.

9.7.9 Purchase of goods without quotation can be resorted for value upto Rs. 25,000/-only on each occasion may be made without inviting quotations or bids on the basis of a certificate to be recorded by the competent authority, only when the required goods are not available on GeM.

9.7.10 In case a certain item is not available on the GeM portal,⁵¹Purchase of goods costing above [Rs.25,000 (Rupees twenty five thousand only) and upto Rs.2,50,000/- (Rupees two lakh and fifty thousand only)] on each occasion may be made on the recommendations of a duly constituted Local Purchase Committee consisting of three members of an appropriate level as decided by the Head of the Department. The committee will survey the market to ascertain the reasonableness of rate, quality and specifications and identify the appropriate supplier and will jointly record a certificate before placement of the purchase order.

9.7.11 Where an item is available on GeM and Ministry/ Department/ Organization wants to buy outside the GeM in view of any compelling circumstances, the approval of Standing Committee of GeM (SCoGeM) and Secretary concerned shall be required⁵²9.7.12 Rule 149 of GFR provides for the mandatory procurement of common use Goods and Services by Ministries or Departments for Goods or Services available on GeM. Hence only in case of goods and services (of required specification or within required delivery period etc.) are not available on GeM, the procuring entity can resort to Rule 154 and 155 of GFRs i.e. procurement without quotation or procurement on the recommendations of a duly constituted Local Purchase Committee⁵³. However, it is mandatory for a buyer to generate a “GeM

⁵⁰Notified vide OM No. F.6.18.2019-PPD issued by Department of Expenditure dated 11th June, 2021.

⁵¹ Inserted vide OM No. F.1.26/2018-PPD dated 02.04.2019.

⁵² Refer OM No F.6/15/2018-PPD issued by Department of Expenditure dated 5th February 2020. [Accessible from <https://doe.gov.in/sites/default/files/Clarification%20regarding%20function%20of%20Standing%20Committee%20on%20Government%20e-marketplace%20%28ScoGeM%29%20vis-a-vis%20Rule%20149%20of%20General%20Financial%20Rules%20%28GFR%29.pdf>]

⁵³ Notified vide OM No.F/6/1/2018-PPD issued by Department of Expenditure dated 19.01.2018

Availability Report and Past Transaction Summary” (GeMAR&PTS)⁵⁴ with a unique ID on GeM portal using his login credentials on GeM for procurement outside GeM.

9.8 Procurement Proposal (Concept Paper) for other (non-consultancy) Services

The steps for initiating procurement (outsourcing) of Other (Non-consultancy) Services, is similar to that described in para 1.15 in Chapter 1. *(Please refer to Annexure 3, for a suggested format)*

9.9 Obtaining Final Administrative and Budgetary Approvals

Before a final administrative and budgetary approval is taken, a detailed Activity Schedule and Cost estimate is required to be prepared in following manner:

9.9.1 Activity Schedule and Other Requirements

The objectives of the Activity Schedule are:

- i) To provide sufficient information on the quantities of Services to be performed to enable bids to be prepared efficiently and accurately; and
- ii) When a Contract has been entered into, to provide a priced Activity Schedule for use in the periodic valuation of Services executed.

Besides detailing the activities, quantum and time frame, Activity Schedule should contain the following sections also:

- a) **Description of Services:** A brief description of service required is important information that would help the bidders understand the service requirement. It should cover background about the Procuring Entity’s organisation and about the project/ service. The Purpose and Service Outcome statement should be included in the description of services (as finalised for initiating the procurement - Para 1.15, Chapter-1) to help the service providers understand the requirement.
- b) **Itemized Activity Schedule:** In order to attain objectives of the Activity Schedule, Services should be itemized in the Activity Schedule in sufficient detail to distinguish between the different classes of Services, or between Services of the same nature carried out in different locations or in other circumstances which may give rise to different considerations of cost. Consistent with these requirements, the layout and content of the Activity Schedule should be as simple and brief as possible. All information relevant for the bidder to quote a price may be included e.g. -the frequency and quantum and time-frame/ duration of completion of activities to be performed. In activity schedule containing scores of items, evaluation can be simplified if the system used in Works contracts is borrowed, if feasible, where Schedule of rates (SoR) for each activity is specified in the bid documents by the Procuring Entity and only percentage +/- above the SoR (separately for different Schedules or combined) is asked to be quoted by the bidders.
- c) **Labour/ Personnel Activity Schedule:** If labour/ personnel are used in the activity, these may be quantified specifying place, shifts and frequency of utilization in the Activity Schedule. In case any key professionals or Project Manager is required, their

⁵⁴Notified vide OM No. F.6.18.2019-PPD issued by Department of Expenditure dated 11th June, 2021.

qualification and experience required may also be mentioned. Any relievers and leave reserve for deploying the personnel should be included in the rate for such personnel and would not be separately payable.

- d) **Material Schedule:** In case any Materials/ Consumables/ tools of trade are to be consumed/ deployed, a Separate Materials Schedule should be included, indicating the specification and quantity of such materials/ consumables/ tools to be consumed/ deployed per unit activity/ day/ location/ per manpower deployed. Price of all these materials/ tools etc is to be shown as a separate lump-sum cost in the financial bid by the bidder.
- e) **Essential Equipment Schedule:** Any essential equipment, machinery (Trucks, Cranes, Washing Machines, Vessels/ crafts, plant and machinery etc) that the service provider must have and should deploy as a qualifying requirement must be mentioned along with specification, capacity, age of equipment etc. It should be ensured that operators for such equipment must be mentioned as key personnel;
- f) **Performance Specifications, Drawings:** The performance specification or drawings if necessary should be specified for each activity, materials, tools and machines to be used in the activity. Any reporting requirement, periodic meetings or other submissions must be part of the activity schedule.
- g) **Statutory and contractual obligations to be complied with by the contractor:** Service provider mostly works within the premises of Procuring Entity, along with staff of Procuring Entity. Many services are subject to various statutory provisions relating to labour, taxation, Workmen Safety, Child and Women Labour, Private Security Agencies, Environmental Protection, Mining, Forest clearance, Employment reservations etc. The bidder must have Service Tax Number, ESI, EPF Registration Certificate, Registration Declaration of ownership under Indian Registration Act 1908 and Labour License and PAN (Income Tax). Moreover the Procuring Entity himself may have its own regulation about safety, security, confidentiality etc. All such statutory and contractual obligations must be listed, so that price implications and compliance is taken care of by the bidder. In case of security services contracts, the bidder must have the valid license to run the business of Private Security Agency in the state issued by the appropriate authority for operating Security Services.
- h) **Facilities and Utilities to be provided by the Procuring Entity to service provider at Site:** It should be mentioned, if any facility/ utility (Operation Manuals, Emergency Medical, Room, Furniture, Electricity connection, Water connection) etc would be made available to the successful bidder to carry out the service. In case it is proposed to charge the Electricity/ Water supplied to the service provider, the same may be mentioned, including the rate of charges. This aspect has a great bearing on the cost that will be quoted by the bidders. This can have implications in vitiating the selection process either way – a facility to be provided may not get declared or a declared facility may not be provided ultimately. So great care and reality check is necessary, while preparing this Statement. Specially mention facilities and utilities which will not be provided, or the facilities which would be provided on chargeable basis. It should be clearly mentioned that the service provider will not be allowed to use any of Procuring Entity's facility/ area which are not listed in this section.
- i) **Institutional Arrangements and Procedure for Review of Work of consultant after the Award of Contract:** Institutional arrangements like the placement in a

Department, name of project manager and chain of command for reporting may be specified. Process of Review of Service Outcomes and deployment of personnel and resources should be clearly brought out.

A template for Activity and other Schedules is given at Annexure 7.

9.9.2 Estimating Costs, Setting the Budget, and seeking Approval.

Preparation of a well-thought-through cost estimate is essential if realistic budgetary resources are to be earmarked. The cost estimate shall be based on the Procuring Entity's assessment of the resources needed to carry out the assignment: managerial and staff time and physical inputs (for example, materials, consumables, tools and machines). Costs shall be divided into three broad categories:

- i) Remunerations for Personnel deployed;
- ii) Reimbursable: (Travel, logistics, Consumable, Material, Tools, Hiring of third party services etc.);
- iii) Administrative and Miscellaneous (Mobilisation, demobilisation, Temporary Structures, Administrative expenses, office and IT equipment, contingencies, financing costs, Costs for hiring/ depreciation/ financing of machinery and equipment etc).

In general, staff remuneration rates include basic salary, social charges, overheads, fees or profit and allowances. Profit element, Taxes and duties should be added to the estimated costs.

9.9.3 Final Administrative and Budgetary Approvals

The Activity Schedule shall be compatible with the available budget. The most important step is to determine whether all tasks required to achieve the desired output have been included. The next step is to determine whether adequate budget has been allocated to implement the assignment as designed. Since the budget may be fixed or limited, a series of iterations may be required before a final, acceptable Activity Schedule is formulated. CA's approval may be taken for the Procurement before proceeding ahead. After administrative approval provision may be made in the Budget or if that is not feasible, additional confirmation at the time of seeking Administrative approval may be taken from the CA for inclusion in the Revised Estimate stage of Budget. Indent may be initiated after such budgetary provisions/ confirmations. Procurement should be initiated only after such approvals and budgetary provisions.

9.10 Procedure for Single Source Selection (SSS)

Should it become necessary, in an exceptional situation to outsource a job to a specifically chosen contractor, the CA's approval may be taken. In such cases the detailed justification, the circumstances leading to the outsourcing by choice and the special interest or purpose it shall serve shall form an integral part of the proposal. Threshold Limits for use of SSS method of Selection may be prescribed in SoPP.

9.11 Procedure for Small Value and emergency Procurements of Other (Non-consultancy) Services

In many small value procurement of other services, the service provider may neither be capable of handling the bidding process, nor would this be a cost-effective process for the Procuring Entity. For procurement upto Rs 25,000 (twenty five thousands), the 'Direct

Procurement without Quotation' mode of procurement used in Procurement of goods may very well be utilised in such cases. Similarly for procurement of services upto Rs 2.5 (Rupees two and a half) Lakhs, 'Direct Procurement by a Purchase Committee' mode as used in procurement of Goods may be utilised. In all such modes of procurement, the procedure prescribed in the Manual for Policies and Procedures for Procurement of Goods may be followed. Please refer to Annexure 8 & 9 for certificates to be recorded for such procurements.

9.12 Procedure for Procurements below Rs 10 (Rupees Ten) Lakhs

For procurements below Rs. 10 (Rupees Ten) lakh, the User should prepare a list of likely and potential service providers on the basis of formal or informal enquiries from Ministries or Departments and Organisations involved in similar activities, scrutiny of 'Yellow pages', and trade journals, if available, web site etc. The Procuring Entity should scrutinise the preliminary list of likely contractors as identified above, shortlist the prima facie eligible and capable contractors and issue RfP to these shortlisted firms on a limited tender enquiry basis as per standard practice. The number of the contractors so identified for issuing RfP should be more than three. Services which are available on GeM have to be mandatorily procured through that portal (please refer to 9.7).

9.13 Procedure for higher Value of Procurements

For Procurements above the Rs 10 (Rupees Ten) lakh, the Procuring Entity should issue advertised single stage tender enquiry asking for the offers by a specified date and time etc. Advertisement in such case should be given on Central Public Procurement Portal (CPPP) at www.eprocure.gov.in and on Government E-Market (GeM). An organisation having its own website should also publish all its advertised tender enquiries on the website. The advertisements for invitation of tenders should give the complete web address from where the bidding documents can be downloaded. Attention of known reputed service providers (as ascertained as per para above) may also be separately drawn wherever possible. Services which are available on GeM have to be mandatorily procured through that portal (please refer to para 9.7 above).

9.14 Preparation of the Request for Proposals (RfP)

In procurement of other (non-consultancy) Services, a Standard RfP document should be basis for preparation of Bid Documents. There are variations in the way information and sections in standard RFPs are formulated but essential information/sections are as follows:

- i) A letter of invitation (LoI);
- ii) Instructions to Bidders (ITB) and data sheet (which contains assignment specific information);
- iii) Qualification/ Eligibility Criteria for service providers;
- iv) Activity Schedules and other Requirements
 - a) Description of Service
 - b) Activity Schedule
 - c) Manpower Schedule: Assessment of Manpower for Deployment

- d) Materials Schedule (indicating the specification and quantity of such materials/ consumables/ tools to be consumed/ deployed per unit activity/ day/ location/ per manpower deployed).
 - e) Essential Equipment: Any essential equipment, machinery that the service provider must have as a qualifying requirement along with specification, capacity, age of equipment etc.;
 - f) The statutory and contractual obligations to be complied with by the contractor.
 - g) Services & Facilities to be Provided by the Procuring Entity and respective obligations of the Procuring Entity and service provider
- v) General Conditions of Contract (GCC);
 - vi) Special Conditions of Contract (SCC);
 - vii) Formats
 - a) service provider's Bid Cover Letter
 - b) Qualification Information
 - c) Standard formats for the technical proposal;
 - d) Standard Format for the Financial Proposal
 - e) Letter of Acceptance
 - f) Contract Form
 - g) Securities Formats
 - 1. Bid Security (Bank Guarantee)
 - 2. Bank Guarantee for Advance Payment
 - 3. Performance Security (Bank Guarantee)

9.15 Important Provisions of ITB

9.15.1 **Eligibility Criteria:** Eligibility for firms to be considered as responsive bid in procurement of Other (Non-consultancy) Services should be specified. For example:

- i) The bidder must be registered under appropriate authorities i.e. must be registered with Service Tax authorities/Income Tax/EPF/ESI authorities/ PSARA/ PAN etc;
- ii) Joint Ventures (JV) are normally not permitted in the procurement of Other (Non-consulting) services;
- iii) Must not have been under any declaration of ineligibility by any authority. A declaration to the effect should be furnished;
- iv) A consistent history of litigation or arbitration awards against the Applicant may result in disqualification;
- v) Each Bidder shall submit only one Bid for one RfP. The system shall consider only the last bid submitted through the e-procurement portal. In case of Packaging/ Slicing of Services, it should be clarified, how multiple bids and discounts by a bidder in different slices would be considered.

9.15.2 **Qualifying criteria** to be met by bidders to qualify for award of the Contract may be specified. Although the qualification criteria would depend on the type of service, its complexity and volume, but a sample qualifying criteria is given below:

- i) **Financial Capability:**

- a) Average Annual financial turnover of related services during the last three years, ending 31st March of the previous financial year, should be at least 30% (thirty percent) of the estimated cost.
- b) Liquid assets and/or credit facilities, net of other contractual commitments and exclusive of any advance payments which may be made under the Contract, of no less than the amount specified in the BDS.

ii) Past Experience:

- a) The bidder must have at least three years' experience (ending month of March prior to the bid opening) of providing similar type of services to Central/State Government/ PSUs/ Nationalised Banks/ Reputed Organisations. Services rendered with list of such Central/State/ PSUs/ Nationalized Banks with duration of service shall be furnished.
- b) The bidder must have successfully executed/completed similar Services (definition of "similar services" should be clearly defined), over the last three years i.e. the current financial year and the last three financial years: -
 - 1. Three similar completed services costing not less than the amount equal to 40% (forty percent) of the estimated cost; or
 - 2. Two similar completed services costing not less than the amount equal to 50% (fifty percent) of the estimated cost; or
 - 3. One similar completed service costing not less than the amount equal to 80% (eighty percent) of the estimated cost.

iii) Equipment and Managerial Capability:

- a) Ownership/ proposals for the timely acquisition (own, lease, hire, etc.) of the essential equipment listed in the BDS;
- b) a Contract Manager with five years' experience in Services of an equivalent nature and volume, including no less than three years as Manager;

9.15.3 Qualification Documents to be submitted: To judge their qualification, all bidders should be asked to include the following information and documents with their bids:

- i) Copies of original Registration certificate documents defining the constitution or legal status, place of registration, and principal place of business; written power of attorney of the signatory of the Bid to commit the Bidder. Appropriate business licences/ registrations:
 - a) Service Tax registration certificate
 - b) PAN number
 - c) Copies of EPF, ESI, Labour license
 - d) Copy of valid license under the Private Security Agencies (Regulation) Act, 2005 or the similar Act/ Rules promulgated by State in which the service is performed (in case of Security Service)
- ii) Total monetary value of Services performed for each of the last five years;
- iii) Copies of work orders and experience in Services of a similar nature and size for each of the last three years, and details of Services under way or contractually committed; and names and address of clients who may be contacted for further information on those contracts;

- iv) Evidence of adequacy of working capital for this Contract (access to line(s) of credit and availability of other financial resources);
- v) Audited financial Statements for the last three years (Copies of the Profit and Loss (P/L) statements along with Balance Sheet for the concerned period);
- vi) Bank Account details;
- vii) Authority to seek references from the Bidder's bankers;
- viii) Information regarding any litigation, current or during the last five years, in which the Bidder is involved, the parties concerned, and disputed amount; and
- ix) Proposals for subcontracting components of the Services amounting to more than 10 (ten) percent of the Contract Price.

9.15.4 **Site Visit:** The Bidder, at the Bidder's own responsibility and risk, may be encouraged to visit at their own cost, and examine the Site of required Services and its surroundings and obtain all information that may be necessary for preparing the Bid and entering into a contract for the Services.

9.15.5 **Restrictions regarding Personnel Deployed:** The quoted rates shall not be less than the minimum wage fixed/notified by the State Government – where the service is performed and shall include all statutory obligations. However bids without any element of cost over and above such minimum wage (or below it) shall be treated as 'Nil' price quotation and would be rejected. The service provider shall be liable for all kinds of dues payable in respect of all personnel provided under the contract and the Procuring Entity shall not be liable for any dues for availing the services of the personnel. The service provider should ensure that persons to be deployed are not alcoholic, drug addict and not indulge in any activity prejudicial to the interest of the Procuring Entity. The service provider shall ensure to get the Police verification for all the manpower deployed by them and the contractor should ensure that the manpower deputed should bear good moral character.

9.15.6 **Workmen Safety and Insurance:** The service provider shall alone be fully responsible for safety and security and insurance or life insurance of their personnel who is working on the operation and maintenance works. The service providers (a) shall take out and maintain, and shall cause any Subcontractors to take out and maintain, at their (or the Subcontractors', as the case may be) own cost but on terms and conditions approved by the Procuring Entity, insurance against the risks, and for the coverage, as shall be specified in the SCC; and (b) at the Procuring Entity's request, shall provide evidence to the Procuring Entity showing that such insurance has been taken out and maintained and that the current premiums have been paid. The service provider shall provide and ensure sufficient protection gears like safety shoes, hand gloves, ladders, etc. are being used by their workers while carrying out works. The Procuring Entity shall not be liable for any compensation in case of any fatal injury/death caused to or by any man power while performing/discharging their duties/ for inspection or otherwise.

9.15.7 **Liquidated Damages for Delay in Performance:** The service provider shall pay liquidated damages to the Procuring Entity at the rate per day stated in the SCC for each day that the Completion Date is later than the Intended Completion Date. The total amount of liquidated damages shall not exceed the amount defined in the SCC. The Procuring Entity may deduct liquidated damages from payments due to the service provider. Payment of liquidated damages shall not affect the service provider's liabilities.

9.15.8 Penalty for non-performance: If the service provider has not corrected a Defect within the time specified in the Procuring Entity's notice, a penalty for Lack of performance will be paid by the service provider. The amount to be paid will be calculated as a percentage of the cost of having the Defect corrected, assessed as described in SCC.

9.15.9 Filling up the Financial Bid by the Bidders: The Bidder should be asked to fill in rates and prices for all items of the Services described in the in the Activity Schedule. Items for which no rate or price is entered by the Bidder will not be paid for by the Procuring Entity when executed and shall be deemed covered by the other rates and prices in the Activity Schedule. The priced Activity Schedule contains sections on Remuneration for Staff deployed, Reimbursable Expenses and Miscellaneous Expenses. All duties, taxes, and other levies payable by the service provider under the Contract, or for any other cause, as in the month prior to the month of the deadline for submission of bids, should be included in the total Bid price submitted by the Bidder. For the purpose of determining the remuneration due for additional Services, a breakdown of the lump-sum price shall be provided by the Bidder. Bidding Documents should include a clause that "if a firm quotes NIL charges/ consideration, the bid shall be treated as unresponsive and will not be considered".

9.15.10 Price Adjustment

In case the duration of the contract is expected to exceed 18 (eighteen) months for a time-based contract or an Indefinite delivery contract, a price adjustment provision for the remuneration rate should be included in the contract based on the Consumer Price Index in the country. Lump-sum contracts shall not generally be subject to price adjustment except for small value multi-year contracts (for example, for auditors). Short-term contracts where the delivery period does not extend beyond 18 (eighteen) months should normally be concluded with a firm and price fixed by inviting tenders accordingly. However, even for shorter deliveries, the price adjustment [or Price Variation Clause (PVC)] may be stipulated for items with inputs (raw material, man power, etc.), prone to short-term price volatility - especially for critical or high value services – otherwise there is a possibility of the contract failing or the purchaser having to pay a higher price if prices fall.

Where it is decided to conclude the contract with a variable price, an appropriate clause incorporating, inter-alia, a suitable price variation formula should also be provided in the tender documents, to calculate the price variation between the base level and scheduled delivery date. It is best to proactively provide our own PVC in the tender document to discourage different bidders quoting different formulae and different base dates, which may lead to problems on bringing their prices on a common comparable footing.

The variations are to be calculated periodically by using indices published by Governments/ chambers of commerce/London Metal Exchange / any other neutral and fair source of indices. Suitable weights are to be assigned to the applicable elements, that is, fixed overheads and profits, material and man power in the price variation formula.

The following are important elements of PVC:

- a) The price agreed upon should specify the base date, that is, the month and year to which the price is linked to enable variations being calculated with reference to the price indices prevailing in that month and year;

- b) The price variation formula must also stipulate a minimum percentage of variation of the contract price, only above which the price variation will be admissible (for example, where the resultant increase is lower than, say, two per cent of the contract price, no price adjustment will be made in favour of the supplier);
- c) The price variation clause should provide for a ceiling on price variations, particularly where escalations are involved. It could be a percentage per annum or an overall ceiling or both;
- d) Where advance or stage payments are made there should be a further stipulation that no price variations will be admissible on such portions of the price, after the dates of such payment;
- e) Where deliveries are accepted beyond the scheduled delivery date subject to levy of liquidated damages as provided in the contract. The LD (if a percentage of the price) will be applicable on the price as varied by the operation of the PVC;
- f) No upward price variation will be admissible beyond the original scheduled delivery date for defaults on the part of the supplier. However, a downward price variation would be availed by the purchaser as per the denial clause in the letter of extension of the delivery period;
- g) Price variation may be allowed beyond the original scheduled delivery date, by specific alteration of that date through an amendment to the contract in cases of force majeure or defaults by Government;
- h) Where contract execution depends on imported (subject to customs duty and foreign exchange fluctuations) and/or locally sourced goods/ works/ services (subject to excise duty and other duties and taxes), the percentage and element of duties and taxes included in the price should be specifically stated, along with the selling rate of foreign exchange element taken into account in the calculation of the price of the imported item;
- i) The clause should also contain the mode and terms of payment of the price variation admissible; and
- j) The buyer should ensure a provision in the contract for the benefit of any reduction in the price in terms of the PVC being passed on to him.
- k) An illustrative PVC clause is available in Annexure 2F.
- l) Care should be exercised in contracts providing for price variation to finalise the price before final payment is made, after obtaining data and documents in support of claims for escalation, if any. Where no such claims are submitted by the suppliers, an examination of whether there has been a downward trend in the cost, which the contractor may not bring out, is required. At any rate, an undertaking should be obtained from the contractor to the following effect in case it becomes necessary to make the final payment before he has submitted the required data/documents related to the PVC:

“It is certified that there has been no decrease in the price of price variation indices and, in the event of any decrease of such indices during the currency of this contract, we shall promptly notify this to the purchaser and offer the requisite reduction in the contract rate.”

- m) Notwithstanding the above formalities, it should be appreciated that it is in the interest of the purchaser to be vigilant about downward variation and it is, therefore, the basic responsibility of the purchase officers to make sure that the benefits of downward variation, wherever it occurs, are fully availed of.

9.16 Standard Formats for Technical and Financial Proposals

- i) The standard formats for technical proposals should include:
 - a) service provider’s Bid Cover Letter(including eligibility, following Code of Integrity in Public Procurement - CIPP);
 - b) Power of attorney;
 - c) Qualification Information with enclosures;
 - d) Write up on Bidder’s Organisation, confirmation of compliance with (or deviations from)Description of Services, Activity Schedule, Essential Equipment Schedule, Manpower/ Team, Statutory Obligation and Facilities to be provided by the Procuring Entity, Statutory and Contractual requirements, Respective obligations of Procuring Entity and service provider, Contract For, GCC and SCC; etc. and
 - e) Enclosures: Cost of Bid/ Bid Processing Fee/ Bid Security
- ii) The standard formats for a financial proposal include:
 - a) Financial Bid Format;
 - b) Summary Price Schedule;
 - c) Priced Activity Schedule;
 - d) Priced Material Schedule;
 - e) Priced Miscellaneous Schedule (including administrative costs, Essential Equipment, Operating Manpower);
 - f) Breakdown of Contract Prices

9.17 Receipt of Bids, Evaluation and Award of Contract

9.17.1 Receipt and opening of Bids is done in a manner similar to procurement of other categories. Annexure 5 may be used mutadis-mutandis for format of Bid Opening Attendance cum Report

9.17.2 The Procuring Entity should evaluate, segregate, rank the responsive bids and select the successful bidder for placement of the contract, in a manner similar to Procurement of Goods/ Works. Procuring Entity will award the Contract to the Bidder whose Bid has been determined as the lowest evaluated Bid price, provided the offer is determined in accordance with the bid documents to be:

- i) Substantially responsive;
- ii) Eligible bidder;
- iii) Meets the minimum Technical/ qualification standards

9.17.3 If, the contract is being let on a “slice and package” basis, the lowest evaluated Bid Price will be determined when evaluating the contract in conjunction with other contracts to be awarded concurrently, taking into account any discounts offered by the bidders for the award of more than one contract.

9.17.4 The Procuring Entity reserves the right to accept or reject any Bid, and to cancel the bidding process and reject all bids, at any time prior to the award of Contract, without thereby incurring any liability to the affected Bidder or bidders or any obligation to inform the affected Bidder or bidders of the grounds for the Procuring Entity’s action.

9.17.5 Notification of Award, Performance Security and Signing of the Contract also follows same procedure as in other categories of procurements.

A format of Tender Evaluation and Report is given in Annexure 10.

(Rule 203 of GFR 2017)

9.17.6 Quality-cum-cost based Selection (QCBS) for Works and Non-Consultancy Services⁵⁵

9.17.6.1 Procuring entities are hereby allowed to use QCBS for procurement of works and non-consultancy services in the following cases:

- (i) where the procurement has been declared to be a Quality Oriented Procurement (QOP) by the competent authority or
- (ii) for procurement of Non-Consulting Services, where estimated value of procurement (including all taxes and option clause) does not exceed Rs 10 crore.

Note: In cases where estimated value was less than Rs 10 crore, but on tendering, following QCBS process, it is proposed to place contract for more than Rs 10 crore, the following procedure shall be adopted:

- (a) *In case the difference between estimated value (including taxes etc as above) and value of the proposed contract (including taxes etc) is less than 10% of the estimated value, there will be no bar on placement of contract.*
- (b) *In all other cases, the procurement process is to be scrapped and restarted either as QOP or on non QCBS basis.*

The principles of QCBS shall be as provided in Rule 192(i), (ii) and (iii) of the GFR. However, the maximum weight of the non-financial parameters shall in no case exceed 30%.

9.17.6.2 The Competent Authority for allowing QCBS shall be as follows:-

(i) For declaring a procurement as QOP:

- a) Where the procuring entity/ project executing authority is covered by Rule 1 of GFR, the Secretary of the Ministry/ Department, to which the procuring entity belongs.
- b) Where the procuring entity is a CPSE, the Board of Directors of the CPSE.

⁵⁵ Notified under para 15.2 vide OM No.F.1/1/2021-PPD issued by Department of Expenditure dated 29.10.2021

(ii) For Non-consulting Services not exceeding Rs.10 crore in value:

- a) Where the procuring entity is covered by Rule 1 of GFR, by the officer or authority two levels above the officer/ authority competent to finalize the particular procurement, or the Secretary of the Ministry/ Department whichever is lower.
- b) Where the procuring entity is a CPSE, the authority or officer two levels above the officer competent to finalize the particular procurement, or the Board of Directors of the CPSE whichever is lower.

9.17.6.3 In all cases of QOP, a Special Technical Committee (STC) shall be constituted with the following composition:-

- (i) Two or more persons who have expert knowledge and/or long experience relevant to the procurement in question;
- (ii) One or more persons with extensive experience in handling public projects and/or public finance in the Government or State/Central Public Sector;
- (iii) One or more persons with experience in financial management/ financial administration/audit/accountancy;
- (iv) Not more than one member representing the procuring entity who may inter alia provide administrative support to the Committee.
- (v) Any person who is a member of the STC shall not associate himself in any manner with any bidder for the procurement concerned.
- (vi) The persons referred to in sub paras (i) to (iii) shall be persons not working under the Competent Authority specified in para 9.17.6.2. and shall not belong to any organization under the control of, or receiving funding from, the procuring entity or the Ministry/ Department to which such procuring entity belongs.

9.17.6.4 The names of members of the Special Technical Committee shall be decided either by the Competent Authority specified in para 9.17.6.2 above or by any other authority to whom such power is delegated by the competent authority; however, powers shall not be delegated to the officer or authority competent to finalize the particular procurement. Sitting fee may be paid to the members of the STC. Incidental costs including travel shall be paid by the procuring entity.

9.17.6.5 The STC shall make specific recommendations on the following matters:-

- (i) The weight to be given to non-financial parameters (not exceeding 30%).
- (ii) The specific quality/ technical parameters, their weights, their scoring methodology, the minimum qualification score etc. and other relevant criteria necessary for ensuring fair and transparent quality/ technical evaluation of the bids.

The recommendations of the STC shall be followed except where there are special grounds in public interest for deviating from them. However, every case of deviation from the recommendations of the STC shall require approval of the Competent Authority specified in para 9.17.6.2 (i) above who approved the declaration of the procurement as QOP.

9.17.6.6 In respect of QCBS for Non-Consultancy Services not exceeding Rs.10 crore, a Technical Committee shall be constituted to carry out functions mentioned in para 9.17.6.5 in lieu of the STC. The composition of the Technical Committee shall follow the provisions of para 9.17.6.3 (i) to (v). The provisions of 9.17.6.3 (vi) shall however not be applicable in such cases.

9.17.6.7 Grounds for Declaring a Procurement to be Quality Oriented Procurement: A procurement should be declared as a QOP only if there is enough justification in terms of value addition or enhancement of delivery or paramount importance of quality. Reasons for not adopting two cover/ pre-qualification-based/ least cost system shall be documented.

9.17.6.8 Tender Documents - Fixing/ Selection of the Evaluation/ Qualification Criteria

- (i) To ensure quality, some of the criteria used in marking may be made mandatory and if a bidder does not meet those, then bids shall not be evaluated further.
- (ii) Weightage may also be given for timely completion of past projects of similar nature by the bidder.
- (iii) In all cases of QOP, a pre-bid meeting shall be held in which the technical criteria including the marking scheme shall be discussed with the potential bidders. If any changes in the criteria are necessitated by such consultation, such changes shall require the recommendation of the STC. In Non-Consultancy Services, pre-bid meetings may be held at the discretion of the public authority.

9.17.6.9 Fixing of Scoring/ Marking Criteria:

- (i) The scoring should not be a variable that relies on the subjective opinion of the evaluating panel. The marking scheme should enable achievement of almost similar scores irrespective of the persons/ experts being involved in the evaluation process. When the outcomes are consistent for the available information, the QCBS parameters are more reliable. Unambiguous description and criteria help to avoid grey areas so as to ensure that there is only one possible score for the item. As far as possible, the criteria should be so specific and clear that bidders can self-mark their own bids.
- (ii) It is better to specify minimum marks for meeting the qualifying criteria specified.
- (iii) Examples of fixed quality parameters that ought not to be considered for relative scoring include organizations' ISO/ standards' accreditation, etc. These are required to establish the credentials of the service provider but cannot be used for relative comparison between various bidders.
- (iv) Bidders should be asked to produce certificates for the past performance. A format may be given in the tender itself outlining the contract details, completion, sustainability of service etc and bidders may be asked to fill it and give evidence to that effect.
- (v) Bidders may be asked to submit a detailed presentation on their proposals in the form of soft copy along with the bid so as to facilitate better understanding of their proposal and to ensure commitment.
- (vi) Besides the Bill of Quantity (BOQ) output criteria for payment, Key Performance Indicators (KPIs) may be specified with minimum achievement levels for payment so as to ensure quality compliance.

9.17.6.10 Evaluation of QCBS Bids: For evaluation, a suitable committee shall be constituted. However, members of the STC shall not be involved.

9.17.6.11 Joint ventures in QCBS:

- (i) In conventional tenders, some bidders adopt “name borrowing” and Joint Ventures (JV) often do not function in letter and spirit. This results in lack of quality and accountability. JVs often end in one-sided participation, diluting the essence of the tender evaluation during its performance. Since quality is given weightage in the evaluation itself, in QCBS procurement, it is even more important to guard against such tendencies. Therefore, Joint Ventures may be avoided in QCBS procurements as far as possible. Joint Ventures could, however, become necessary in high technology or innovative projects where a single entity may not be able to execute the work alone.(ii) If JVs are allowed, adequate safeguards should be provided. Since weightage for quality/ experience influences the award itself, measures should be taken to ensure that all the JV partners are present and deliver services all through the contract period. An Implementation Board with participation of all JV partners may be provided for wherein the Project Manager from the procuring entity shall also be allowed audience when required. Meeting of JV partners with the project executing authority for quarterly progress review may be made as a criterion linked to achievement of key dates or even payment.

9.18 Service Level Agreement (SLA)

A service level agreement (SLA) is an agreement designed to create a common understanding about services, priorities and responsibilities, improve communications, manage expectations, clarify responsibilities and build the foundation for a win-win relationship. It must be specified in the bidding Document and finalised before the Services are started. The objectives of SLA are:

- i) Identify and define the Procuring Entity’s needs;
- ii) Eliminate unrealistic expectations on either side;
- iii) Provide a framework for understanding between the service provider and the Procuring Entity;
- iv) Reduce areas of conflict and encourage dialog in the event of disputes

While drafting the SLAs, care should be taken that they are balanced to both the contracting parties and penalties are proposed on both the sides.

SLA has two sets of elements:

a) Service elements

- 1. the services to be provided (and perhaps certain services not to be provided, if Procuring Entity might erroneously assume the availability of such services);
- 2. conditions of service availability;
- 3. service standards, such as the timeframes within which services will be provided
- 4. the responsibilities of both parties
- 5. escalation procedures in case of performance deficiencies

b) Management elements

1. how service effectiveness will be tracked
2. how information about service effectiveness will be reported and addressed
3. how service-related disagreements will be resolved
4. how the parties will review and revise the SLA- Conditions warranting change; Change frequency and Change procedures

9.19 Monitoring the Contract

Before commencement of the Services, the service provider shall submit to the Procuring Entity for approval a Program showing the general methods, arrangements, order and timing for all activities. The Services shall be carried out in accordance with the approved Program as updated. CA should nominate an officer/ Committee to be involved throughout in the conduct of the contract and to continuously monitor the performance of the contractor. The process is described in chapter-8, which is broadly applicable to both Consultancy and Non-consultancy services. (*Rule 205 of GFR 2017*)



Annexures

Hierarchy Level	Annexure 1: Procurement Guidelines (Refer Para 1.1)
I – Statutory Framework	The Constitution of India
	Indian Contract Act, 1872; Sale of Goods Act, 1930 and Mercantile Laws
	Laws relevant to Public Procurement (Right To Information Act, 2005; The Micro, Small and Medium Enterprises Development Act, 2006; Prevention of Corruption Act, 1988)
II – Rules and Regulations	General Financial Rules, 2017
	Delegation of Financial Power Rules
	Any other financial, vigilance, security, safety, counter- trade and other regulatory aspects; orders and guidelines of the Government on the subject of Public Procurement
III –Ministry of Finance’s Manuals	Ministry of Finance’s Manual for Procurement of Goods, Works and Consultancy Services & other Services
IV – Procuring Entities’ Codes/ Manuals and Standard Bidding Documents	More Comprehensive and detailed Codes and Manuals for Public Procurement for various categories issued by ‘Procuring Entities’ for their own use
	Standard Bidding Documents for Procurement of Goods/ Works/ Consultancy Services etc.

Remarks: The documents at Hierarchy Levels I and II above are of fundamental and generic nature. Documents at lower levels of hierarchy must conform to the Documents higher up in hierarchy. Relationships of Bidders/ Suppliers/ contractors/ service providers with procuring entities are solely governed by the law of the land and the relevant bid/ contract/registration document(s). Other documents at hierarchy levels II and III mentioned above shall have no locus standi in such relationships.

Annexure 2A: Delegation of Financial Powers – Indents, Contracts and Purchases for public service

(Excerpts from DFPR, Refer Para 1.4)

DFPR Rule 21 of the Delegation of Financial Power Rules**	DFPR Rule 21(a) Minister in Charge of the Department	DFPR Rule 21 (b) Secretary of the Department
For open or limited tender contracts	Full Powers	Rs. 20 crore@@
For single tender including resultant single offer or proprietary contracts		Rs. 5 crore
For agreements or contracts for technical collaboration and consultancy services		Rs. 2 crore

** DoE, Ministry of Finance No.F.1(17)-E.II(A)86-No.F.1(15)-E.II(A)88 Dated: 16th September, 2003

@@ Secretary, D/o Commerce would have powers to approve rate contracts of DGS&D of value upto Rs. 100 crore in each case (DoE, Ministry of Finance No.1 (5)/E.II(A)/2009 Dated: the 24th December, 2009)

Notwithstanding anything as above, in cases where the award of contract or purchase or consultancy is inseparably linked with the project or scheme and forms a part of the proposals for Standing Finance Committee (SFC) or Committee on Non-Plan Expenditure (CNE) or Expenditure Finance Committee (EFC) or Cabinet, the same will be processed as per the financial limits laid down for sanction of such schemes or projects by the Competent Authority.

Explanation- In this rule, the word "contract" includes miscellaneous contracts, such as handling contracts and leases. Leases for hiring accommodation for office, residential and other purposes shall, however, be regulated under item 16 of the Annexure to Schedule V. If a contract extends over a period of time, the total value over the entire period of currency shall be taken for the purpose of applying the limit. Further a limited or open tender which results in only one effective offer shall also be treated as a single tender contract."

Annexure 2B: Suggested Structure of Schedule of Procurement Powers (SoPP)

(Refer Para 1.4)

A suggested structure of SoPP⁵⁶ is given below. However individual threshold values (wherever not given in GFR/ DFPR) would depend on the respective circumstances of various Organisations.

	Threshold Value in Rupees (Lakh)				
Levels of Powers -> Level 1 is entry level and Level 5 is highest e.g. Secretary	Level -1	Level-2	Level 3	Level-4	Level-5
Procurement Proposal initiation, approvals and Signing: Including formulation of ToR/ Activity Schedules and Cost Estimates					
In Principle Approval, initiation and approval of Procurement Proposals for Services					
Initiation, Approval of Terms of ToR/ Activity Schedules and Cost estimates for Services					
Final Administrative, Budgetary Approval for Starting Procurement					
Approval for Floating of Tenders of Various Types including					
Approval Selection of System of Selection of consultants – other than LCS – QCBS					
Approval for Selection by nomination of Services					
Preparation and Approval of Bidding Documents and floating of Tenders – EoI/ RfP for services					
Approval of Retendering of a discharged tender after second attempt					
Competent Authority (CA) for Evaluation and Acceptance of Tenders					

⁵⁶ indicate value threshold above which consultations with/ concurrence/ vetting from IFD would be required

other services - Procurement without calling Quotation					
other services - Procurement Through a Purchase Committee					
Direct Approval of Tenders Without Tender committee					
Tender Committee/ CEC Composition (including Member Secretary thereof) as well as designated level of CA for Acceptance of TC/ CEC Recommendations for Various Slabs of Estimated Tender Value – EoI/ RfP for Services					
Slab 1 (Rs 10 Lakh to 30 Lakh) – Level 2 officers’ TC, Acceptance by Level 3 Officer					
Slab 2 (Rs 30 Lakh to 2 Crore) – Level 3 Officers’ TC acceptance by Level 4 Officer					
Slab 3 (Rs 2 Crore 25 Crore) – Level 4 officers’ TC acceptance by Level 5 Officer					
Higher levels and other type of TC to suit local requirements, Acceptance at Sec level					
Formulation and Placement of Contracts					
Contracts after following Tendering Process					
Acceptance of Special Conditions with concurrence of Finance before Award of Contract as per recommendation of TC/ CA					
Acceptance of Advance Payments					
Other Variations demanded by Bidders in special circumstances.					
Post Contract Powers, including Bill Passing and Payments, Handing over assets/ equipments/ material/ utilities to Contractor; Extensions with or without LD, or approvals of Variations, Contract Closure, Terminations, Arbitrator appointment, Accepting and sanctioning Court and Arbitration award					
Waiver of Liquidated Damages					

Allowing release of Time-barred claims					
Enlistment and Debarment of consultants/ service providers					
Initiation and Approval of Enlistment of service providers					
Initiation and Approval of Removal from Enlistment of service providers due to misdemeanours					
Initiation and Approval of Holiday Listing/ Suspension of service providers due to misdemeanours					
Initiation and Approval of Banning of service providers within the Ministry or recommendation to Ministry of Commerce for Country-wide					

Annexure 2C: Model Clause/ Certificate to be inserted in tenders etc. w.r.t Order (Public Procurement No.1)

[Refer para 1.6 and Appendix-1 (Para 1.3(iii)(e))]

(While adhering to the substance of the Order, procuring entities and GeM are free to appropriately modify the wording of the clause/ certificate based on their past experience, local needs etc.)

Model Clauses for Tenders

I. Any bidder from a country which shares a land border with India will be eligible to bid in this tender only if the bidder is registered with the Competent Authority.

II. "Bidder" (including the term 'tenderer', 'consultant' or 'service provider' in certain contexts) means any person or firm or company, including any member of a consortium or joint venture (that is an association of several persons, or firms or

companies), every artificial juridical person not falling in any of the descriptions of bidders stated hereinbefore, including any agency branch or office controlled by such person, participating in a procurement process.

III. "Bidder from a country which shares a land border with India" for the purpose of this Order means: -

- a. An entity incorporated, established or registered in such a country; or
- b. A subsidiary of an entity incorporated, established or registered in such a country; or
- c. An entity substantially controlled through entities incorporated, established or registered in such a country; or
- d. An entity whose beneficial owner is situated in such a country; or
- e. An Indian (or other) agent of such an entity; or
- f. A natural person who is a citizen of such a country; or
- g. A consortium or joint venture where any member of the consortium or joint venture falls under any of the above

IV. The beneficial owner for the purpose of (iii) above will be as under:

1. In case of a company or Limited Liability Partnership, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has a controlling ownership interest or who

exercises control through other means.

Explanation—

a. “Controlling ownership interest” means ownership of or entitlement to more than twenty-five per cent, of shares or capital or profits of the company;

b. “Control” shall include the right to appoint majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholders agreements or voting agreements;

2. In case of a partnership firm, the beneficial owner is the natural person(s) who, whether acting alone or together, or through one or more juridical person, has ownership of entitlement to more than fifteen percent of

capital or profits of the partnership;

3. In case of an unincorporated association or body of individuals, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has ownership of or entitlement to more than fifteen percent of the property or capital or profits of such association or body of individuals;

4. Where no natural person is identified under (1) or (2) or (3) above, the beneficial owner is the relevant natural person who holds the position of senior managing official;

5. In case of a trust, the identification of beneficial owner(s) shall include identification of the author of the trust, the trustee, the beneficiaries with fifteen percent or more interest in the trust and any other natural person exercising ultimate effective control over the trust through a chain of control or ownership.

V. An Agent is a person employed to do any act for another, or to represent another in dealings with third person.

VI. [To be inserted in tenders for Works contracts, including Turnkey contracts] The successful bidder shall not be allowed to sub-contract works to any contractor from a country which shares a land border with India unless such contractor is registered with the Competent Authority. Model Certificate for Tenders (for transitional cases as stated in para 3 of this Order)

“I have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India; I hereby certify that this bidder is not from such a country and is eligible to be considered.”

Model Certificate for Tenders

“I have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India; I certify that this bidder is not from such a country or, if from such a country, has been registered with the Competent Authority. I hereby certify that this bidder fulfills all requirements in this regard and is eligible to be considered. [Where applicable, evidence of valid registration by the Competent Authority shall be attached.]”

Model Certificate for Tenders for Works involving possibility of sub-contracting

"I have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India and on sub-contracting to contractors from such countries; I certify that this bidder is not from such a country or, if from such a country, has been registered with the Competent Authority and will not sub-contract any work to a contractor from such countries unless such contractor is registered with the Competent Authority. I hereby certify that this bidder fulfills all requirements in this regard and is eligible to be considered. [Where applicable, evidence of valid registration by the Competent Authority shall be attached.]"

Model Certificate for GeM:

"I have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India; I certify that this vendor/ bidder is not from such a country or, is not from such a country, has been registered with the Competent Authority. I hereby certify that this vendor/ bidder fulfills all requirements in this regard and is eligible to be considered for procurement on GeM. [Where applicable, evidence of valid registration by the Competent Authority shall be attached.]"

Annexure 2D: Format for seeking the approval of the Competent Authority for inviting Global Tender Enquiry for procurements less than Rs. 200 crores

(Refer Para 5.1.4)

- (i) Every page should be attested by Administrative Ministry
- (ii) Proposals are to be simultaneously sent to the following:
- Cabinet Secretariat, email: ca4-cabsec@gov.in
 - Department of Promotion of Industry & Internal Trade (DPIIT) email: manmeet.nanda@ias.nic.in & rajesh.gupta66@gov.in
 - Department of Expenditure, email: kanwal.irss@gov.in and sudesh.kumar85@gov.in

Table-1

S.No	Particulars	Remarks
1	Name of the Ministry:	
2	Name of the Department:	
3	Name of the sub-ordinate office (if applicable):	
4	Detailed Description of the Item	
5	Use of the Item	
6	Life time of the item proposed (in years)	
7	Whether item is procured regularly? [If so, details of procurement of the said item over the past three years (three completed financial years or last three tenders and the current financial year] inclusive of supply details as per format given under table-2.	
8	Quantity required to be procured with justification for the quantity (States/UT/Region wise projection)	
9	Estimated procurement price along with basic of such estimation (International Price comparison chart)	
10	Justification to be submitted as under	
	a. Detailed justification for Global Tender and essentially of import (item wise)	
	b. Who are the (possible) vendors of the item under procurement, in the global (including India) market?	
	c. Whether the Department has tried and floated the tender to identify the domestic suppliers in the past financial year (If not, the reason thereof)	
	d. Capacity of all domestic local suppliers as per the domestic tender floated, if any	
11	What are technical alternatives available within country and whether they can be used (<i>substituted</i>) for the <i>proposed item under GTE</i> ?	
12	Whether the Department had in the past attempted at development of local suppliers/ phased indigenization/	

S.No	Particulars	Remarks
	promotion of alternative technology having sufficient local suppliers. (If so, details thereof)	
13	Consequences of non-procurement of the item through GTE.	
14	Whether BIS standards are available for the items proposed under procurement. If not, the efforts made to operationalize such standards.	
15	Whether the department had published procurement plan for next 5 years, for the item under discussion?	

The above proposal is submitted, with the approval of the Secretary of the Administrative Department/ Ministry, for the consideration of the Competent Authority, as mandated by D/o Expenditure order dated 15th May, 2020 regarding Amendment in GFRs-2017, regarding Global Tender Enquiry.

Also, it is informed that the above proposal had been sent to Cabinet Secretariat (via Email ID: ca4-cabsec@gov.in), D/o Expenditure (via Email ID: GTEnquiry-200@gov.in) and to DPIIT, for their consideration.

Stamp and Signature of the
Authorized officer of the proposing Department

Name
Designation
Contact Number
Email ID

Table-2

Details of procurement of the said item over the past three years (Three completed financial years and the current financial year) inclusive of supply details.

Year of contract	Item	Contract No. & date	Supplier	Quantity of supply with unit	Rate per unit	Completion date of contract	Country of Origin of goods	Local content in %

Annexure 2E: List of Medical Devices and IVDs, where local manufacturers are not available, as on 17.12.2021 (as verified with the Medical Devices Manufacturing Associations)

[Refer para 5.1..6 (e)]

S.No	Name of Medical Device/ Equipment
1	Intra-aortic balloon Pump (IABP)
2	Video Assisted Thoracic Surgery (VATS) and Minimally Invasive Cardiac Surgery instrument set
3	Flow Track Cardiac Output Monitoring (EV1000)
4	Sander's Jet Ventilator for Emergency Airway
5	ENT Coblator system with standard set of wands
6	Automated Identification and antibiotic susceptibility system
7	Automated Semen Analyzer
8	Histopathology fully automated H& E slide Stainer
9	Fully Automated IHC Stainer
10	Auto PAP cervical cancer screening system with HPV
11	Automatic components preparation machine
12	Visual Field Analyzer
13	Cystoscope paediatric cystoscope
14	Flow Cytometer
15	Flexible cysto-nephoscopy
16	T Piece Resuscitator
17	CO2 Fraction Laser
18	Diode Laser
19	Q-Switched ND YAD Laser
20	Video Bronchoscope set Adult, Paediatric, and Neonatal
21	Surgical Opera
22	Cavitation /Cavitron - Ultrasonic Surgical Aspirator (CUSA)
23	Endobronchial Ultrasound System
24	Rotary Microtome
25	Magnifying surgical loupes
26	Endoscopic Saphenous Vein Harvesting (EVH) System
27	Intra operative Imaging and TTFM for CT Surgery
28	DEXA Scan
29	Radio surgery equipment
30	Near Infrared Spectroscopy
31	Fluid therapy
32	Near Infrared Spectrometer (NIRS)
33	Electro Physiology (EP) System
34	TOF Monitor/Watch for Neuro Muscular block
35	Transcranial Doppler
36	Low Temperature Hydrogen Peroxide Gas Steriliser
37	Mannequins (Laerdal) for training of CPR for COVID Preparedness
	a) Intubation
	b) Cardio Pulmonary Resuscitation (CPR)
	c) Peripheral, Central and Arterial Cannulation

S.No	Name of Medical Device/ Equipment
	d) Front of neck Access (Cricothyroidotomy and tracheostomy)
38	Image Analysis Tools/Trinocular Compound Phase Contrast Microscope for Andrology Lab
39	Gas Analysis Apparatus Halden's Student Type
40	Gas Analyzer Automatic for CO ₂ ,O ₂ and N ₂
41	High end Operating Microscope
42	Plasma Coblation System
43	Stroboscope
44	ENT Skull Base Navigation System
45	Automated Microbial Identification and Sensitivity System
46	NAT Analyzer
47	Cryostat
48	Vitek2-Automated Microbiology Susceptibility Testing Analyser
49	FFR Machine (Fractional Flow Reserve)
50	VIDAS
51	Kingfisher Flex
52	ACL Elite
53	Cytoprep Centrifuge withVortex Mixer
54	Antigen Retrieval System
55	Trans Oesophageal Echo Cardiograph
56	IVUS -Volcano
57	STERRAD-100 NX All Clear
58	Minimally Invasive Cardiac Instruments
59	Impella
60	Endourology set
61	Cystoscope Karl Storz
62	Video Endoscopy Systems
63	Floppy wire with extra support 0 Coronary Angioplasty
64	Fully Automated Non-Contact Tonometer
65	Optical Biometer
66	Phaco Machine with Posterior and Anterior Vitrectomy
67	Portable Ultrasound Machine for Anaesthesia and Vascular Access
68	Activated Clotting Time Machine
69	Thromboelastogram (TEG)/ Thromboelastometer/ ROTEM
70	Bone Anchored Hearing Aid (BAHA) Sound Processor with Soft Band.
71	CI Speech Processor for Cochlear Implant
72	Bi-Ventricular Pacemaker with Quadripolar LV Lead
73	DDDR with Matching Electrodes Pacemaker
74	MRI Conditional Automatic Implantable Cardioverter Defibrillator (AICD)
75	MR1 Conditional Cardiac Resynchronisation Therapy - Pacing (CRT- P)
76	Single Chamber (SSI) MRI Compatible Pacemaker
77	Single Chamber Temporary Pacemaker
78	Non-complain /semi complain /CTO coronary balloon.
79	Vacuum Heart Stabilizer System for off Pump CABG
80	Expandable Corpectomy device
81	Biomimetic Synthetic Absorbable Dural substitute of sizes
82	AO TRS Modular Drive for Drill/Reamer
83	AO TRS Modular Sagittal saw system
84	Battery Oscillator
85	Arthroscopy Systems

S.No	Name of Medical Device/ Equipment
86	Navigation System for Neurosurgery & Orthopaedic Surgery
87	Time Lapse Embryo Imaging System
88	Portable Mobile Endoscopy Unit
89	Cryoprobe
90	Isothermal Calorimeter (ITC)
91	Electrical Impedance Tomography
92	FNIRS (Functional Near Infra-Red Spectroscopy) System
93	Automated Hand-Held Analyzer
94	Automated High Throughput Liquid Based Cytology (LBC) System
95	Automated IHC (Immuno Histochemistry Stainer)
96	Automated Slide Stainer for Histopathology
97	3T Digital PET/MR
98	Dual Particle Cyclotron on buyback basis
99	Sweat Collection and Chloride Estimation
100	Automated Bronchoscope Cleaning Equipment
101	Electronics and console for the existing 700 MHz NMR Spectrometer
102	Video bronchoscope with mobility of tip in four directions
103	Freeze Fracture System
104	Cryo Plunge Freezing Unit
105	Biological High- Resolution Atomic Force Microscopy
106	Carbon Coater (Evaporator) for grids
107	Hemostasis Analyzer System
108	Auricular Reconstruction Set
109	Thin Layer Chromatography Liner Analyser for lipid analysis
110	Digital Slide Scanner System
111	Full Endoscopic lumbar IT & ED set
112	Rapid Blood/Fluid Flow warmer
113	Fully Automated Computerized Archival System for Histopathology & Cytology Slides
114	Vacuum Assist Drainage Controller Device
115	VAP Care System
116	Cryoablation Unit
117	3D Printer Hardware with SLA (LFSJ TM Technology and Machine interface software
118	Transcutaneous Oxygen Monitor
119	Non-Invasive Jugular Oximetry Monitor
120	Dedicated Solid-state cardiac SPECT Camera
121	Hemodynamic Recorder for Cardio Vascular Lab
122	Gel Documentation System
123	Automatic Colony Counter
124	Droplet Digital Polymerase Chain Reaction System (PCR)
125	Multi-block PCR Machine
126	Integrated Automated Charting System upgradable for ICU Monitoring System
127	Viscoelastic Global coagulation Testing Device
128	Robotic Surgery System with accessories

Annexure 2F: Example of Formula for Price Variation Clause

[Refer Para 6.2.6 (ii) and Para 9.15.10]

(The formula for price variation should ordinarily include a fixed element, a material element and a labour element. The figures representing the material element and the labour element should reflect the corresponding proportion of input costs, while the fixed element may range from 10 to 25% (ten to twenty-five percent). That portion of the price represented by the fixed element and profits and is not subject to variation. The portions of the price represented by the material element and labour element along will attract price variation.)

The formula for price variation will thus be:-

$$Pa = Po \left[\frac{\left(F + a \left(\frac{M1}{M0} \right) + b \left(\frac{L1}{L0} \right) \right)}{100} \right] - Po$$

Where: -

P_a is then adjustment amount payable to the supplier (a minus figure will indicate a reduction in the contract price) on the date of supply.

P_o is the contract price on the base date (which is taken as the date on which tender is due to open).

F is the fixed element (as the percentage of the total price) not subject to price variation.

a is the assigned percentage to the material element in the contract price.

b is the assigned percentage to the labour element in the contract price.

(F, a and b being percentages should total 100)

L_o and L_1 are the average wage indices for the quarter before the quarter in which base month falls and for the quarter before the quarter in which date of supply falls; respectively. For example for a tender opening on March 17, 2016 (base date), L_o would be average wage index for the quarter of Oct-Dec 2015.

M_o and M_1 are the material prices/indices as average of the month, two month prior to the month in which base month falls and average of the month, two month prior to the month in which date of supply falls, respectively. For example, for a tender opening on March 17, 2016 (base date), M_o would be prices/index as average of the month of January 2016. All material prices/indices will be basic prices without excise duty and without any other central, state, local taxes and duties and Octroi.

If more than one major item of material is involved, the material element can be broken up into two or three components such as M_x , M_y , M_z .

The following conditions would be applicable to price adjustment:

- Base dates shall be due dates of opening of bids (technical bid in two or three envelop/cover system).

- Date of supply shall be the date of calculation/determination of the price variation.
- No price increase is allowed beyond original delivery period.
- No price adjustment shall be payable on the portion of contract price paid to the seller as an advance/interim payment after the date of such payment.
- Total adjustment will be subject to maximum ceiling of ____%.
- No price adjustment shall be payable if this is less than or equal to 2% (two percent) of P_o .
- Payments for each supply would initially be made as per the base price mentioned in the contract. Price adjustment bill should be submitted only quarterly for the supplies made during the quarter.
- In GTE tenders extra care should be taken in selecting the price indices. Preferably the price indices should be from the same country and of same currency as the country and currency of the bidder. In case price is in a currency of a country where inflation is low and the indices are from country with much higher inflation rates, $\left(\frac{M1}{M0}\right)$ and $\left(\frac{L1}{L0}\right)$ should be multiplied by a correction factor of exchange rates $\left(\frac{E_0}{E_1}\right)$, where E_0 is the exchange rate of country of M and L indices with reference to currency of price P. For example, if M&L are from India and P is in \$, then E_0 is Number of Rs. in a \$ on base date and E_1 is the exchange rate on determination date.
- Even if there is no price adjustment claim, supplier must submit all relevant data to prove that there is no downward variation. In any case he must submit a declaration as follows;

“It is certified that there has been no decrease in the price of price variation indices and in the event of any decrease of such indices during the currency of this contract we shall promptly notify the same to the purchaser and offer requisite reduction in the contract rate.”

Annexure 3: Format of Procurement Proposal

Procurement Proposal (Concept Paper) for Procurement of Consultancy/ other services

(Refer Para 1.15 and 9.8)

NO.		Date	
Category of Assignment		Consultancy Services/ other services	
Name of Officer/ Office proposing the Assignment			
Brief Description of Consultancy/ other services Proposed:			
Proposed Period of Engagement:			
Place and Nodal Officer for execution			
Total Estimated Cost:			
Estimate Name/ number:			
Allocation No		Allocation Code No	

Purpose/ Objective Statement of Services

- i) Description of service:
- ii) Background of the Organisation and the Project:
- iii) Purpose/ Objectives of the Assignment: (Highlight how the proposed procurement of services would fit in with short-term and strategic goals of Procuring Entity)

Service Outcome Statement

- i) Outcomes expected from the Procurement of Services:
 - a) Broad List of Activities/ Steps involved in achieving objectives:
 - b) Expected Time-frame of assignment/ Duration of Engagement:
 - c) Rough estimate of cost of Procurement of services: (including related costs to be incurred by the organization)

Justification for the procurement of Services

- i) Capabilities required for carrying out the assignments:
 - a) Rough assessment of available in-house capabilities as compared to required capabilities:
 - b) The eligibility and pre-qualification criteria to be met by the consultants/ service providers:
 - c) Precedences and similar assignments carried out earlier in our organisation/ similar organisations
 - d) Justification: Based on assessment of required and in-house capabilities;

In case of Consultancy Services

It is certified that, the hiring of consultants is justified for following reasons (Tick points applicable). Please also add a narrative justification:

- i) Inadequacy of Capability or Capacity of required expertise in-house; or

- ii) There is internal capacity/ capability to do the job but there are consideration of economy, Speed and efficiency in relation to additional requirement/ commitment/ usage of;
 - a) Staff/ Management/ Organization;
 - b) Technological and Material Resources;
 - c) Money, and
 - d) Time/ Speed of execution; and
- iii) Also tick one or more of following:
 - a) The need to have qualified consultant for providing a specialized high quality service; or/ and
 - b) Need for impartial advice from a consultant (acting independently from any affiliation, economic or otherwise) to avoid conflicts of interest;
 - c) The need for Transfer of Knowledge/ Training/ Capacity and capability building as a by-product of such engagement
 - d) Need to acquire information about/ Identifying and implementing new methods and systems
 - e) Need for planning and implementing organizational change

In case of Other (Non-consultancy) Services

It is certified that, the procurement (outsourcing) of these services is justified for following reasons (Tick one main point below). Please also add a narrative justification:

- i) An administrative policy decided by the Ministry/ Department to outsource specific (class of) services; or
- ii) Economy, Speed and efficiency and more effective delivery of public services relating to additional requirement/ commitment/ usage of (tick one or more below):
 - a) Staff/ Management/ Organization;
 - b) Technological and Material Resources;
 - c) Money, and
 - d) Time/ Speed of execution.

In principle approval

In principle approval may kindly be accorded, for further processing. Final administrative and budgetary approvals would be taken after development of Terms of Reference/ Activity Schedule and detailed estimates.

Proposing Officer

Signatures/ Name/ Designation/ Department

Comments and Instructions:

Approving Officer

Signatures/ Name/ Designation/ Department

Annexure 4: Terms of Reference (ToR) Format

(Refer Para 4.1)

1. Description of Assignment
2. Procuring Entity's Organisation Background
3. Assignment Background
4. Statement of Purpose/ Objectives
5. Statement of Assignments Outcomes
6. Detailed Scope of Work and Time-lines
 - a. Tasks, Activities, dependencies, bar chart and Gantt Chart, Milestones
 - b. Place of Assignment and Touring Requirements if any
 - c. Length and Duration of assignments
7. Team Composition and Qualification Requirements for the Key Experts (and any other requirements which will be used for evaluating the key experts under the Bid data sheet)
8. Capacity Building, Training and Transfer of Knowledge, if any
9. Deliverables, Reporting Requirements and Time Schedule for Deliverables [If no reports are to be submitted, state here "Not applicable."]
 - a. Format, frequency, and contents of reports; dates of submission
 - b. Number of copies, and requirements for electronic submission (or on computer media)
 - c. Persons (indicate names, titles, submission address) to receive them;
10. Background material, Data, reports, records of previous surveys, and so on, to be provided to the consultant (Mention a caveat about reliability of material provided and need for the consultant to verify and crosscheck vital aspects)
11. Facilities such as local conveyance, office space, office machines, secretarial assistance, utilities, local services, etc., which would be provided to the consultant by the Procuring Entity (Specifically mention, what facility/ utilities would not be provided and also, charges if any for facilities offered)
12. Institutional and organisational arrangement
 - a. Counterpart Project Manager and Team
 - b. Consultancy Management Committee
 - c. Chain of Command for reporting
13. Procedure for review of the work of consultant after award of contract

Annexure 5: Bid Opening Attendance Sheet cum Report

(Refer Para 6.4, 6.8 and 9.17)

[Name of Procuring Entity]

Bid Opening Attendance Sheet cum Report

Type of Opening	Eol/ Technical/ Financial	No		Date and Time of Opening		
Title of Tender						
Attendance Record						
Sr No	Bidder's Name	Bidder's Address	Bidder's Authorisation and Date	Represented by	Contact No.	Signature of Representative

Bid Opening Report							
Offer No.	Bidder's Name	Bidder's Ref and Date	Submission of Requisite EMD (Y/N)	Submission of other Mandatory Documents (Y/N)	No of Cuttings/ Overwritings	Rate Quoted and Taxes/ Duties (Financial Bid)	Other Special Features Announced
--/--							
--/--							
--/--							

Total no. of regular tenders taken out from the tender box to be opened as mentioned above..... (In figures and in words)

Signature, Date and Time Name and Designation of Tender Opening Officer	Signature, Signature, Date and Time Name and Designation of Tender Opening Officer
--	---

Received total regular tenders..... (In figures/words) as above

Signature, Date and Time Name and Designation of Procuring Entity Officer	Signature, Signature, Date and Time Name and Designation of Procuring Entity Officer
--	---

Annexure 6: CEC Committee Minutes Format for Consultancy Services

(For Eol/ Techno-Commercial/Financial Bids)

(Refer Para 5.1, 5.2 and 6.7)

Organisation: _____					
Minutes of Tender Committee Meeting (Eol/ Techno-commercial/Financial Bids)					
Stage of Evaluation: Eol/ Technical/ Financial					
Section I: Top Sheet					
File No:				Date:	
Procuring Entity/ Client				Method of Selection LCS/ QCBS/ SSS	
Type of Contract		Lump-sum/ Time Based/ Percentage/ Retainer cum Success Fee/ Indefinite Delivery			
Name of Assignment				Estimated Cost:-	
Tender Stage Published In				Date of Publication	
Bid Validity and Extensions taken				Bid Opening Date	
Past Precedents/ Procurements					
Sr. No.	service provider	Order Reference & Date	Description of Service	Cost Details	Remarks
Members of the Tender Committee					
Sr. No.	Name	Designation	Sr. No.	Name	Designation
1			2		
3			4		
Section II: Background of the Assignment					
Include a brief description, context, scope, and objectives of the services. Mention technical and financial approvals; estimated cost; budgetary provisions; urgency of requirement; special technical requirements and other connected procurements which are part of same package/project.					
Review special conditions, restriction if any, on participation of bidders; purchase preferences, requirements prescribed in bid documents (EMD, document submission, etc.)					
Describe briefly the selection process that has been completed before this stage: mode of bidding; bidding document contents; bid publication; Pre-proposal Conferences,					

Amendment/ Clarifications sought and given, withdrawals of firms before proposal submissions, level of competition obtained; issues if any noticed during bid-opening (bids not opened due to lack/ unsatisfactory EMD, etc.), the establishment of the shortlist, EoI, and. Describe major events that may have affected the timing (delays, complaints from consultants, reference of RfP document (attach with the Evaluation Report or make it available for review/approving authority), extension of proposal submission date, and so on).

Names/nationality of firms/associations (mark domestic firms and firms that had expressed interest)of Firms who participated and Shortlisted Bidders prior to this stage – EoI/ Technical Evaluation:

- i) Participated/ Expressed Interest:
- ii) Shortlisted in EoI/ Technical Evaluation prior to this

Section III: Preliminary Evaluation of Responsiveness (Refer to Annexure 6A)

Review handling of any complaints received

Discuss preliminary evaluation for determining substantially responsive bids and for minor corrections and clarifications

Section IV: Evaluation of Responsive Bids: Technical Evaluation

- i) Describe briefly the meetings and actions taken by the evaluation committee: formation of a technical evaluation team, outside assistance, evaluation guidelines, justification of sub-criteria and associated weightings as indicated in the standard RfP and compliance of evaluation with RfP.
- ii) Summary of Evaluation Criteria and Weights assigned
- iii) Grading and Rating Scheme in the Bid documents or decided before the Evaluation
- iv) Present results of the technical evaluation: scores and the award recommendation (based on Rating System agreed among evaluators prior to receipt of proposals).
- v) Highlight strengths and weaknesses of each proposal (most important part of the report).
 - a) Strengths: Experience in very similar projects in the country; quality of the methodology, proving a clear understanding of the scope of the assignment; strengths of the local partner; and experience of proposed staff in similar assignments.
 - b) Weaknesses: Of a particular component of the proposal; of a lack of experience in the country; of a low level of participation by the local partner; of a lack of practical experience (experience in studies rather than in implementation); of staff experience compared to the firm's experience; of a key staffer (e.g., the team leader); of a lack of responsiveness; and of disqualifications (conflict of interest).
- vi) Comment on individual evaluators' scores (discrepancies). Items requiring further negotiations.

Technical Evaluation Report should also contain (Formats given in Annexure 6B to 6F)

- a) Technical Evaluation Summary (simplified in case of LCS or EoI, otherwise detailed, if so chosen in RfP)
- b) Evaluation of Consultancy Firm's Experience (In case of Detailed Technical Evaluation specified)

- c) Evaluation of Methodology & Work Schedule (In case of Detailed Technical Evaluation specified)
- d) Evaluation of the Key Professionals (In case of Detailed Technical Evaluation specified)

Section V: Evaluation of Technically Successful Bids: Financial Evaluation

- i) Start with review of techno-commercial evaluation and shortlisted Firms and approval and directions by CA
- ii) Describe briefly the meetings and actions taken by the evaluation committee: formation of a financial evaluation team, outside assistance, evaluation guidelines, justification of associated weightings as indicated in the standard RfP and compliance of evaluation with RfP.
- iii) Insert a summary table of evaluated financial scores/ combined weighted scores
- iv) Deliberations should be in the sequence of financial/ combined scores etc. Indicate: any issues faced during the evaluation, such as difficulty in obtaining the exchange rates to convert the prices into the common currency used for evaluation purposes; adjustments made to the prices of the proposal(s) (mainly to ensure consistency with the technical proposal) and determination of the evaluated price (does not apply to Quality-based (Quality-based), Selection- based on Qualifications (Qualifications), and Single-source Selection (Single-Source)); arithmetical correction in case of Time-based Contract, tax-related problems; award recommendation; and any other important information.
- v) Attach Minutes of Public Opening of Financial Proposals

Section VI: Summary of Recommendations

Bid-wise recommendation should be recorded

In case of evaluation of financial bids,

- i) Give a summary of recommended bids, award value, bid expiry date and special conditions, if any;
- ii) Also mention that the rates recommended are considered reasonable (and basis for such determination);
- iii) Total value of the recommendations for determining level of acceptance authority;
- iv) Mention that none of the TC members have any conflict of interest with the parties recommended for award;
- v) Request acceptance of recommendations by competent authority and that it's within his powers of acceptance as per SoPP/ DFPR.

Signature Name and Designation of the Members

1		2	
	Date:		Date:
	(Name & Designation)		(Name & Designation)
3		4	
	Date:		Date:
	(Name & Designation)		(Name & Designation)

Remarks by the Accepting Authority:

Signature: _____ Date: _____

Name & Designation of Accepting Authority _____

Annexure 6A: Format for evaluation of Responsiveness

Name of the consultancy firm:

Sr. No.	Item	Required response
1	Has the consultant paid the RfP document fees?	Yes
2	Has the consultant submitted the requisite bid processing fee and bid security?	Yes
3	Have all the pages required to be signed by the authorized representative of the consultant been signed?	Yes
4	Has the power of attorney been submitted in the name of authorized representative?	Yes
5	In the case of JV/consortium, whether the MoU has been submitted?	Yes
6	Has the consultant submitted all the required forms of the technical proposal?	Yes
7	Technical proposal does not contain any financial information?	Yes
8	Is financial proposal submitted separately in a sealed cover?	Yes

Annexure 6B: Format for Simplified evaluation of quality (LCS/ Eol)

(If so specified in Bid Documents)

Sr. No.	Item	Required response
1	Does the consultancy firm have the required experience?	Yes
2	Does the proposed methodology of work fulfil the objectives of the assignment/ job till the last detail of the ToR?	Yes
3	Do the methodology, work plan and staffing schedule provide coverage of the entire scope of work as described in ToR?	Yes
4	Does the team leader fulfil the minimum educational qualification and experience criteria?	Yes
5	Has the consultant provided for all the professionals for requisite expertise?	Yes
6	Does the key professional (indicate the position) fulfil the minimum educational qualification and experience criteria? [Evaluate for all the proposed key personnel]	Yes
7	Does the staffing schedule including the key professionals proposed, the responsibility assigned to them and the support staff together is adequate for performing the entire scope of work indicated in the ToR?	Yes

Note: If the answer is yes, in all the cases, the consultancy firm is considered technically qualified for the assignment.

(If so specified in RfP)

**Annexure 6C: Format for Detailed Technical evaluation -
Summary Sheet**

(To be compiled from Annexures 6D; 6E; and 6F)

S.No.	Name of the consultant	Firm's Experience Marks Awarded	Methodology & Work schedule Marks Awarded	Qualifications of Key Professionals Marks Awarded	Total Marks. Awarded	Ranking of Technical Marks
		Max. Marks =	Max. Marks =	Max. Marks =	Max. Marks 100	

Annexure 6D Evaluation of Consultancy Firm's Experience

(Averaged from individual worksheets of CEC members)

Sr.No.	Name of the Consultancy	Firm Number of Projects of similar nature	Marks Awarded
			Max. Marks =

Annexure 6E Evaluation of Methodology & Work Schedule

(Averaged from individual worksheets of CEC members)

S.No.	Name of the Consultancy	Firm's Understanding of ToR – Marks Awarded	Work Plan & Methodology – Marks Awarded	Organization and Staffing for the proposed assignment – Marks Awarded	Total – Marks Awarded
		Max. Marks =	Max. Marks =	Max. Marks =	Max Marks =

Annexure 6F Evaluation of the Key Professionals

(Averaged from individual worksheets of CEC members)

Name of the Consultancy Firm:								
Sr. No.	Name of the Key Professionals	Educational Qualification	Marks Awarded	No. of Projects of similar nature	Marks Awarded	Experience of the region (No. of Projects in the region)	Marks Awarded	Total Marks (4+6+8)
			Max. Marks =		Max. Marks =		Max. Marks =	Max. Marks =
1	2	3	4	5	6	7	8	9
Grand Total for the consultant:								
Name of the Consultancy Firm:								
Grand Total for the consultant:								
Name of the Consultancy Firm:								
Grand Total for the consultant:								
Name of the Consultancy Firm:								
Grand Total for the consultant:								

Annexure 7: Activity and Other Schedule for Other (Non-consultancy) Services

(Refer Para 9.9.1)

- i) Description of Assignment
- ii) Procuring Entity's Organisation and Assignment Background
- iii) Statement of Purpose/ Objectives
- iv) Statement of Assignments Outcomes
- v) Itemized Activity Schedule and Time-lines
 - a. Tasks, Activities, dependencies, categorised into classes, location and features affecting prices.
 - b. Frequency of Activities, Quantum, Length and Duration of Activities
 - c. Performance standards for such activities
- vi) Labour/ Personnel Deployment Schedule:
 - a. Type of Personnel, Number of each type, Place, Shifts, Frequency of deployment
 - b. Project Managers, Supervisors, Their qualifications/ experience, numbers
 - c. Leave reserve and reliving staff needed are not included in the numbers of personnel, these must be included in the rate of each personnel
- vii) Material Schedule, if any: Materials, Consumables, Tools of Trade, to be consumed/ deployed, tabulate, quantum, specifications, per unit of activity/ Manpower/ day/ location etc
- viii) Essential Equipment Schedule: Deployment of essential machinery (equipment, Trucks, Cranes, Washing Machines, vessels/ crafts, plant & machinery) – mention quantity/ activity, specifications, capacity, age. Possession/ access to such machinery may also be included in the qualification requirements.
- ix) Outcomes, deliverables, reports and Time Schedule for Deliverables
- x) Statutory and contractual obligations to be complied with by the contractor: Various statutory provisions relating to labour, taxation, Workmen Safety, Child and Women Labour, Private Security Agencies, Environmental Protection, Mining, Forest clearance, Employment reservations and Procuring Entity's own regulation about safety, security, confidentiality etc. must be listed, so that price implications and compliance is taken care of by the bidder.
- xi) Facilities and Utilities to be provided by the Procuring Entity to service provider at Site: It should be mentioned, if any facility/ utility (Operation Manuals, Emergency Medical, Room, Furniture, Electricity connection, Water connection) etc would be made available to the successful bidder to carry out the service. In case it is proposed to charge the Electricity/ Water supplied to the service provider, the same may be mentioned, including the rate of charges. Specially mention facilities and utilities which will not be provided, or the facilities which would be provided on chargeable basis.
- xii) Institutional and organisational arrangement
 - a. Counterpart Project Manager and Team
 - b. Chain of Command for reporting
- xiii) Procedure for review of the work of consultant after award of contract

Annexure 8: Certificate for Procurement of other services without Quotation

(Refer Para 9.11)

Ref _____

No:

Place: _____ Date: _____

“I, _____, am personally satisfied that the other services executed as described below are of the requisite scope and performance standards and have been got executed from a reliable service provider at a reasonable price.”

Description of Service:	
Justification:	
Place and Nodal Officer for availing the Services	
Contract Basis	Lump-Sum/ Unit (Item) Rate/ Time-based
Scope/ Quantum/ Performance Standards	
Rate:	
Taxes/Duties:	
Other Charges:	
Total Contract Price:	
service provider	M/S
Vide Bill No.:	
Cheque may be drawn in favour of	
Name of Procuring Officer:	
Designation:	
Signature:	

Annexure 9: Purchase Committee Certificate for Procurement of other services

(Refer Para 9.11)

Ref _____

No:

Place: _____

Date: _____

Description of Service:						
Justification:						
Place and Nodal Officer for availing the Services						
Contract Basis		Lump-Sum/ Unit (Item) Rate/ Time-based				
Scope/ Quantum/ Performance Standards						
Details of Prices Ascertained						
service provider	Rate:	Taxes/Duties:	Other Charges:	Total Unit Price:	Total Price:	Recommendations & Comments
Selected service provider						
Unit Rate, Taxes/ Duties/ Other Charges						
Total Unit Rate						
Total Value of Purchase						
Cheque may be drawn in favour of						
Signature:		Signature:		Signature:		
Name 1:		Name 2:		Name 3:		
Designation:		Designation:		Designation:		

"Certified that we the undersigned, members of the purchase committee are jointly and individually satisfied that the above described Services are executed at a reasonable price and are of the requisite scope and performance standards and have been got executed from a reliable service provider, and it is not debarred by Department of Commerce or Ministry/Department concerned." The details of recommended purchase are:

(For Techno-Commercial/Financial Bids)

Annexure 10: Tender Committee Minutes Format for Other (Non-consultancy) Services

(Refer Para 9.17)

Organisation: _____					
Minutes of Tender Committee Meeting (Techno-commercial/Financial Bids)					
Procuring Entity/ Client:			Stage of Evaluation: Technical/ Financial Bids		
Section I: Top Sheet					
File No:				Date:	
Name of Assignment					
Type of Contract	Lump-sum/ Time Based/ Indefinite Delivery/ Unit (Item) Rate		Estimated Cost:-		
Tender Published In			Date of Publication		
Bid Validity and extensions taken			Bid Opening Date		
Past Precedents/ Procurements					
Sr. No.	Supplier	Order Reference & Date	Quantity	Basic Rate (Rs.)	Remarks
Members of the Tender Committee					
Sr. No.	Name	Designation	Sr. No.	Name	Designation
1			2		
3			4		
Section II: Background of the Assignment					
Include a brief description, context, scope, and objectives of the services. Mention technical and financial approvals; estimated cost; budgetary provisions; urgency of requirement; special technical requirements and other connected procurements which are part of same package/project.					
Review special conditions, restriction if any, on participation of bidders; purchase preferences, requirements prescribed in bid documents (EMD, document submission, etc.)					
Describe briefly the selection process that has been completed before this stage: mode of bidding; bidding document contents; bid publication; Pre-proposal Conferences, Amendment/ Clarifications sought and given, withdrawals of firms before proposal submissions, level of competition obtained; issues if any noticed during bid-opening (bids not opened due to lack/ unsatisfactory EMD, etc.), the establishment of the shortlist. Describe major events that may have affected the timing (delays, complaints from consultants, reference of RfP document (attach with the Evaluation Report or make it available for review/approving authority), extension of proposal submission date, and so on).					
Names/nationality of firms/associations (mark domestic firms and firms that had expressed interest) of Firms who participated and Shortlisted Bidders prior to this stage: a) Participated: b) Shortlisted in Technical Evaluation prior to this					

Section III: Preliminary Evaluation of Responsiveness	
Review handling of any complaints received	
Discuss preliminary evaluation for determining substantially responsive bids and for minor corrections and clarifications	
Section IV: Evaluation of Responsive Bids – Technical/ Quality Evaluation	
i) Describe briefly the meetings and actions taken by the evaluation committee: formation of a technical evaluation team, outside assistance, evaluation guidelines, justification of evaluation criteria in the standard RfP and compliance of evaluation with RfP.	
ii) Present results of the technical evaluation	
iii) Highlight strengths and weaknesses of each proposal:	
(a) <u>Strengths</u> : Experience in very similar projects in the country; proving a clear understanding of the scope of the assignment;	
(b) <u>Weaknesses</u> : Of a particular component of the proposal; of a lack of experience in the region or type of service; of a lack of responsiveness;	
Section V: Evaluation of Technically Successful Bids: Financial Evaluation	
a) Start with review of techno-commercial evaluation and shortlisted Firms and approval and directions by CA	
b) Describe briefly the meetings and actions taken by the evaluation committee: formation of a financial evaluation team, outside assistance, evaluation guidelines, and compliance of evaluation with RfP.	
c) Insert a summary table of evaluated bid prices from L-1 to highest	
d) Attach Minutes of Public Opening of Financial Proposals	
Section VI: Summary of Recommendations	
Bid-wise recommendation should be recorded	
In case of evaluation of financial bids,	
i) Give a summary of recommended bids, award value, bid expiry date and special conditions, if any.	
Also mention that the rates recommended are considered reasonable (and basis for such determination).	
Total value of the recommendations for determining level of acceptance authority.	
Mention that none of the TC members have any conflict of interest with the parties recommended for award.	
Request acceptance of recommendations by competent authority and that it's within his powers of acceptance as per SoPP/ DFPR.	
Signature Name and Designation of the Members	
1	2
Date:	Date:
(Name & Designation)	(Name & Designation)
3	4
Date:	Date:
(Name & Designation)	(Name & Designation)
Remarks by the Accepting Authority:	
Signature: _____ Date: _____	
Name & Designation of Accepting Authority _____	



Appendix

Appendix 1: Basic Aims and Fundamental Principles of Public Procurement

(Refer Para 1.5, 1.6)

1.1 Basic Aims of Procurement – the Five Rs of Procurement

In every procurement, public or private, the basic aim is to achieve just the right balance between costs and requirements concerning the following five parameters called the Five R's of procurement. The entire process of procurement (from the time the need for an item, facility or services is identified till the need is satisfied) is designed to achieve such a right balance. The word 'right' is used in the sense of 'optimal balance'.

i). Right Quality

Procurement aims to buy just the right quality that will suit the needs – no more and no less – with clear specification of the Procuring Entity's requirements, proper understanding of functional value and cost, understanding of the bidder's quality system and quality awareness. The concept of the right balance of quality can be further refined to the concept of utility/value. For the Right Quality, Technical Specification (Terms of Reference (ToR) in case of Procurement of Services) should be the most vital ingredient. In public procurement, it is essential to give due consideration to Value for Money while benchmarking the specification.

ii). Right Quantity

There are extra costs and systemic overheads involved with both procuring a requirement too frequently in small quantities or with buying large quantities. Hence, the right quantity is procured (in appropriate size of contract) which balances extra costs associated with larger and smaller quantities. In case of Procurement of Services, scope of Work determines the quantum of services.

iii). Right Price

It is not correct to aim at the cheapest materials/ facilities/ Services available. The price should be just right for the quality, quantity and other factors involved (or should not be abnormally low for a facilities/works/ services which could lead to a situation of non-performance or failure of contract). The concept of price can be refined further to take into account not only the initial price paid for the requirement but also other costs such as maintenance costs, operational costs and disposal costs (Also termed as life cycle costing - please also refer to para 1.2 below)

iv). Right Time and Place

If the material (or facility or services) is needed by an organisation in three months' time, it will be costly to procure it too late or too early. Similarly, if the vendor delivers the materials/ facilities/ services in another city, extra time and money would be involved in logistics. An unrealistic time schedule for completion of a facility may lead to delays, claims and disputes.

v). Right Source

Similarly, the source of delivery of Goods, Works and Services of the requirement must have just right financial capacity and technical capability for our needs (demonstrated through satisfactory past performance of contracts of same or similar nature). Buying a few packets of printer paper directly from a large manufacturer may not be the right strategy. On the other hand, if our requirements are very large, buying such requirements through dealers or middlemen may also not be right.

1.2 Refined Concepts of Cost and Value – Value for Money

The concept of price or cost has been further refined into Total Cost Of Ownership (TCO) or Life Cycle Cost (LCC) or Whole-of-Life (WOL) to take into account not only the initial acquisition cost but also cost of operation, maintenance and disposal during the lifetime of the external resource procured. Similarly, the concept of quality is linked to the need and is refined into the concept of utility/ value. These two, taken together, are used to develop the concept of Value for Money (VfM, also called Best Value for Money in certain contexts). VfM means the effective, efficient, and economic use of resources, which may involve the evaluation of relevant costs and benefits, along with an assessment of risks, non-price attributes (e.g. in goods and/or services that contain recyclable content, are recyclable, minimise waste and greenhouse gas emissions, conserve energy and water and minimize habitat destruction and environmental degradation, are non-toxic etc.) and/or life cycle costs, as appropriate. Price alone may not necessarily represent VfM. *In public procurement, VfM is achieved by attracting the widest competition by way of optimal description of need; development of value-engineered specifications/ Terms of Reference (ToR); appropriate packaging/ slicing of requirement; selection of an appropriate mode of procurement and bidding system.* These advanced concepts are explained below.

1.2.1 The Concept of Value

Value is a management and economics concept. It represents the extent of satiation of a hierarchy of needs of a person by a product bought for this purpose. This is subjective and difficult to quantify. This is because different persons (or the same persons under different circumstances) would have different hierarchy of needs and would perceive different extents of satiation or value from the same product. There are three sources of the value of a product. The first source of value is from the functional usage of the product (known as use value) and the second source comes from the social status associated with the ownership of the product (esteem value). This can be shown as the difference between a luxury branded gold-plated, diamond encrusted pen and a disposable non-descript functional pen, though both fulfil the broadly same function and have the same use value. The luxury branded pen, in addition to the use value, also has additional esteem value. The third source of value comes from the price that one can get by exchanging or scrapping the product at the end of the useful life of the product. This is called the disposal value. Normally, when people buy a car, they do consider the estimated disposal value of different choices of models. Value is the sum total of all the three values.

1.2.2 Total Cost of Ownership

While the value of a product covers all components of value over the “Whole-Of-Life” (WOL), the costs incurred on the product should also take into consideration the total of various elements of costs incurred over WOL of the product. For this purpose, future costs are discounted to present value (not to be confused with the value we are discussing – this is a

financial discounting concept). For example, it would not be prudent to buy a cheap car, which has a very high cost of operating. This is called variously as WOL or “Life-Time-Cost” (LCC) or “Total Cost of Ownership” (TCO). The last is a preferred nomenclature in procurement and is defined as the total of all costs associated with a product, service, or capital equipment that are incurred over its expected life. Typically, these costs can be broken into four broad categories:

- a) **Procurement price.** The amount paid to the vendor/ contractor for the product, service, or capital equipment;
- b) **Acquisition costs.** All costs associated with bringing the product, service, or capital equipment into operation at the customer's location. Examples of acquisition costs are sourcing, administration, freight, taxes, and so on;
- c) **Usage costs.** In the case of a product, all costs associated with converting the procured part/material into the finished product and supporting it through its usable life. In the case of a service, all costs associated with the performance of the service that is not included in the procurement price. In the case of capital equipment, all costs associated with operating the equipment through its life. Examples of usage costs are inventory, conversion, wastage, lost productivity, lost sales, warranty, installation, training, downtime, and so on; and
- d) **End-of-life costs.** All costs incurred when a product, service, or capital equipment reaches the end of its usable life, net of amounts received from the sale of the remaining product or the equipment (disposal value) as the case may be. Examples of end-of-life costs are obsolescence, disposal, clean-up, and project termination costs

1.2.3 Value for Money

Besides value of a product or service, the customer also has his own notion of “value” of a particular sum of money. This is different for different people or even for the same person in different circumstances. When the perceived value of a product matches the perceived value of the amount of money (cost of the product), the customer feels he got the full value for his money. This is called the VfM. In procurement, Total Cost of Ownership is taken to evaluate value for money. Given the limited resources available to the government, ensuring VfM in procurement is the key to ensuring the optimum utilisation of scarce budgetary resources. It usually means buying the product or service with the lowest WOL costs that is ‘fit for purpose’ and just meets the specification. VfM also incorporates affordability; clearly, goods or services that are unaffordable cannot be bought. This should be addressed as soon as possible within the process, ideally at the need assessment stage before procurement commences. In order to address this issue, a change in the procurement approach, specification or business strategy may be required.

Where an alternative is chosen that does not have the lowest WOL costs, then the additional ‘value added’ benefit must be proportional and objectively justifiable. Assessment of bids should be conducted only in relation to a published set of evaluation criteria (which should be relevant to the subject of the contract), and any ‘added value’ that justifies a higher price must flow from these defined criteria. In public procurement VfM is often primarily established through the competitive process. A strong competition from a vibrant market will generally deliver a VfM outcome. However, where competition is limited, or even absent,

other routes may have to be used to establish VfM. These can include benchmarking, construction of theoretical cost models or 'shadow' bids by the procurement agency. For major contracts, this can require considerable financial expertise and external support. A VfM assessment, based on the published conditions for participation and evaluation, may include consideration of some factors such as:

- i) Fitness for purpose;
- ii) Potential vendor/contractor's experience and performance history;
- iii) Flexibility (including innovation and adaptability over the lifecycle of the procurement);
- iv) Environmental sustainability (such as energy efficiency and environmental impact); and
- v) Total cost of ownership

But due to uncertainties in estimates of various components of TCO (and actual costs over the life-cycle) and intangibles of Value, some element of subjectivity may become unavoidable, and hence is not normally useable in routine Public Procurement cases. Therefore, preference is given to alternative means for ensuring VfM by way of optimal description of needs; development of value-engineered specifications/ Terms of Reference and appropriate packaging/ slicing of requirements and selection of appropriate mode/ bidding systems of procurement etc.

1.3 Fundamental Principles of Public Procurement

General Financial Rules, 2017 lay down the Fundamental Principles of Public Procurement. These principles and other additional obligations of procuring authorities in public procurement can be organised into five fundamental principles of public procurement, which all procuring authorities must abide by and be accountable for:

i). Transparency Principle

All procuring authorities are responsible and accountable to ensure transparency, fairness, equality, competition and appeal rights. This involves simultaneous, symmetric and unrestricted dissemination of information to all likely bidders, sufficient for them to know and understand the availability of bidding opportunities and actual means, processes and time-limits prescribed for completion of registration of bidders, bidding, evaluation, grievance redressal, award and management of contracts. It implies that such officers must ensure that there is consistency (absence of subjectivity), predictability (absence of arbitrariness), clarity, openness (absence of secretiveness), equal opportunities (absence of discrimination) in processes. In essence Transparency Principle also enjoins upon the Procuring Authorities *to do only that which it had professed to do as pre-declared in the relevant published documents and not to do anything that had not been so declared*. As part of this principle, all procuring entities should ensure that offers should be invited following a fair and transparent procedure and also ensure publication of all relevant information on the Central Public Procurement Portal (CPPP).

ii). Professionalism Principle

As per these synergic attributes, the procuring authorities have a responsibility and accountability to ensure professionalism, economy, efficiency, effectiveness and integrity in the procurement process. They must avoid wasteful, dilatory and improper practices violating the Code of integrity for Public Procurement (CIPP) mentioned in Chapter 3 of this manual. They should, at the same time, ensure that the methodology adopted for

procurement should not only be reasonable and appropriate for the cost and complexity but should also effectively achieve the planned objective of the procurement. As part of this principle, the government may prescribe professional standards and specify suitable training and certification requirements for officials dealing with procurement matters.

In reference to the above two principles - Transparency and Professionalism Principle, It may be useful to refer to the following provisions in the General Financial Rules, 2017:

“Rule 144 of GFR 2017: Fundamental principles of public buying. (for all procurements including procurement of works).— Every authority delegated with the financial powers of procuring goods in public interest shall have the responsibility and accountability to bring efficiency, economy, and transparency in matters relating to public procurement and for fair and equitable treatment of suppliers and promotion of competition in public procurement.

The procedure to be followed in making public procurement must conform to the following yardsticks:-

- a) *The description of the subject matter of procurement to the extent practicable should --
 1. be objective, functional, generic and measurable and specify technical, qualitative and performance characteristics;
 2. not indicate a requirement for a particular trade mark, trade name or brand.*
- b) *the specifications in terms of quality, type etc., as also quantity of goods to be procured, should be clearly spelt out keeping in view the specific needs of the procuring organisations. The specifications so worked out should meet the basic needs of the organisation without including superfluous and non-essential features, which may result in unwarranted expenditure.*
- c) *Where applicable, the technical specifications shall, to the extent practicable, be based on the national technical regulations or recognized national standards or building codes, wherever such standards exist, and in their absence, be based on the relevant international standards. In case of Government of India funded projects abroad, the technical specifications may be framed based on requirements and standards of the host beneficiary Government, where such standards exist. Provided that a Procuring Entity may, for reasons to be recorded in writing, adopt any other technical specification.*
- d) *Care should also be taken to avoid purchasing quantities in excess of requirement to avoid inventory carrying costs;*
- e) *offers should be invited following a fair, transparent and reasonable procedure;*
- f) *the procuring authority should be satisfied that the selected offer adequately meets the requirement in all respects;*
- g) *the procuring authority should satisfy itself that the price of the selected offer is reasonable and consistent with the quality required;*
- h) *at each stage of procurement the concerned procuring authority must place on record, in precise terms, the considerations which weighed with it while taking the procurement decision.*
- i) *a complete schedule of procurement cycle from date of issuing the tender to date of issuing the contract should be published when the tender is issued.*

- j) *All Ministries/Departments shall prepare Annual Procurement Plan before the commencement of the year and the same should also be placed on the their website”*
- k) *[Notwithstanding anything contained in these Rules, Department of Expenditure may, by order in writing, impose restrictions, including prior registration and/or screening, on procurement from bidders from a country or countries, or a class of countries, on grounds of defence of India, or matters directly or indirectly related thereto including national security; no procurement shall be made in violation of such restrictions.]⁵⁷*

iii). **Broader Obligations Principle**

Over and above transparency and professionalism, the procuring authorities have also the responsibility and accountability to conduct public procurement in a manner to facilitate achievement of the broader objectives of the government - to the extent these are specifically included in the ‘Procurement Guidelines’:

- a) Preferential procurement from backward regions, weaker sections and MSEs, locally manufactured goods or services, to the extent specifically included in the ‘Procurement Guidelines’; and
- b) Reservation of procurement of specified class of goods from or through certain nominated CPSEs or Government Organisations, to the extent specifically included in the ‘Procurement Guidelines’.
- c) Support to broader social policy and programme objectives of the government (for example, economic growth, strengthening of local industry - make-in-India, Ease of Doing Business, job and employment creation, and so on, to the extent specifically included in the ‘Procurement Guidelines’);
- d) Facilitating administrative goals of other departments of government (for example, ensuring tax or environmental compliance by participants, Energy Conservation, accessibility for People With Disabilities etc. to the extent specifically included in the ‘Procurement Guidelines’).
- e) Procurement policies and procedures must comply with accessibility criteria which may be mandated by the Government from time to time. Keeping this in view, Department of Expenditure amended Rule 144 of GFR, 2017 and introduced a sub-point (xi) imposing restrictions under the rule [as mentioned under (ii) above]. The detailed provisions were notified through Order (Public Procurement No.1)⁵⁸ which are as follows:

1. **Requirement of registration**

- a) Any bidder from a country which shares a land border with India will be eligible to bid in any procurement whether of goods, services (including consultancy services and non-consultancy services) or works (including turnkey projects) only if the bidder is registered with the Competent Authority, specified in Para 12(c) below.
- b) The Order shall not apply to (i) cases where orders have been placed or contract has been concluded or letter/notice of award/ acceptance (LoA) has been issued on or

⁵⁷ Inserted vide Department of Expenditure (DoE), Ministry of Finance (MoF) OM No. F.6/18/2019-PPD dated 23.07.2020.

⁵⁸ Inserted vide Department of Expenditure (DoE), Ministry of Finance (MoF) OM No. F.6/18/2019-PPD dated 23.07.2020.

before the date of the order (23rd July 2020); and (ii) cases falling under para 13 below.

2. **Transitional cases**

Tenders where no contract has been concluded or no LoA has been issued so far shall be handled in the following manner: -

- a) In tenders which are yet to be opened, or where evaluation of technical bid or the first exclusionary qualificatory stage (i.e. the first stage at which the qualifications of tenderers are evaluated and unqualified bidders are excluded) has not been completed: No contracts shall be placed on bidders from such countries. Tenders received from bidders from such countries shall be dealt with as if they are non-compliant with the tender conditions and the tender shall be processed accordingly.
- b) If the tendering process has crossed the first exclusionary qualificatory stage, if the qualified bidders include bidders from such countries, the entire process shall be scrapped and initiated *de novo*. The *de novo* process shall adhere to the conditions prescribed in the Order.
- c) As far as practicable, and in cases of doubt about whether a bidder falls under paragraph (1) above, a certificate shall be obtained from the bidder whose bid is proposed to be considered or accepted, in terms of paras 5(c), 5(d) and 6 read with para (1).

3. **Incorporation in tender conditions**

In tenders to be issued after the date (23rd July 2020) of the order, the provisions of paragraph (1) above and of other relevant provisions of the Order shall be incorporated in the tender conditions.

4. **Applicability**

- a) Apart from Ministries/Departments, attached and subordinate bodies, notwithstanding anything contained in Rule 1 of the GFRs 2017, the Order shall also be applicable:to all Autonomous Bodies;
- b) to public sector banks and public sector financial institutions; and
- c) subject to any orders of the Department of Public Enterprises, to all Central Public Sector Enterprises; and
- d) to procurement in Public Private Partnership projects receiving financial support from the Government or public sector enterprises/ undertakings.
- e) Union Territories, National Capital Territory of Delhi and all agencies/ undertakings thereof

5. **Definitions**

- a) "Bidder" for the purpose of the Order (including the term 'tenderer', 'consultant' 'vendor' or 'service provider' in certain contexts) means any person or firm or company, including any member of a consortium or joint venture (that is an association of several persons, or firms or companies), every artificial juridical person not falling in any of the descriptions of bidders stated hereinbefore, including any agency, branch or office controlled by such person, participating in a procurement process.
- b) "Tender" for the purpose of the Order will include other forms of procurement, except where the context requires otherwise.
- c) "Bidder from a country which shares a land border with India" for the purpose of the Order means

- i. An entity incorporated, established or registered in such a country; or
 - ii. A subsidiary of an entity incorporated, established or registered in such a country; or
 - iii. An entity substantially controlled through entities incorporated, established or registered in such a country; or
 - iv. An entity whose beneficial owner is situated in such a country; or
 - v. An Indian (or other) agent of such an entity; or
 - vi. A natural person who is a citizen of such a country; or
 - vii. A consortium or joint venture where any member of the consortium or joint venture falls under any of the above
- d) "Agent" for the purpose of the Order is a person employed to do any act for another, or to represent another in dealings with third persons.
6. **Beneficial owner for the purposes of point (c) (iv) will be as under:**
- a) In case of a company or Limited Liability Partnership, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person(s), has a controlling ownership interest or who exercises control through other means. Explanation:-
 - b) In case of a partnership firm, the beneficial owner is the natural person(s) who, whether acting alone or together, or through one or more juridical person, has ownership of entitlement to more than fifteen percent of capital or profits of the partnership;
 - c) In case of an unincorporated association or body of individuals, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has ownership of or entitlement to more than fifteen percent of the property or capital or profits of such association or body of individuals;
 - d) Where no natural person is identified under (6) (a) or (6) (b) or (6) (c) above, the beneficial owner is the relevant natural person who holds the position of senior managing official;
 - e) In case of a trust, the identification of beneficial owner(s) shall include identification of the author of the trust, the trustee, the beneficiaries with fifteen percent or more interest in the trust and any other natural person exercising ultimate effective control over the trust through a chain of control or ownership.

7. **Sub-contracting in works contracts**

In works contracts, including turnkey contracts, contractors shall not be allowed to sub-contract works to any contractor from a country which shares a land border with India unless such contractor is registered with the Competent Authority. The definition of "contractor from a country which shares a land border with India" shall be as in paragraph (5) (c) above. This shall not apply to sub-contracts already awarded on or before the date of the Order (i.e. 23rd July, 2020).

8. **Certificate regarding compliance**

A certificate shall be taken from bidders in the tender documents regarding their compliance with the Order. If such certificate given by a bidder whose bid is accepted is found to be false, this would be a ground for immediate termination and further legal action in accordance with law.

9. **Validity of registration**

In respect of tenders, registration should be valid at the time of submission of bids and at the time of acceptance of bids. In respect of supply otherwise than by tender, registration should be valid at the time of placement of order. If the bidder was validly registered at the time of acceptance / placement of order, registration shall not be a relevant consideration during contract execution.

10. **Government e-Marketplace**

The Government E-Marketplace shall, as soon as possible, require all vendors/ bidders registered with GeM to give a certificate regarding compliance with the Order, and after the date fixed by it, shall remove non-compliant entities from GeM unless/ until they are registered in accordance with this Order.

11. **Model Clauses/ Certificates**

Model Clauses and Model Certificates which may be inserted in tenders / obtained from Bidders are given at Annexure-2C. While adhering to the substance of the Order, procuring entities are free to appropriately modify the wording of these clauses based on their past experience, local needs etc. without making any reference to Department of Expenditure.

12. **Competent Authority and Procedure for Registration**

- a) The Competent Authority for the purpose of registration under this Order shall be the Registration Committee constituted by the Department for Promotion of Industry and Internal Trade (DPIIT)⁵⁹.
- b) The Registration Committee shall have the following members¹⁰
 - i. An officer, not below the rank of Joint Secretary, designated for this purpose by DPIIT, who shall be the Chairman;
 - ii. Officers (ordinarily not below the rank of Joint Secretary) representing the Ministry of Home Affairs, Ministry of External Affairs, and of those Departments whose sectors are covered by applications under consideration;
 - iii. Any other officer whose presence is deemed necessary by the Chairman of the Committee.
- c) DPIIT has laid down the method of application, format etc. for such bidders as stated in para (1) (a) above⁶⁰. On receipt of an application seeking registration from a bidder from a country covered by para (1) (a) above the Competent Authority shall first seek political and security clearances from the Ministry of External Affairs and Ministry of Home Affairs, as per guidelines issued from time to time. Registration shall not be given unless political and security clearance have both been received.
- d) The Ministry of External Affairs and Ministry of Home Affairs may issue guidelines for internal use regarding the procedure for scrutiny of such applications by them.

⁵⁹ (i) In respect of application of the Order to procurement by/ under State Governments, all functions assigned to DPIIT shall be carried out by the State Government concerned through a specific department or authority designated by it. The composition of the Registration Committee shall be as decided by the State Government and paragraph G above shall not apply. However, the requirement of political and security clearance as per para D shall remain and no registration shall be granted without such clearance.

(ii) Registration granted by State Governments shall be valid only for procurement by the State Government and its agencies/ public enterprises etc. and shall not be valid for procurement in other states or by the Government of India and their agencies/ public enterprises etc.

⁶⁰ Notified vide OM No.P-45021/112/2020-PP (BE-II) (E-43780) issued by DPIIT dated 30.03.2021

e) The decision of the Competent Authority, to register such bidder may be for all kinds of tenders or for a specified type(s) of goods or services, and may be for a specified or unspecified duration of time, as deemed fit. The decision of the Competent Authority shall be final.

f) Registration shall not be granted unless the representatives of the Ministries of Home Affairs and External Affairs on the Committee concur⁶¹.

g) Registration granted by the Competent Authority of the Government of India shall be valid not only for procurement by Central Government and its agencies/ public enterprises etc. but also for procurement by State Governments and their agencies/ public enterprises etc. No fresh registration at the State level shall be required.

h) The Competent Authority is empowered to cancel the registration already granted if it determines that there is sufficient cause. Such cancellation by itself, however, will not affect the execution of contracts already awarded. Pending cancellation, it may also suspend the registration of a bidder, and the bidder shall not be eligible to bid in any further tenders during the period of suspension.

i) For national security reasons, the Competent Authority shall not be required to give reasons for rejection/cancellation of registration of a bidder.

j) In transitional cases falling under para (2) above, where it is felt that it will not be practicable to exclude bidders from a country which shares a land border with India, a reference seeking permission to consider such bidders shall be made by the procuring entity to the Competent Authority, giving full information and detailed reasons. The Competent Authority shall decide whether such bidders may be considered, and if so shall follow the procedure laid down in the above paras.

k) Periodic reports on the acceptance/ refusal of registration during the preceding period may be required to be sent to the Cabinet Secretariat. Details will be issued separately in due course by DPIIT.

13. Special Cases [In reference to para (1) (b) above]

a) Bona fide procurements made through GeM without knowing the country of the bidder till the date fixed by GeM for this purpose, shall not be invalidated by the Order.

b) Bona fide small procurements, made without knowing the country of the bidder, shall not be invalidated by the Order.

c) In projects which receive international funding with the approval of the Department of Economic Affairs (DEA), Ministry of Finance, the procurement guidelines applicable to the project shall normally be followed, notwithstanding anything contained in the Order and without reference to the Competent Authority. Exceptions to this shall be decided in consultation with DEA.

⁶¹ (i) In respect of application of the Order to procurement by/ under State Governments, all functions assigned to DPIIT shall be carried out by the State Government concerned through a specific department or authority designated by it. The composition of the Registration Committee shall be as decided by the State Government and paragraph G above shall not apply. However, the requirement of political and security clearance as per para D shall remain and no registration shall be granted without such clearance.

(ii) Registration granted by State Governments shall be valid only for procurement by the State Government and its agencies/ public enterprises etc. and shall not be valid for procurement in other states or by the Government of India and their agencies/ public enterprises etc.

- d) The Order shall not apply to procurement by Indian missions and by offices of government agencies/ undertakings located outside India.
 - e) The Order will not apply to bidders from those countries (even if sharing a land border with India) to which the Government of India has extended lines of credit or in which the Government of India is engaged in development projects. Updated lists of countries to which lines of credit have been extended or in which development projects are undertaken are given in the website of the Ministry of External Affairs⁶².
 - f) A bidder is permitted to procure raw material, components, sub-assemblies etc. from the vendors from countries which shares a land border with India. Such vendors will not be required to be registered with the Competent Authority, as it is not regarded as “sub-contracting”. However, in case a bidder has proposed to supply finished goods procured directly/ indirectly from the vendors from the countries sharing land border with India, such vendor will be required to be registered with the Competent Authority⁶³.
 - g) Procurement of spare parts and other essential service support like Annual Maintenance Contract (AMC)/ Comprehensive Maintenance Contract (CMC), including consumables for closed systems, from Original Equipment Manufacturers (OEMs) or their authorized agents, shall be exempted from the requirement of registration as mandated under Rule 144(xi) of GFR, 2017 and Public Procurement orders issued in this regard⁶⁴.
14. Clarification to Order (Public Procurement No.1) dated 23rd July 2020⁶⁵
- a) For the purpose of (2)(b) above, “qualified bidders” means only those bidders would otherwise have been qualified for award of the tender after considering all factors including price, if the Order (Public Procurement No.1) dated 23rd July 2020 had not been issued.
 - b) If bidders from such countries would not have qualified for award for reasons unconnected with the said Orders (for example, because they do not meet tender criteria or their price bid is higher or because of the provisions of purchase preference under any other order or rule or any other reason) then there is no need to scrap the tender/ start the process *de novo*.
 - c) The following examples are given to assist in implementation of the Order
 - i. Example 1: Four bids are received in a tender. One of them is from a country which shares a land border with India. The bidder from such country is found to be qualified technically by meeting all prescribed criteria and is also the lowest bidder. In this case, the bidder is qualified for award of the tender, except for the provisions of the Order (Public Procurement No. 1) dated 23rd July. In this case, the tender should be scrapped and fresh tender initiated.
 - ii. Example 2: The facts are as in Example 1, but the bidder from such country, though technically qualified is not the lowest because there are other

⁶² Notified through Order (Public Procurement No. 2) vide F.No.6/18/2019-PPD issued by Department of Expenditure dated 23.07.2020

⁶³ Notified vide OM No. F.18/37/2020-PPD issued by Department of Expenditure dated 08.02.2021

⁶⁴ Notified vide OM No. F.12/1/2021-PPD(Pt.) issued by Department of Expenditure dated 02.03.2021

⁶⁵ Notified through Order (Public Procurement No. 3) vide F.No.6/18/2019-PPD issued by Department of Expenditure dated 24.07.2020

technically qualified bidders whose price is lower. Hence the bidder from such country would not be qualified for award of the tender irrespective of the Order (Public Procurement No. 1) dated 23rd July 2020. In such a case, there is no need to scrap the tender.

- iii. Example 3: The facts are as in Example 1, but the bidder from a country which shares a land border with India, though technically qualified, is not eligible for award due to the application of price preference as per other orders/ rules. In such a case, there is no need to scrap the tender.
- iv. Example 4: Three bids are received in a tender. One of them is a bidder from a country sharing a land border with India. The bidder from such a country does not meet the technical requirements and hence is not qualified. There is no need to scrap the tender.

iv). **Extended Legal Responsibilities Principle**

Procuring authorities must fulfil additional legal obligations in public procurement, over and above mere conformity to the mercantile laws (which even private sector procurements have to comply with). The Constitution of India has certain provisions regarding fundamental rights and public procurement. Courts have, over a time, taking a broader view of Public Procurement as a function of 'State', interpreted these to extend the responsibility and accountability of public procurement Authorities. Courts in India thus exercise additional judicial review (beyond contractual issues) over public procurement in relation to the manner of decision making in respect of fundamental rights, fair play and legality. Similarly, procuring authorities have also the responsibility and accountability to comply with the laws relating to Governance Issues like Right to Information (RTI) Act and Prevention of Corruption Act, and so on. Details of such extended legal obligations are given in Appendix 2.

v). **Public Accountability Principle**

Procuring authorities are accountable for all the above principles to several statutory and official bodies in the Country – the Legislature and its Committees, Central Vigilance Commission, Comptroller and Auditor General of India, Central Bureau of Investigations and so on– in addition to administrative accountability. As a result, each individual public procurement transaction is liable to be scrutinised independently, in isolation, besides judging the overall outcomes of procurement process over a period of time. Procuring authorities thus have responsibility and accountability for compliance of rules and procedures in each individual procurement transaction besides the achievement of overall procurement outcomes. The procuring authority, at each stage of procurement, must therefore, place on record, in precise terms, the considerations which weighed with it while making the procurement decision from need assessment to fulfilment of need. Such records must be preserved, retained in easily retrievable form and made available to such oversight agencies. The Procuring Entity shall Therefore, maintain and retain audit trails, records and documents generated or received during its procurement proceedings, in chronological order, the files will be stored in an identified place and retrievable for scrutiny whenever needed without wastage of time. The documents and record will include:

- a) documents pertaining to determination of need for procurement;
- b) description of the subject matter of the procurement;
- c) statement of the justification for choice of a procurement method other than open competitive bidding;

- d) documents relating to pre-qualification and registration of bidders, if applicable;
- e) particulars of issue, receipt, opening of the bids and the participating bidders at each stage;
- f) requests for clarifications and any reply thereof including the clarifications given during pre-bid conferences;
- g) bids evaluated, and documents relating to their evaluation;
- h) contracts and Contract Amendment; and
- i) complaint handling, correspondences with clients, consultants, banks.

Appendix– 2: Legal Aspects of Public Procurement

(Refer Para 1.3 and 1.12)

1.0 Relevant Provisions of the Constitution of India

1.1 Equality for Bidders

Article 19 (1) (g) of the Constitution of India (under Part III – ‘Fundamental Rights’) grants all its citizens the right “to practise any profession or to carry out any occupation, trade or business”. This has been interpreted by courts in a way so as to ensure that every citizen of India has a right to get equal opportunity to bid for and be considered for a public procurement contract. However, this provision does permit stipulation of reasonable eligibility or pre-qualification criteria for the selection of successful bidders in a public procurement contract. Thus a public procurement organisation should be ready to prove in court that no eligible bidder has been denied reasonable and equal opportunity under this article to bid and be considered for the concerned contract.

1.2 Persons Authorised to Make and Execute Contracts on Behalf of Governments

As per Article 299 (Part XII – Finance, Property, Contracts and Suits) of the Constitution of India, all contracts on behalf of the Union Government or state governments are to be entered into and executed by authorised persons on behalf of the President of India or Governor of the state, respectively. The President of India, Governor of the state and the authorised persons who enter into or execute such contracts are granted immunity from personal liability under this article. That is why, above the signatures of such persons, on the contract documents, a legal phrase “For and on Behalf of the President of India/the Governor of State” is written to signify this fact.

“Part III - FUNDAMENTAL RIGHTS - Right to Freedom

§19 Protection of certain rights regarding freedom of speech, etc.

(1) All citizens shall have the right-
(a) to freedom of speech and expression;
(b) to assemble peaceably and without arms;
(c) to form associations or unions;
(d) to move freely throughout the territory of India;
(e) to reside and settle in any part of the territory of India; [and]
(g) to practise any profession, or to carry on any occupation, trade or business.”

“Part XII. - Finance, Property, Contracts and Suits

§299 Contracts:

All contracts made in the exercise of the executive power of the Union or of a State shall be expressed to be made by the President, or by the Governor of the State, as the case may be, and all such contracts and all assurances of property made in the exercise of that power shall be executed on behalf of the President or the Governor by such persons and in such manner as he may direct or authorise.

Neither the President nor the Governor shall be personally liable in respect of any contract or assurance made or executed for the purposes of this Constitution, or for the purposes of any enactment relating to the Government of India heretofore in force, nor shall any person making or executing any such contract or assurance on behalf of any of them be personally liable in respect thereof.”

In a state government, the persons who are authorised to do so are listed in the DFPR. Provisions of DFPR are expanded upon by various departments by issuing SoPP. Rule 224 (1) & (2), Chapter 8: Contract Management of the GFR, 2017 covers this aspect also

1.3 Other Mercantile Laws

A procurement contract besides being a commercial transaction is also a legal transaction. There are a number of commercial/mercantile laws that are applicable equally to the private sector and public procurement, such as the Indian Contract Act, Sales of Goods Act, Arbitration and Conciliation Act, and so on. Although a public procurement professional is expected to have a working knowledge of the following basic laws relating to procurement, yet he is not expected to be a legal expert. If standard contract forms are used, the procurement official can discharge his normal functions without frequent legal help. In case any complex legal issue arises, or a complex contract beyond the standard contract form is to be drafted, an appropriate legal professional may be associated with the procurement from an early stage.

Salient features of these mercantile laws relating to Procurement are summarised below.

2.0 Salient Features of the Indian Contract Act

2.1 Legal Aspects Governing Public Procurement of Goods - Introduction

A public procurement contract, besides being a commercial transaction, is also a legal transaction. There are a number of laws that may affect various commercial aspects of public procurement contracts. A public procurement professional is expected to be generally aware of the implications of following basic laws affecting procurement of goods; however, he or she is not expected to be a legal expert. Where appropriate in complex cases, legal advice may be obtained. In other categories of procurement, additional set of laws may be relevant:

- i) The Constitution of India;
- ii) Indian Contracts Act, 1872;
- iii) Sale of Goods Act, 1930;
- iv) Arbitration and Conciliation Act, 1996 read with the Arbitration and Conciliation (Amendment) Act, 2015;
- v) Competition Act, 2002 as amended with Competition (Amendment) Act, 2007;
- vi) Micro, Small and Medium Enterprises Development (MSMED) Act, 2006;
- vii) Information Technology Act, 2000 (IT Act, regarding e-procurement and e-auction, popularly called the Cyber Law);
- viii) Right to Information (RTI) Act 2005;
- ix) Central Vigilance Commission Act, 2003;
- x) Delhi Special Police Establishment Act, 1946 (basis of the Central Bureau of Investigation);
- xi) Prevention of Corruption Act, 1988;
- xii) The Foreign Trade (Development and Regulation) Act, 1992 and the Foreign Trade Policy (EXIM Policy), 2015; Foreign Exchange Management Act (FEMA), 1999 and FEMA (Current Account Transactions) Rules, 2000.

The elements and principles of contract law and the meaning and import of various legal terms used in connection with the contracts are available in the Indian Contract Act, 1872

read with the Sale of Goods Act, 1930. Some of the salient principles relating to contracts are set out briefly in this chapter.

2.2 Elementary Legal Practices

2.2.1 **What is a Contract?** The proposal or offer when accepted is a promise, a promise and every set of promises forming the consideration for each other is an agreement, and an agreement if made with free consent of parties competent to contract, for a lawful consideration and with a lawful object is a contract.

2.2.2 **Proposal or Offer:** When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of the other to such act or abstinence, he is said to make a proposal or offer. In a sale or purchase by tender, the tender signed by the tenderer is the proposal. The invitation to tender and instructions to tenderers do not constitute a proposal.

2.2.3 **Acceptance of the Proposal:** When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal when accepted becomes a promise.

2.2.4 **What agreements are contracts:** An agreement is a contract enforceable by law when the following are satisfied. A defect affecting any of these renders a contract un-enforceable

- i) Competency of the parties;
- ii) Freedom of consent of both parties
- iii) Lawfulness of consideration
- iv) Lawfulness of object

2.3 Competency of Parties

Under law any person who has attained majority and is of sound mind or not debarred by law to which he is subject, may enter into contracts. It, therefore, follows that minors and persons of unsound mind cannot enter into contracts nor can insolvent person do so.

2.3.1 Categories of persons and bodies who are parties to the contract may be broadly sub-divided under the following heads: -

- i) Individuals;
 - ii) Partnerships;
 - iii) Limited Companies;
 - iv) Corporations other than limited companies
- a) **Contracts with Individuals:** Individuals tender either in their own name or in the name and style of their business. If the tender is signed by any person other than the concerned individual, the authority of the person signing the tender on behalf of another must be verified and a proper power of attorney authorizing such person should be insisted on. In case, a tender is submitted in a business name and if it is a concern of an individual, the constitution of the business and the capacity of the individual must appear on the face of the contract and the tender signed by the individual himself as proprietor or by his duly authorized attorney.
 - b) **Contracts with Partnerships:** A partnership is an association of two or more individuals formed for the purpose of doing business jointly under a business

name. It is also called a firm. It should be noted that a partnership is not a legal entity by itself, apart from the individuals constituting it. A partner is the implied authority to bind the firm in a contract coming in the purview of the usual business of the firm. The implied authority of a partner, however, does not extend to enter into arbitration agreement on behalf of the firm. While entering into a contract with partnership firm care should be taken to verify the existence of consent of all the partners to the arbitration agreement.

- c) **Contracts with Limited Companies:** Companies are associations of individuals registered under Companies Act in which the liability of the members comprising the association is limited to the extent of the shares held by them in such companies. The company, after its incorporation or registration, is an artificial legal person which has an existence quite distinct and separate from the members of shareholders comprising the same. A company is not empowered to enter into a contract for purposes not covered by its memorandum of association; any such agreement in excess of power entered into the company is void and cannot be enforced. Therefore, in cases of doubt, the company must be asked to produce its memorandum for verification or the position may be verified by an inspection of the memorandum from the office of the Registrar of Companies before entering into a contract. Normally, any one of the Directors of the company is empowered to present the company. Where tenders are signed by persons other than Directors or authorized Managing Agents, it may be necessary to examine if the person signing the tender is authorized by the company to enter into contracts on its behalf.
- d) **Corporation other than Limited Companies:** Associations of individuals incorporated under statutes such as Trade Union Act, Co-operative Societies Act and Societies Registration Act are also artificial persons in the eye of law and are entitled to enter into such contracts as are authorized by their memorandum of association. If any contract has to be entered into with any one or such corporations or associations, the capacity of such associations to enter into contract should be verified and also the authority of the person coming forward to represent the said Association.

2.4 Consent of both Parties

Two or more persons are said to consent when they agree upon the same thing in the same sense. When two persons dealing with each other have their minds directed to different objects or attach different meanings to the language which they use, there is no agreement. The misunderstanding which is incompatible with agreement, may occur in the following cases: -

- i) When the misunderstanding relates to the identity of the other party to the agreement;
- ii) When it relates to the nature or terms of the transactions;
- iii) When it related to the subject matter of the agreement.

2.5 Free consent of both Parties

2.5.1 The consent is said to be free when it is not caused by coercion, undue influence, fraud, mis-representation or mistake. Consent is said to be so caused when it

would not have been given but for the existence of coercion, undue influence, fraud, mis-representation or mistake. When consent to an agreement is caused by coercion, undue influence, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was caused. A party to a contract, whose consent was caused by fraud or misrepresentation may, if he thinks fit, insist that the contract shall be performed, and that he shall be put in the position in which he would have been if the representations made had been true.

2.5.2 In case consent to an agreement has been given under a mistake, the position is slightly different. When both the parties to an agreement are under a mistake as to a matter essential to the agreement, the agreement is not voidable but void. When the mistake is unilateral on the part of one party only, the agreement is not void.

2.5.3 Distinction has also to be drawn between a mistake of fact and a mistake of law. A contract is not void because it was caused by a mistake as to any law in force in India but a mistake as to law not in force in India has the same effect as a mistake of fact.

2.6 Consideration

Consideration is something which is advantageous to the promisor or which is onerous or disadvantageous to the promisee. Inadequacy of consideration is, however, not a ground avoiding the contract. But an act, forbearance or promise which is contemplation of law has no value is no consideration and likewise an act or a promise which is illegal or impossible has no value.

2.7 Lawfulness of object

The consideration or object of an agreement is lawful, unless it is forbidden by law or is of such a nature that if permitted, it would defeat the provisions of any law, or is fraudulent or involves or implies injury to the fraudulent property of another or the court regards it as immoral or opposed to public policy. In each of these cases the consideration or object of an agreement is said to be unlawful.

2.8 Communication of an Offer or Proposal

The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made. A time is generally provided in the tender forms for submission of the tender. Purchaser is not bound to consider a tender, which is received beyond that time.

2.9 Communication of Acceptance

A date is invariably fixed in tender forms upto which tenders are open for acceptance. A proposal or offer stands revoked by the lapse of time prescribed in such offer for its acceptance. If, therefore, in case it is not possible to decide a tender within the period of validity of the offer as originally made, the consent of the tenderer firm should be obtained to keep the offer open for further period or periods.

2.9.1 The communication of an acceptance is complete as against the proposer or offerer, where it is put in the course of transmission to him, so as to be out of the power of the acceptor, and it is complete as against the acceptor when it comes to the knowledge of the proposer or offerer. The medium of communication in government contracts is generally by post and the acceptance is, therefore, complete as soon as it is posted. So that there

might be no possibility of a dispute regarding the date of communication of acceptance, it should be sent to the correct address by some authentic fool proof mode like registered post acknowledgement due, etc.

2.10 Acceptance to be identical with Proposal

If the terms of the tender or the tender, as revised, and modified, are not accepted or if the terms of the offer and the acceptance are not the same, the acceptance remains a mere counter offer and there is no concluded contract. It should, therefore, be ensured that the terms incorporated in the acceptance are not at variance with the offer or the tender and that none of the terms of the tender are left out. In case, uncertain terms are used by the tenderers, clarifications should be obtained before such tenders are considered for acceptance. If it is considered that a counter offer should be made, such counter offer should be carefully drafted, as a contract is to take effect on acceptance thereof.

If the subject matter of the contract is impossible of fulfilment or is in itself in violation of law such contract is void.

2.11 Withdrawal of an Offer or Proposal

A tenderer firm, who is the proposer may withdraw its offer at any time before its acceptance, even though the firm might have offered to keep the offer open for a specified period. It is equally open to the tenderer to revise or modify his offer before its acceptance. Such withdrawal, revision or modification must reach the accepting authority before the *date and time of opening of tender*.

No legal obligations arise out of such withdrawal or revision or modification of the offer as a simple offer is without a consideration. Where, however, a tenderer agrees to keep his offer open for a specified period for a consideration, such offers cannot be withdrawn before the expiry of the specified date. This would be so where earnest money is deposited by the tenderer in consideration of his being supplied the subsidiary contract and withdrawal of offer by the tenderer before the specified period would entitle the purchaser to forfeit the earnest money.

2.12 Withdrawal of Acceptance

An acceptance can be withdrawn before such acceptance comes to the knowledge of the tenderer. A telegraphic revocation of acceptance, which reaches the tenderer before the letter of acceptance, will be a valid revocation.

2.13 Changes in terms of a concluded Contract

No variation in the terms of a concluded contract can be made without the consent of the parties. While granting extensions or making any other variation, the consent of the contractor must be taken. While extensions are to be granted on an application of the contractor, the letter and spirit of the application should be kept in view in fixing a time for delivery.

2.14 Discharge of Contracts

A contract is discharged or the parties are normally freed from the obligation of a contract by due performance of the terms of the contract. A contract may also be discharged: -

- i) **By mutual agreement:** If neither party has performed the contract, no consideration is required for the release. If a party has performed a part of the contract and has undergone expenses in arranging to fulfil the contract it is necessary for the parties to agree to a reasonable value of the work done as consideration for the value.
- ii) **By breach:** In case a party to a contract breaks some stipulation in the contract which goes to the root of transaction, or destroys the foundation of the contract or prevents substantial performance of the contract, it discharges the innocent party to proceed further with the performance and entitles him to a right of action for damages and to enforce the remedies for such breach as provided in the contract itself. A breach of contract may, however, be waived.
- iii) **By refusal of a party to perform:** On a promisor's refusal to perform the contract or repudiation thereof even before the arrival of the time for performance, the promisee may at his option treat the repudiation as an immediate breach putting an end to the contract for the future. In such a case the promisee has a right of immediate action for damages.
- iv) **In a contract where there are reciprocal promises:** If one party to the contract prevents the other party from performing the contract, the contract may be put to an end at the instance of the party so prevented and the contract is thereby discharged.

2.15 Stamping of Contracts

Under entry 5 of Schedule I of the Indian Stamp Act, an agreement or memorandum of agreement for or relating to the sale of goods or merchandise exclusively is exempt from payment of stamp duty. (A note or memorandum sent by a Broker or Agent to his principal intimating the purchase or sale on account of such principal is not so exempt from stamp duty.)

The Stamp Act provides that no Stamp Duty shall be chargeable in respect of any instrument executed by or on behalf of or in favour of the Government in cases where but for such exemption Government would be liable to pay the duty chargeable in respect of such instrument. (Cases in which Government would be liable are set out in Section 29 of the Act).

2.16 Authority for Execution of Contracts

As per Clause 1 of Article 299 of the Constitution, the contracts and assurances of property made in the exercise of the executive power of the Union shall be executed on behalf of the President. The words "for and on behalf of the President of India" should Therefore, follow the designation appended below the signature of the officer authorized in this behalf.

Note 1: The various classes of contracts and assurances of property, which may be executed by different authorities, are specified in the Notifications issued by the Ministry of Law from time to time.

Note 2: The powers of various authorities, the conditions under which such powers should be exercised and the general procedure prescribed with regard to various classes of contracts and assurances of property are laid down in Rule 21 of the Delegation of Financial Powers Rules.

2.17 Contract Effective Date

The date of commencement of the obligations under the contract on the parties to a contract is referred as the contract effective date. This date should be invariably indicated in each contract, as per agreed terms and conditions. The Ministries/Departments are advised to set the effective date to be a date after the following:

- i) Date of signing of the contract;
- ii) Furnishing of performance bond in terms of performance security;
- iii) Receipt of Bank Guarantee for advance payment;
- iv) Obtaining Export Licence for supply of stores by seller and confirmation by the buyer;
- v) Receipt of End User's Certificate. The supplier shall provide the End User's Certificate within 30 (thirty) days of the signing of the contract.

3.0 Salient Features of the Indian Arbitration & Conciliation Act 1996

3.1 Indian Arbitration & Conciliation Act 1996 provides for dispute settlement either by a process of conciliation and/or by arbitration. This act is based on a 'United Nation's Commission on International Trade Law Model Arbitration Law' with an object to minimise the supervisory role of courts in the arbitral process and to provide that every final arbitral award is enforced in the same manner, as if it was a decree of the court. It covers both international and domestic arbitration and conciliation.

3.1 Arbitration

Arbitration is one of the oldest methods of settling civil disputes arising out of and in the course of performance of the contract between two or more persons by reference of the dispute to an independent and impartial third person called the arbitrator, instead of litigating the matter in the usual way through the courts. It saves time and expense, avoids unnecessary technicalities and, at the same time, ensures "substantial justice within limits of the law".

3.2 Arbitrator, Arbitration and Arbitral Award

The person or persons appointed to determine differences and disputes are called the arbitrator or arbitral tribunal. The proceeding before him is called arbitration proceedings. The decision is called an Award. For the purpose of Law of Limitations, The Arbitration for a particular dispute is deemed to have commenced on the date, on which a request for arbitration is received by the respondent.

3.3 Arbitration Agreement

It is an agreement by the parties to submit to arbitration all or certain disputes, which have arisen or which may arise between them, in respect of a defined legal relationship, whether contractual or non-contractual. The dispute resolution method of arbitration, as per the Arbitration and Conciliation Act, can be invoked only if there is an arbitration agreement (in the form of an arbitration clause or a separate arbitration agreement) in the contract. If there is such an agreement, courts are barred from directly entertaining any litigation in respect of such contracts, and are bound instead to refer the parties to arbitration.

3.4 Appointment and Composition of Arbitral Tribunal

Both parties can mutually agree on the number of arbitrators (which cannot be an even number) to be appointed. In case there is no agreement, a single (sole) arbitrator may be appointed. The parties can mutually agree on a procedure for appointing the arbitrator or arbitrators, or else in case of arbitration with three arbitrators, each party will appoint one arbitrator and the two appointed arbitrators will appoint the third arbitrator, who will act as a presiding arbitrator. If one party fails to appoint an arbitrator within 30 (thirty) days, or if the two appointed arbitrators fail to agree on the third arbitrator, then the court may appoint any person or institution as arbitrator. In case of an international commercial dispute, the application for appointment of arbitrator has to be made to the Chief Justice of India. In case of other domestic disputes, the application has to be made to the Chief Justice of the High Court within whose jurisdiction the parties are situated.

3.5 Challenge to Appointment of Arbitrator

An arbitrator is expected to be independent and impartial. If there are some circumstances due to which his independence or impartiality can be challenged, he must disclose the circumstances before his appointment. The appointment of an arbitrator cannot be challenged on any ground, except when there is justifiable doubt as to the arbitrator's independence or impartiality or when he does not possess the qualifications for the arbitrator agreed to by the parties. The challenge to appointment has to be decided by the arbitrator himself. If he does not accept the challenge, the arbitration can continue and the arbitrator can make the arbitral award. However, in such a case, application for setting aside the arbitral award can be made to the court, after the award is made by the arbitrator. Thus the other party cannot stall further arbitration proceedings by rushing to court.

3.6 Conduct of Arbitral Proceedings

The parties are free to agree on the procedure to be followed for conducting proceedings, location, language of hearings and written proceedings. Failing any agreement, the arbitral tribunal may decide themselves on these aspects. The parties shall be treated with equality and each party shall be given a full opportunity to present its case. The arbitral tribunal shall observe the rules of natural justice but is bound neither by Civil Procedure Code 1908 nor by Indian Evidence Act 1872. Limitation Act, 1963 is applicable from the date of commencement of arbitral proceedings. Arbitral tribunals have powers to do the following:

- i) Determine admissibility, relevance, materiality and weight of any evidence;
- ii) Decide on their own jurisdiction;
- iii) Decide on interim measures;
- iv) Termination of proceedings; and
- v) Seek court assistance in taking evidence.

3.7 Arbitral Award

The decision of the arbitral tribunal is termed as 'arbitral award'. The decision of arbitral tribunal shall be by majority. The arbitral award shall be in writing, mentioning the place and date, and signed by the members of the tribunal. It must state the reasons for the award. A copy of the award should be given to each party. The tribunal can make interim award also. An arbitral award is enforceable in the same manner as if it were a decree of the court.

3.8 Recourse against Arbitral Award

Recourse to a court against an arbitration award can be made by an application (within three months from the date of the arbitral award), only on the grounds specified in the act, that is, the party was under some incapacity; arbitration agreement was not valid; proper opportunity was not given to present the case; award deal with disputes not falling within the terms of reference of arbitrator; composition of the arbitral tribunal is not as per agreement of parties; subject matter of dispute is not capable of settlement through arbitration under the law or the arbitral award is in conflict with the public policy.

3.9 Conciliation

This is a new concept added in the Act for settlement of disputes. The party initiating conciliation shall send a written invitation to the other party to conciliate and proceedings shall commence when the other party accepts the initiations to conciliation. The parties may agree on the name of a sole conciliator or each party may appoint one conciliator. The conciliation shall assist the parties to reach an amicable settlement of their dispute. When the parties sign the settlement agreement, it shall be final and binding on the parties. The conciliator shall authenticate the settlement agreement and furnish a copy thereof to each party. This process has not yet come into a common use.

3.10 Changes introduced by the Arbitration and Conciliation (Amendment) Act, 2015

- i) Independence, Disqualification and Obligations of arbitrators at the time of appointment
 - a) **Independence, Impartiality and Accountability of Arbitrators:** A fixed fee structure ensures the independence of the arbitral tribunal and also provides a reasonable cost estimate to the parties entering into arbitration. The Amendment Act in the Fourth Schedule prescribes the model fees for arbitrators and the High Courts have been assigned the responsibility of framing the rules for determination of the fees and the manner of its payment. The model fee varies from Rs 45,000 (Rupees forty-five thousands) to Rs 30 (Rupees thirty) Lakhs for various slabs of disputed value from Rupees five Lakh to above Rs 20 (Rupees Twenty) Crore (with a sole arbitrator entitles to 25% (twenty five percent) extra above the model fee) it is clarified that such fees shall not be applicable in International Commercial Arbitration and in cases where parties have agreed for determination of fees as per the rules of an arbitral institution.
 - b) **Disqualification from appointment:** A long and exhaustive list of specific circumstances which shall act as a bar against any person from being appointed as an arbitrator in a dispute, have been enumerated in the seventh schedule. However, the parties to the dispute have been given the opportunity, after the dispute has arisen, to waive the applicability of the seventh schedule, by mutual written agreement, if they so deem fit. Especially of interest in Public Procurement is disqualification of past or present employees, consultant, advisors or other related business relationship not only with the Procuring Entity but also with any affiliated entity thereof. Thus the earlier practice of appointing serving officers of Procuring Entity as arbitrator is no more legal.
 - c) **Disclosures:** An arbitrator who is approached for appointment is obligated to disclose as per Sixth Schedule of the Act. The declaration as per a set format removes any ambiguity and ensures uniformity:

1. **conflict of Interest** the existence either direct or indirect, of any past or present relationship with or interest in any of the parties or in relation to the subject matter in dispute, whether financial, business, professional or other kind, which is likely to give rise to justifiable doubts as to his independence or impartiality as per fifth schedule to the Act for arbitrator.
 2. **Time constraints:** An arbitrator shall disclose all circumstances which may affect his ability to deliver an award within 12 (twelve) months.
- ii) Fast-tracking Arbitration in India
- a) **Award within 12 (twelve) months:** The arbitral tribunal is statutorily obligated to deliver an award within 12 (twelve) months from the date when arbitral tribunal enters into reference. The arbitral tribunal is said to have entered upon the reference on the date on which the arbitrator(s) have received notice of their appointment. The award can be delayed by a maximum period of six months only under the special circumstances where all parties give their consent to such extension of time. Where the award is not made out within the statutory period the mandate of arbitrators shall automatically terminate. It is open for the courts to extend the time period for making an award upon receipt of an application by any of the parties. Such extension is to be granted only for sufficient cause and the court in its discretion may impose the following penalties depending on the facts and circumstances of the case:
 1. Reduce the fees of arbitrators by up to 5% for each month of delay.
 2. Substitute one or all the arbitrators.
 3. Impose actual or exemplary costs on any of the parties.
 - b) **Oral arguments to be held on a day-to-day basis:** Oral arguments as far as possible shall be heard by the arbitral tribunal on a day to day basis and no adjournments shall be granted without sufficient cause. Provision for imposition of exemplary cost on the party seeking adjournment without sufficient cause has also been made.
 - c) **Fast Track Procedure:** The parties to arbitration may choose to opt for a new fast track procedure either before or after the commencement of the arbitration. The award in fast track arbitration is to be made out within six months. Where the Arbitral Tribunal delivers the award within a period of six months the arbitral tribunal shall be entitled to additional fees. The quantum of such additional fees shall be determined by the parties. The salient features of the fast track arbitration are:
 1. Dispute is to be decided based on written pleadings only.
 2. Arbitral Tribunal shall have the power to call for clarifications in addition to the written pleadings where it deems necessary.
 3. Oral hearing maybe held only if all the parties make a request or if the arbitral tribunal considers it necessary.
 4. The parties are free to decide the fees of the arbitrator(s).
 - d) **Appointment within 60 (sixty) days:** Whenever an application for appointment of Arbitrator(s) is moved before a court such application shall be disposed of as expeditiously as possible and an endeavour shall be made to dispose of the matter within a period of sixty days from the date of service of notice on the

opposite party. The court while appointing arbitrators shall confine itself to the examination of the existence of an arbitration agreement.

3.10.1 Procedural and Jurisprudence simplified

- a) **Arbitration to commence within 90 (ninety) days of interim relief:** Where the court grants interim relief before the commencement of arbitration, the arbitration must commence within 90 (ninety) days from such order of interim relief. The court however has been given the authority to extend the period within which the arbitration must commence, if it deems such extension necessary. The Act prohibits courts from entertaining any application for interim relief once the arbitration has entered into reference, unless the court finds that circumstances exist which may not render the remedy provided under section 17 efficacious.
- b) **Powers of Interim Relief in Section 9 also to Arbitral Tribunal:** The parties to arbitration can now directly approach the arbitral tribunal for seeking interim relief on the same grounds as were available to the parties under section 9 of the previous act. Further, the tribunal has now been granted the powers of a court while making interim awards in the proceedings before it.
- c) **Arbitral tribunal not bound to rule in accordance with terms of the contract:** The arbitral tribunal was previously bound to deliver an award in accordance with the terms of the agreement and was required to take into consideration the 'usages of the trade applicable to the transaction'. Vide the Amendment the arbitral tribunal has been freed of the obligation to only rule in accordance with the terms of the agreement. The arbitral tribunal is only required to take the agreement into account while delivering its award and is free to deviate from the terms of the agreement if the circumstances so warrant.
- d) Act made applicable on International Commercial Arbitration with even seat outside India: Part I of the act has been made applicable for limited purpose (listed below) on International Commercial Arbitrations even in instances where the seat of the arbitration is outside India, however giving freedom to exclude the applicability the Act by entering into an agreement to this effect:
 1. Seeking interim relief from courts [section 9]
 2. Seeking the assistance of the court in taking evidence [section 27]
 3. Appealing against the order of a court where the court refuses to refer the parties to arbitration. [section 37(1) (a)]
 4. Restricting the right to second appeal and preserving the right of parties to approach the Supreme Court in appeal. [section 37 (3)]

4.0 Salient Features of Competition Act, 2002 relating to Anti-competitive Practices

- i) The **Preamble of the Competition Act, 2002**, provides for the establishment of a Commission keeping in view of the economic development of the country to promote and sustain competition in markets; prevent practices having adverse effect on competition; protect consumer interest; and ensure freedom of trade carried on by participants in Indian markets.
- ii) The Act was amended by **Competition (Amendment) Act, 2007** and again by Competition (Amendment Act), 2009.

- iii) In India, **Competition Commission of India (“CCI”)**, formulated under the Competition Act is a quasi-judicial and regulatory body entrusted with the task enforcement of the Competition Act, 2002. Apart from specific functions under the Competition Act, 2002 the CCI also has extra-territorial jurisdiction, inquiry into anticompetitive conduct, sector-specific regulatory work, competition advocacy, power of appointment of professional and experts, and procedure for investigation (in terms of regulating its own procedure).
- iv) Section 8 dealing with **composition of Commission** provides for a chairperson and not less than two and not more than six members which are to be appointed by Central Government. The CCI is vested with inquisitorial, investigative, regulatory, adjudicatory and also advisory jurisdiction. Vast powers have been given to the Commission and under Section 64, the Commission can frame regulations.
- v) The **Competition Appellate Tribunal (COMPAT)** is another body entrusted with the responsibility of hearing and disposing of appeals against any direction or decision or order of the CCI. It also adjudicates on compensation claims arising from the findings of the CCI or its own findings on appeals against the CCI orders and passes orders on the recovery of compensation.
- vi) Any person aggrieved by the order or decision of the CCI may prefer an **appeal** to the Competition Appellate Tribunal (‘COMPAT’) within 60 (sixty) days from the date of communication of such order or decision. The second and final appeal under Section 53T lies before the Supreme Court of India from the orders of the COMPAT within a period of 60 (sixty) days from the date of communication of the order by the COMPAT.
- vii) CCI may **initiate an inquiry**:
 - a) On its own motion on the basis of information and knowledge in its possession, or
 - b) On receipt of any information, in such manner and accompanied by such fee as may be determined by regulations, from any person, consumer or their association or trade association, or
 - c) On receipt of a reference from the Central Government or a State Government or a statutory authority
- viii) The Act provides for Director General office as a separate investigative wing to assist the CCI. The DG looks into the complaints received from the CCI and submits all findings to it. DG is solely responsible for making enquiries, for examining documents and for making investigations into complaints. The DG is vested under the Act with powers of summoning of witnesses, examining them on oath, requiring the discovery and production of documents, receiving evidence on affidavits, issuing commissions for the examination of witnesses etc.
- ix) The Act in Section 49 (3) lays down the advocacy function of CCI and lays down that the CCI shall take suitable measures for the promotion of competition advocacy, creating awareness and imparting training about competition issues. Section 32 of the Act grants the CCI extra-territorial jurisdiction over anticompetitive conduct which has an appreciable adverse effect on competition within India. Any anticompetitive activity taking place outside India but having an appreciable adverse effect on competition within India shall be subject to the application of the Competition Act.
- x) Under s. 21 of the Act, any statutory authority can suo motto or on request of a party in the course of a proceeding before it can make a reference to CCI. CCI shall give its opinion within sixty days of receipt of such reference by such statutory authority. Under the provisions of the Act, the authority which made reference shall consider the opinion

of the Commission and thereafter, give its findings recording reasons on the issues referred to in the said opinion by CCI. Section 21A in the same language provides for such reference by CCI to any statutory authority.

- xi) The key provisions of the Competition Act include:
 - a) Section 3 of the Competition Act, 2002 dealing with anti-competitive agreements;
 - b) Section 4 of the Competition Act, 2002 which discusses abuse of dominance;
 - c) Section 5 and 6 of the Competition Act, 2002 dealing with the regulation of combinations.
- xii) The term 'agreement', has been defined broadly in the Competition Act. It extends to a mere 'arrangement', 'understanding' or 'action in concert', none of which need be in writing or enforceable by law.
- xiii) Section 3(1) of the Competition Act lays down that no enterprise or association of enterprises or person or association of persons shall enter into any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition within India. The Act prohibits an anti-competitive agreement and declares that such an agreement shall be void.
- xiv) Section 3(3) of the Competition Act deals with the horizontal agreements as it covers the agreements between entities engaged in identical or similar trade of goods or provision of services. It also includes cartels. The section covers:
 - a) Agreement entered into between enterprises or associations of enterprises or persons or associations of persons or between any person and enterprise
 - b) Practice carried on by any association of enterprises or association of persons
 - c) Decision taken by any association of enterprises or association of persons
- xv) Section 3(3) of the Competition Act enlists four broad classifications of horizontal agreements which are presumed to cause an appreciable adverse effect on competition (AAEC) in India.
 - a) Agreements regarding Prices
 - b) Agreements regarding Quantity/ Quality
 - c) Market Allocation
 - d) Bid Rigging
- xvi) These four horizontal agreements are not presumed to have appreciable adverse effect on competition and excluded from the provisions of Section 3(3) of the Competition Act, 2002 provided they are entered into by way of joint ventures and increase efficiency in production, supply, distribution, storage, acquisition or control of goods or provision of services.
- xvii) Cartels, by their very nature are secretive and thus it is difficult to find the direct evidence of their presence. The orders of the CCI clearly point that CCI relies on circumstantial evidence, both economic and conduct-based, to reach its decision on the existence of a cartel agreement.
- xviii) The Act provides a definition for bid rigging and it covers agreements having effect of eliminating or reducing competition for bids or adversely affecting or manipulating the process for bidding:
 - a) Collusive bidding: Agreement between firms to divide the market, set prices or limit production – involves, kickbacks and misrepresentation of independence
 - b) Bid Rotation

- c) Bid Suppression
 - d) Complementary Bidding
 - e) Subcontracting arrangements
 - f) Market Allocation
- xix) The Act gives wide discretion to CCI to frame the remedies to overcome the anticompetitive situation:
- a) Declare Anticompetitive Agreements Void
 - b) Impose Heavy Penalties
 1. Penalty can be up to 10% (ten percent) of the average turnover for the last three preceding financial years upon each of such persons or enterprises which are parties to bid-rigging
 2. Cartel, a penalty of up to three times of its profit for each year of the continuance of such agreement or 10% (ten percent) of its turnover for each year of the continuance of such agreement, whichever is higher
 - c) Order the parties to Cease & Desist
 - d) Modification of agreements
 - e) Remedy Damage to reputation
 - f) Fix Individual Liability
 - g) Grant Interim orders
 - h) Any other order as CCI deems fit
- xx) Who can file the information: Raising issues regarding anti-competitive behaviour for action by CCI under the act is called filing the information:
- a) Any person, consumer or their association or trade association can file information before the Commission.
 - b) Central Govt. or a State Govt. or a statutory authority can also make a reference to the Commission for making an inquiry.
 - c) "Person" includes an individual, HUF, firm, company, local authority, cooperative or any artificial juridical person.
- xxi) What are the issues on which information can be filed?
- a) The information can be filed on the issues like anti-competitive agreements and abuse of dominant position or a combination.
 - b) Class of consumers.
- xxii) The fee -
- a) Rupees 5000/- (Five thousand only) in case of individual, or Hindu undivided family (HUF), or Non Government Organisation (NGO), or Consumer Association, or Co-operative Society, or Trust, duly registered under the respective Acts,
 - b) Rupees 20,000/-(twenty thousand only) in case of firms, companies having turnover in the preceding year upto Rupees one Crores, and
 - c) Rupees 50,000/- (fifty thousand only) in case not covered under clause (a) or (b) above.

5.0 Salient Features of the Whistle Blowers Protection Act, 2011 and the Whistle Blowers Protection (Amendment) Act, 2015

- i) The Act seeks to protect whistleblowers, i.e. persons making a public interest disclosure related to an act of corruption, misuse of power, or criminal offence by a public servant.

- ii) Any public servant or any other person including a non-governmental organization may make such a disclosure to the designated agencies i.e. Central or State Vigilance Commission. The Time Limit for making any complaint or disclosure to the Competent Authority is seven years from the date on which the action complained against is alleged to have taken place.
- iii) The Designated Agency cannot entertain any disclosure relating to any inquiry ordered under the Public Servants (Inquiries) Act, 1850 and Commissions of Inquiry Act, 1952.
- iv) Similarly, the Amendment Act, 2015, The Bill prohibits the reporting of a corruption related disclosure if it falls under any 10 (ten) categories including information related to:
 - a) The sovereignty, strategic, scientific or economic interests of India, or the incitement of an offence
 - b) Records of deliberations of the Council of Ministers
 - c) That which is forbidden to be published by a court or if it may result in contempt of court;
 - d) A breach of privilege of legislatures;
 - e) Commercial confidence, trade secrets, intellectual property (if it harms a third party);
 - f) That relayed in a fiduciary capacity;
 - g) That received from a foreign government;
 - h) That which could endanger a person's safety etc.;
 - i) That which would impede an investigation etc.;
 - j) Personal matters or invasion of privacy.

However, if information related to (ii), (v), (vi), and (x) is available under the Right to Information Act, 2005, then it can be disclosed under the Act.

- v) Any public interest disclosure received by a Competent Authority will be referred to a government authorised authority if it falls under any of the above prohibited categories. This authority will take a decision on the matter, which will be binding.
- vi) The Identity of the Complainant must be included in the Complaint or the Disclosure. However the Designated Agency shall conceal the identity of the complainant unless the complainant himself has revealed his identity to any other office or authority while making public interest disclosure or in his complaint or otherwise. However, the Designated Agency can reveal the identity of the complainant in circumstances where it becomes inevitable or extremely necessary for the purposes of the enquiry.
- vii) The Designated Agency may, with the prior written consent of the complainant, reveal the identity of the complainant to such office or organization where it becomes necessary to do so. If the complainant does not agree to his name being revealed, in that case, the complainant shall provide all documentary evidence in support of his complaint to the Designated Agency.
- viii) Any person who negligently or with mala fide reveals the identity of the complainant shall be punished with imprisonment up to three years and fine not exceeding fifty thousand rupees.
- ix) Similarly any disclosure made with mala fide and knowingly that it was false or misleading shall be punished with imprisonment up to two years and fine not exceeding thirty thousand rupees.
- x) After receipt of the report or comments relating to the complaint, if the Designated Agency is of the opinion that such comments or report reveals either wilful misuse of

power or wilful misuse of discretion or substantiates allegations of corruption, it shall recommend to the public authority to take appropriate corrective measures such as initiating proceedings against the concerned public servant or other administrative and corrective steps. However, in case the public authority does not agree with the recommendation of the Designated Agency, it shall record the reasons for such disagreement.

- xi) While dealing with any such inquiry, the Designated Agency shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908 in respect of matters like receiving evidence, issuing commissions, discovery and production of any document etc. Also, every proceeding before the Designated Agency shall be deemed to be a judicial proceeding under the Code of Criminal Procedure, 1973 and Indian Penal Code.
- xii) No obligation to maintain secrecy or other restrictions upon the disclosure of information shall be claimed by any Public Servant in the proceedings before the Designated Agency.
- xiii) But, no person is required to furnish any information in the inquiry under this act if such information falls under the 10 (ten) categories mentioned before.
- xiv) It shall be the responsibility of the Central Government to ensure that no person who has made a disclosure is victimised on the ground that such person had made a disclosure under this act.
- xv) If any person is victimised or likely to be victimised on the above-mentioned ground, he may contact the Designated Agency and the Designated Agency may pass appropriate directions in this respect. The Designated Agency can even restore status quo ante with respect to the Public Servant who has made a disclosure. Also, the Designated Agency can pass directions to protect such complainant.
- xvi) If an offence under this act has been committed by any Head of the Department unless he proves that the offence was committed without his knowledge or that he exercised all due diligence in this respect.
- xvii) This Act extends to all the Companies as well. When any offence under this act has been committed by a company, every person who at the time of the offence was responsible for the conduct of the business of the company shall be deemed to be guilty of the offence unless he proves that the offence was committed without his knowledge or that he exercised all due diligence in this respect.
- xviii) No court can take cognizance of any offence under this act save on a complaint made by the Designated Agency. No court inferior to that of a Chief Metropolitan Magistrate or a Chief Judicial Magistrate shall try any offence under this act. The High Court shall be the appellate authority in this respect.

Appendix 3: Electronic Procurement (e-Procurement)

(Refer Para 4.5)

1.0 Electronic procurement (e-procurement)

E-procurement is the use of information and communication technology (specially the internet) by the buyer in conducting procurement processes with the vendors/ contractors for the acquisition of goods (supplies), works and services aimed at open, non-discriminatory and efficient procurement through transparent procedures. The Procurement Policy Division, Department of Expenditure, MoF, has vide Office Memorandum no: 10/3/2012-PPC dated January 9, 2014⁶⁶ prescribed mandatory procurement of tenders through the e-procurement mode for tenders valued above Rupees two lakh. (as per GFR, 2017, now this is mandatory for all tenders)

2.0 Service Provider

A service provider is engaged to provide an e-procurement system covering the following:

- i) All steps involved, starting from hosting of tenders to determination of techno-commercially acceptable lowest bidder, are covered;
- ii) The system archives the information and generates reports required for the management information system/decision support system;
- iii) A helpdesk is available for online and offline support to different stakeholders;
- iv) The system arranges and updates the Digital Signature Certificate (DSC) for departmental users; and
- v) Different documents, formats, and so on, for the e-procurement systems are available.

3.0 The e-Procurement Process: In e-procurement, all processes of tendering have the same content as in normal tendering and are executed, once the necessary changes have been made, online by using the DSC as follows:

- i) **Communications:** Wherever traditional procedures refer to written communication and documents, the corresponding process in e-procurement would be handled either fully online by way of uploading/downloading/emails or automatically generated SMSs or else partly online and partly offline submission. It is advisable to move to full submissions online. More details would be available from e-procurement service provider's portal. In e-procurement, the tender fee, EMD and documents supporting exemption from such payments are submitted in paper form to the authority nominated in the NIT, but scanned copies are to be uploaded – without which the bid may not get opened. In future, such payments may be allowed online also;
- ii) **Publishing of tenders:** Tenders are published on the e-procurement portal by authorised executives of Procuring Entity with DSC. After the creation of the tender, a unique "tender id" is automatically generated by the system. While

⁶⁶ http://eprocure.gov.in/cppp/sites/default/files/instruction_contents/INST_DOC_NO_1/eProcurement0901208.4.pdf

creating/publishing the tender, the "bid openers" are identified – four officers (two from the Procuring Entity and two from the associated/integrated Finance) with a provision that tenders may be opened by any two of the four officers. As in case of normal tenders, NITs are also posted on the Procuring Entity website. The downloading of the tender may start immediately after e-publication of NIT and can continue till the last date and time of bid submission. The bid submission will start from the next day of e-publication of NIT. In case of limited and PAC/ single tenders, information should also be sent to target vendors/contractors through SMS/email by the portal;

- iii) **Registration of bidders on portal:** In order to submit the bid, bidders have to register themselves online, as a one-time activity, on the e-procurement portal with a valid DSC. The registration should be in the name of the bidder, whereas DSC holder may be either the bidder himself or a duly authorised person. The bidders will have to accept, unconditionally, the online user portal agreement which contains all the terms and conditions of NIT including commercial and general terms and conditions and other conditions, if any, along with an online undertaking in support of the authenticity of the declarations regarding facts, figures, information and documents furnished by the bidder online;
- iv) **Bid submission:** The bidders will submit their techno-commercial bids and price bids online. No conditional bid shall be allowed/ accepted. Bidders will have to upload scanned copies of various documents required for eligibility and all other documents as specified in NIT, techno-commercial bid in cover-I, and price bid in cover-II. To enable system generated techno-commercial and price comparative statements, such statements should be asked to be submitted in Excel formats. The bidder will have to give an undertaking online that if the information/declaration/scanned documents furnished in respect of eligibility criteria are found to be wrong or misleading at any stage, they will be liable to punitive action. EMD and tender fee (demand draft/banker's cheque/pay order) shall be submitted in the electronic format online (by scanning) while uploading the bid. This submission shall mean that EMD and tender fee are received electronically. However, for the purpose of realisation, the bidder shall send the demand draft/banker's cheque/pay order in original to the designated officer through post or by hand so as to reach by the time of tender opening. In case of exemption of EMD, the scanned copy of the document in support of exemption will have to be uploaded by the bidder during bid submission;
- v) **Corrigendum, clarifications, modifications and withdrawal of bids:** All these steps are also carried out online mutatis mutandis the normal tendering process;
- vi) **Bid opening:** Both the techno-commercial and price bids are opened online by the bid openers mentioned at the time of creation of the tender online. Relevant bidders can simultaneously take part in bid opening online and can see the resultant bids of all bidders. The system automatically generates a technical scrutiny report and commercial scrutiny report in case of the techno-commercial bid opening and a price comparative statement in case of price bid opening which can also be seen by participating bidders online. Bid openers download the bids and the reports/statements and sign them for further processing. In case of opening of the price bid, the date and time of opening is uploaded on the portal and shortlisted firms

are also informed through system generated emails and SMS alerts – after shortlisting of the techno-commercially acceptable bidders;

- vii) **Shortfall document:** Any document not enclosed by the bidder can be asked for, as in case of the traditional tender, by the purchaser and submitted by the bidder online, provided it does not vitiate the tendering process;
- viii) **Evaluation of techno-commercial and price bids:** This is done offline in the same manner as in the normal tendering process, based on system generated reports and comparative statements;
- ix) **Award of contract:** Award of the contract is done offline and a scanned copy is uploaded on the portal. More needs to be done in this regard. The information and the manner of disclosure in this regard must conform to Section 4(1) (b), 4(2) and 4(3) of the RTI Act to enhance transparency and also to reduce the need for filing individual RTI applications. Therefore, the award must be published in a searchable format and be linked to its NIT. Please see Para 8.5 for further details; and
- x) **Return of EMD:** EMD furnished by all unsuccessful bidders should be returned through an e-payment system without interest, at the earliest, after the expiry of the final tender validity period but not later than 30 (thirty) days after conclusion of the contract. EMD of the successful bidder should be returned after receipt of performance security as called for in the contract.



Government of India
Ministry of Finance
Department of Expenditure



**MANUAL
FOR
PROCUREMENT OF
GOODS
(Updated June, 2022)**



**Government of India
Ministry of Finance
Department of Expenditure**

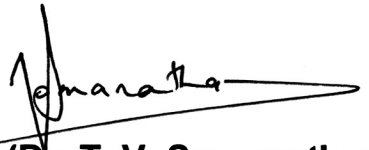
Manual for Procurement of Goods

(Updated June, 2022)

Government of India
Ministry of Finance
Department of Expenditure

FOREWORD

1. The Manual for Procurement of Goods was comprehensively revised and issued in 2017. The manual, over a period of time, has become a standard reference document for officials involved in Public Procurement across all Ministries/ Departments/ Attached and Sub-ordinate bodies/ Central Public Sector Enterprises, etc. The Manual is also a resource material for institutes providing training on Public Procurement.
2. Public Procurement is a dynamic field where policies are constantly reviewed to help Government achieve its socio-economic or strategic goals. Hence, there is a need to keep reference documents, like manuals, updated to ensure their continued relevance.
3. Instructions on procurement issued by Department of Expenditure from time to time, since issuance of the last Manual, have been incorporated in the current edition. **Further, all procurement related instructions issued by Central Vigilance Commission have been subsumed into the Manual, in collaboration with the Commission.**
4. I would like to acknowledge the hard work of the concerned officers not only in this Department but in other Organisations, Ministries and Departments; the role of Shri Vikram Rajvanshi, Consultant (Public Procurement) is also specifically acknowledged.
5. I hope that this updated Manual will help procuring officials working in various Ministries/ Departments and Public Enterprises as a guiding template, deepen the impact of policy initiatives and improve the ease of doing business with the Government.



(Dr. T. V. Somanathan)
Finance Secretary

Date: 1st July, 2022

FOREWORD

1. Government organizations procure a wide variety of goods and services and undertake execution of works in pursuance of their duties and responsibilities. With a view to improving transparency in decision making in public procurement and reducing the scope for subjectivity, Department of Expenditure in 2006 had prepared a set of three Manuals on Policies and Procedures for Procurement of Goods, Works and hiring of Consultants, in conformity with the General Financial Rules (GFR), 2005. Over the years, these Manuals have served as a guide book for procurement.
2. In the last few years, the Government of India has issued new instructions in the domain of public procurement. Some of these important changes include introduction of Central Public Procurement Portal (CPPP), Government e-Marketplace (GeM), preferential market access for micro and small enterprises, preference for domestic manufacturers of electronic goods, inclusion of integrity pact, etc. The GFR has been revised comprehensively in March 2017 covering inter-alia these set of new instructions. Consequently the Manual of Procurement too has been revised after a decade and within a month of the release of GFR 2017.
3. The new Manual on Procurement of Goods has been extensively revised in keeping with GFR 2017 and in consonance with the fundamental principles of transparency, fairness, competition, economy, efficiency and accountability. Efforts have been made to cover all major aspects of procurement in this Manual in a user-friendly manner. The manual is the outcome of extensive consultations in two stages with Ministries/Departments/PSUs and other organizations over a period of six months.
4. Manuals issued by this Department are to be taken as generic guidelines, which have to be necessarily broad in nature. Ministries/Departments are advised to supplement this manual to suit their local/specialized needs, by issuing their own detailed manuals (including customized formats); Standard Bidding Documents and Schedule of Procurement Powers to serve as detailed instructions for their own procuring officers.
5. I would like to acknowledge the lead taken by Dr. Vivek Joshi, Joint Secretary, DoE and dedicated efforts of Shri Sanjay Aggarwal, Director (PPD), Shri Vinayak T. Likhari, Under Secretary(PPD) and Shri Girish Bhatnagar, Consultant (Public Procurement) in revision of this Manual. I would also like to thank Ministries, Departments, other organisations and individuals who reviewed the drafts of the Manual and provided their valuable inputs.
6. I hope that this Manual would be useful to procuring officials working in various Ministries/ Departments as operating instructions and will bring about greater transparency and predictability in government procedures and help in improving the ease of doing Business with Government.


(Ashok Lavasa)
Finance Secretary

Date : 05.04.2017

Disclaimer

While every care has been taken to ensure that the contents of this manual are accurate and up to date till June 2022, the procuring entities are advised to check the precise current provisions of law and other applicable instructions from the original sources. In case of any conflict between the provisions stipulated in this manual and in the original source such as GFR or the prevailing laws, the provisions contained in the extant law and the original instructions shall prevail.

Table of Contents

FOREWORD	iii
Disclaimer.....	vii
Abbreviations and Acronyms.....	xiv
Procurement Glossary.....	xvii
Chapter 1: Introduction – Policies and Principles	1
1.1 Procurement Rules and Regulations; and this Manual.....	1
1.2 Clarification, Amendments and Revision of this Manual.....	1
1.3 Applicability of this Manual.....	2
1.4 Authorities competent to purchase goods and their Purchase Powers	3
1.5 Basic Aims of Procurement – the Five R’s of Procurement	3
1.6 Refined Concepts of Cost and Value – Value for Money	4
1.7 Fundamental Principles of Public Procurement.....	4
1.8 Standards (Canons) of Financial Propriety.....	13
1.9 Public Procurement Infrastructure at the Centre.....	14
1.10 Product Reservation and Preferential/Mandatory Purchase from certain sources	15
1.11 Proactive Information Disclosures	25
1.12 Public Procurement Cycle.....	26
Chapter 2: Need assessment, formulation of Specifications and Procurement Planning	27
2.1 Need Assessment.....	27
2.2 Formulation of Technical specifications (TS).....	29
2.3 Obtaining Technical, Administrative and Budgetary Sanctions/ Approvals and signing of Indents	33
2.4 Procurement Planning	34
Chapter 3: Supplier Relationship Management.....	36
3.1 Supplier Relationship Management.....	36
3.2 Code of Integrity for Public Procurement (CIPP)	36
3.3 Integrity Pact (IP)	39
3.4 Development of New Sources and Registration of Suppliers	41
3.5 Debarment of Suppliers	46
3.6 Compulsory Enlistment of Indian Agents.....	50
Chapter 4: Modes of Procurement and Bidding Systems.....	51
4.1 Modes of Procurement.....	51
4.2 Open Tender Enquiry(OTE).....	51
4.3 Global Tender Enquiry(GTE)	53
4.4 Limited Tender Enquiry(LTE).....	58
4.5 Special Limited Tender Enquiry for Procurements More than Rs. 25 (Rupees twenty-five) Lakh	60
4.6 Proprietary Article Certificate	61

4.7	Single Tender Enquiry (STE) without a PAC	62
4.8	Drawals against Rate Contract (RC)/Framework Contract (FC).....	63
4.9	Direct Procurement without Quotation	66
4.10	Direct Procurement by Purchase Committee.....	67
4.11	Purchase through Central Purchase Organisation or other Organizations.....	68
4.12	Bidding Systems	69
4.13	Single Stage Bidding System.....	70
4.14	Two Stage Bidding - Expression of Interest Tenders – Market Exploration	73
4.15	Electronic Procurement (e-Procurement)	76
4.16	Electronic Reverse Auction (RA)	77
4.17	One Stop Government e-Marketplace (GeM).....	78
Chapter 5: Preparing bid documents, publication, receipt and opening of bids		91
5.1	Preparation of Bid Documents	91
5.2	Receipt and Custody of Tenders	100
5.3	Procedures to be followed during Bid Opening.....	102
Chapter 6: Forms of Securities, Payment Terms and Price Variations		105
6.1	Forms of Security.....	105
6.2	Payment Clause.....	108
6.3	Terms of Payment for Domestic Goods.....	110
6.4	Terms of Payment for Imported Goods.....	111
6.5	Advance Payment.....	113
6.6	Firm Price vis-à-vis Variable Price	114
6.7	Exchange Rate Variation	116
6.8	Taxes, Duties and Levies.....	116
6.9	Incoterms Terms of Delivery	118
6.10	e-Payment.....	119
6.11	Deduction of Income Tax, Service Tax, and so on, at Source from Payments to Suppliers	120
6.12	Recovery of Public Money from Supplier's Bill	120
6.13	Refund from Supplier	120
6.14	Payment against Time Barred Claims	120
Chapter 7: Evaluation of Bids and Award of Contract		121
7.1	Tender Evaluation.....	121
7.2	Preparation and Vetting of Comparative Statement	122
7.3	Preliminary Examination	122
7.4	Evaluation of Responsive Bids and Decision on Award of Contract.....	124
7.5	Deliberations by the Tender Committee for Award of Contract.	127
7.6	Award of Contract	135
Chapter 8: Rate Contract and other Procurements with special features		141
8.1	Rate Contracts	141

8.2 Handling Procurement in urgencies/ Emergencies and Disaster Management ..	144
8.3 Buy Back Offer.....	144
8.4 Capital Goods/ Equipment (Machinery and Plant – M&P).....	144
8.5 Turnkey Contract	145
8.6 Annual Maintenance Contract (AMC)	145
Chapter 9: Contract Management	148
9.1 Contract Management	148
9.2 Amendment to the Contract.....	148
9.3 Operation of Option Clause	149
9.4 Safeguards for Handing over Procuring Entity Materials/Equipment to Contractors	150
9.5 Payments to the Contractor and Handling of Securities	151
9.6 Monitoring of Supplier Performance	151
9.7 Delays in Performance of Contract.....	151
9.8 Breach of Contract, Remedies and Termination.....	156
9.9 Dispute Resolution.....	158
9.10 Closure of Contract.....	160
9.11 Goods Receiving.....	161
9.12 Quality Assurance and Inspection	162
9.13 Storage and Issue of Inspected Goods.....	169
9.14 Accounting and Payment of Received Materials	169
Chapter 10: Disposal of Scrap Goods	172
10.1 Scrap for Disposal.....	172
10.2 Classification and Categorisation.....	172
10.3 Survey of Materials for Classifying as Scrap for Disposal	172
10.4 Modes of Disposal	173
10.5 Preparation for Disposal	174
10.6 Conditions of Disposal Applicable to all Modes of Disposal	174
10.7 Disposal through Tender.....	175
10.8 Disposal through Auction	177
10.9 Disposal at scrap value or by other modes.....	177
10.10 Delivery of Sold Material.....	178
10.11 Procedure for Adjustment of Sale Proceeds in the Books of Accounts.....	180
Annexure 1: Procurement Guidelines.....	182
Annexure 2A: Delegation of Financial Powers – Indents, Contracts and Purchases for public service	183
Annexure 2B: Powers for Incurring Contingent Expenditure.....	184
Annexure 2C: Suggested Structure of Schedule of Procurement Powers (SoPP)	185
Annexure 2D: Format for seeking the approval of the Competent Authority for inviting Global Tender Enquiry for procurements less than Rs. 200 crores.....	188

Annexure 2E: List of Medical Devices and IVDs, where local manufacturers are not available, as on 17.12.2021 (as verified with the Medical Devices Manufacturing Associations)	191
Annexure 2F: Model Clause/ Certificate to be inserted in tenders etc. w.r.t Order (Public Procurement No.1)	194
Annexure 3: Purchase Requisition (Indent) for Goods (Non-stock)	197
Annexure 4A: Purchase Requisition Register for Indenters	198
Annexure 4B: Purchase Requisition Register for Procuring Entity.....	199
Annexure 5: Limited Tender Form.....	200
Annexure 6: Proprietary Article Certificate	202
Annexure 7: Purchase without Quotation Format.....	203
Annexure 8: Purchase Committee Certificate Format	204
Annexure 9: Sample Prequalification Criteria.....	205
Annexure 10: Bid Opening Attendance Sheet cum Report	208
Annexure 11: Tender Committee Minutes Format	209
Annexure 12: Invitation and Declaration for Negotiations	211
Annexure 13: Format of Revised Offer in Negotiations	212
Annexure 14: Letter (Notification) of Award (LoA) of Contract	213
Annexure 15: Example of Formula for Price Variation Clause	214
Annexure 16: Incoterms	216
Annexure 17: Progress of Supply Order Register	217
Annexure 18: Proposal for Extension of Delivery Period.....	218
Annexure 19: Format for Extension of Delivery Period/Performance Notice.....	219
Annexure 20: Model Format for Correspondence with Supplier after Expiry of Delivery Date	221
Annexure 21: No Claim Certificate	222
Annexure 22: Goods Receipt and Inspection Report	223
Annexure 23: Pay Order Form	224
Annexure 24: Survey Committee's Report	225
Annexure 25: Sale Account for Goods Disposed	226
Annexure 26: Deleted.....	227
Annexure 27: List of Medicines Reserved for procurement from Pharma CPSEs	228
Annexure 28 Deleted.....	231
APPENDIX.....	232
Appendix 1: Advanced Concepts of Value for Money	233
1.0 The Concept of Value	233
2.0 Total Cost of Ownership	233
3.0 Value for Money.....	234
Appendix– 2: Legal Aspects of Public Procurement.....	235
1.0 Relevant Provisions of the Constitution of India	235

2.0 Salient Features of the Indian Contract Act	236
3.0 Salient Features of the Sales of Goods Act, 1930	242
4.0 Salient Features of the Indian Arbitration & Conciliation Act 1996	243
5.0 Salient Features of Competition Act, 2002 relating to Anti-competitive Practices	247
6.0 Salient Features of the Whistle Blowers Protection Act, 2011 and the Whistle Blowers Protection (Amendment) Act, 2015.....	250
Appendix 3: Electronic Procurement (e-Procurement) and e-Auction.....	253
1.0 Electronic procurement (e-procurement)	253
2.0 Service Provider:.....	253
3.0 Process:	253
4.0 Disposal through e-Auction.....	255
Appendix 4: Management of Public Procurement Function	260
1.0 Organisation of Procurement Function	260
2.0 Management Reporting	260
3.0 Record Keeping	261
Appendix 5: Templates for Management Reports and KPIs	262

Abbreviations and Acronyms

AMC	Annual Maintenance Contract	CPO	Central Purchasing Organizations
ACASH	Association of Corporations and Apex Societies of Handlooms	CPPP	Central Public Procurement Portal
AITB	Additional Instructions to Bidders (may in some instances be called Bid Data Sheet – BDS or Tender Information Sheet -TIS)	CPSE	Central Public Sector Enterprise
AMC	Annual Maintenance Contract	CRAC	Consignee Receipt and Acceptance Certificate
BC	Bill Currency (selling/ buying)	CST	Central Sales Tax
BEE	Bureau of Energy Efficiency	CVC	Central Vigilance Commission
BG	Bank Guarantee	CVO	Chief Vigilance Officer
BIS	Bureau of Indian Standards	DCF	Discounted Cash Flow
BOC	Bid Opening Committee	DDO	Direct Demanding Officer (for RCs)
BSTC	Buyer Specific Terms & Conditions	DFPR	Delegation of Financial Power
BSV	Balance Sale Value	DGS&D	Directorate General of Supplies and Disposals
C&AG	Comptroller and Auditor General (of India)	DPIIT	Department for Promotion of Industry and Internal Trade
CA	Competent Authority	DSC	Digital Signature Certificate
CAPEX	Capital Expenditure (model of acquisition/ procurement)	eASP	E-Auction Service Provider
CBI	Central Bureau of Investigation	ECS	Electronic Clearing System
CCI	Competition Commission of India	EFT	Electronic Funds Transfer
CFR	Cost and Freight	EMD	Earnest Money Deposit
CHA	Custom House Agent	EoI	Expression of Interest (Tender)
CIF	Cost Insurance and Freight	EPM	Export Promotion and Marketing
CIP	Carriage and Insurance Paid	ERV	Exchange Rate Variation
CIPP	Code of Integrity for Public Procurement	EXIM	Export Import (Policy)
CMC	Comprehensive Maintenance Contract	FA (&CAO)	Financial Adviser (and Chief Accounts Officer)
COMPAT	Competition Appellate Tribunal	FAS	Free Alongside Ship
COTS	Commercially Off The Shelf (Items)	FC	Framework Contract
CPCB	Central Pollution Control Board	FEMA	Foreign Exchange Management Act
		FM	Force Majeure
		FOB	Free On Board
		FOR	Free On Rail

FOT	Free On Truck	LPP	Last Purchase Price
GCC	General Conditions of Contract	LTE	Limited Tender Enquiry
GCS	General Conditions of Sale	M&P	Machinery and Plant
GeM	Government Electronic Market	MeitY	Ministry of Electronics and Information Technology
GeMAR&PTS	GeM Availability Report and Past Transaction Summary	MoEF	Ministry of Environment and Forests
GFR	General and Financial Rules, 2017	MRP	Maximum Retail Price
Gol	Government of India	MSE	Micro and Small Enterprise
GRIR	Goods Receipt and Inspection Report	MSME(D)	Micro Small and Medium Enterprises (Development Act, 2006)
GTC	General Terms & Conditions	MSTC	Metal Scrap Trading Corporation
GTE	Global Tender Enquiry	NEFT	National Electronic Funds Transfer
HOD	Head of the Department	NIC	National Informatics Centre
IEM	Independent External Monitor	NIT	Notice Inviting Tender
INCOTERMS	International Commercial Terms	NSIC	National Small Industries Corporation
IP	Integrity Pact	NTH	National Test House
IRDA	Insurance Regulatory and Development Authority	OEM	Original Equipment Manufacturer
ISI	Indian Standards Institute	OES	Original Equipment Suppliers
ISO	International Organization for Standardization	OPEX	Operating Expense (model of acquisition/ procurement)
ITB	Instructions to Bidders (may in some instance be called Instructions to Tenderers - ITT)	OPMs	Original Parts Manufacturers
ITJ	Indian Trade Journal	OTE	Open Tender Enquiry
JLG	Joint Liability Group	PAC	Proprietary Article Certificate
KPIs	Key Performance Indices	PBG	Performance Bank Guarantee, also see SD
KVIC	Khadi and Village Industries Commission	PC	Producer Companies
L1	Lowest Bidder	PPD	Procurement Policy Division, Department of Expenditure, Ministry of Finance
LC	Letter of Credit	PPP	Public Private Partnership
LCC	Life Cycle Costing	PPP-MII	Public Procurement (Preference to Make in India), Order
LD	Liquidated Damages	PQB	Pre-qualification Bidding
LoA	Letter (Notification) of Award also called Acceptance of Tender (A/T)	PQC	Pre-qualification Criterion

PR	Purchase Requisition/ Indent	STC	Special Terms & Conditions
PSU	Public Sector Undertaking	STE	Single Tender Enquiry
PVC	Price Variation Clause	TC	Tender Committee also called Tender Purchase or Evaluation Committee (TPC/ TEC)
QA	Quality Assurance	TCO	Total Cost of Ownership
RA/ eRA	Electronic Reverse Auction	TCS	Tax Collected at Source
RBI	Reserve Bank of India	TDS	Tax Deducted at Source
RC	Rate Contract (or Framework Contract FC)	ToR	Terms of Reference
(S)RfP	(Standard) Request for Proposals (Document)	TS	Technical Specification
RTGS	Real Time Gross Settlement	UAM	Udyam Aadhaar Memorandum
RTI	Right to Information	UCP 600	The Uniform Customs and Practice for Documentary Credits (UCPDC or simply UCP)
SBD	Standard Bidding Document	UNCITRAL	United Nations Commission on International Trade Law
SC	Survey Committee	URC	Udyam Registration Certificate
SCC	Special Conditions of Contract	URDG 758	Uniform Rules for Demand Guarantees
SD	Security Deposit, also see PBG	VAT	Value Added Tax
SHG	Self Help Group	VfM	(Best) Value for Money
SLA	Service Level Agreement	WOL	Whole of Life (Cost) or Total Cost of Ownership TCO
SLTE	Special Limited Tender (Enquiry)		
SoPP	Schedule of Procurement Powers		
SPCB	State Pollution Control Board		
STA	Subject to Acceptance		

Procurement Glossary

In this Manual and in the 'Procurement Guidelines', unless the context otherwise requires¹:

- i) "Bid" (including the term 'tender', 'offer', 'quotation' or 'proposal' in certain contexts) means an offer to supply goods, services or execution of works made in accordance with the terms and conditions set out in a document inviting such offers;
- ii) "Bidder" (including the term 'tenderer', 'consultant' or 'service provider' in certain contexts) means any eligible person or firm or company, including a consortium (that is an association of several persons, or firms or companies), participating in a procurement process with a procuring entity;
- iii) "(Standard) Bid(ding) documents" (including the term 'tender (enquiry) documents' or 'Request for Proposal Documents' – RfP documents in certain contexts) means a document issued by the procuring entity, including any amendment thereto, that sets out the terms and conditions of the given procurement and includes the invitation to bid. A Standard (Model) Bidding Document is the standardised template to be used for preparing Bidding Documents after making suitable changes for specific procurement;
- iv) "Bidder registration document" means a document issued by a procuring entity, including any amendment thereto, that sets out the terms and conditions of registration proceedings and includes the invitation to register;
- v) "Bid security" (including the term 'Earnest Money Deposit'(EMD), in certain contexts) means a security from a bidder securing obligations resulting from a prospective contract award with the intention to avoid: the withdrawal or modification of an offer within the validity of the bid, after the deadline for submission of such documents; failure to sign the contract or failure to provide the required security for the performance of the contract after an offer has been accepted; or failure to comply with any other condition precedent to signing the contract specified in the solicitation documents.;
- vi) "Central Public sector enterprise" means a body incorporated under the Companies Act or established under any other Act and in which the Central Government or a Central enterprise owns more than 50 per cent of the issued share capital;
- vii) "Central Purchase Organisation" means a procuring entity which is authorised by the Government of India by an order, made in this behalf, to make procurement for one or more procuring entities. However, Government can authorise other Organisations for specific categories of materials;
- viii) "Class-I local supplier" means a supplier or service provider, whose goods, services or works offered for procurement, meet the minimum local content as prescribed for 'Class-I local supplier' under the Public Procurement (Preference to Make in India), Order 2017²;
- ix) "Class-II local supplier" means a supplier or service provider, whose goods, services or works offered for procurement, meets the minimum local content as prescribed for

¹ The main preferred term is within the inverted commas. Alternative equivalent terms used in certain contexts, if any, are listed in the brackets. Text within brackets is not considered for sort-order of terms.

²Notified vide Order No. P-45021/2/2017-PP (BE-II) issued by Department of Promotion of Industry and Internal Trade dated 16.09.2020

'Class-II local supplier' but less than that prescribed for 'Class-I local supplier' under the Public Procurement (Preference to Make in India), Order 2017³;

- x) "Competent authority" means the officer(s) who finally approves the decision.
- xi) "Consultancy services" means a one-off (that is, not repetitive and not routine) services, involving project specific intellectual and procedural processes using established technologies and methodologies but the outcomes – which are primarily of non-physical nature – may not be standardised and would vary from one consultant to another. It may include small works or supply of goods which are incidental or consequential to such services;
- xii) "e-Procurement" means the use of information and communication technology (specially the internet) by the procuring entity in conducting its procurement processes with bidders for the acquisition of goods (supplies), works and services with the aim of open, non-discriminatory and efficient procurement through transparent procedures;
- xiii) "Goods" includes all articles, material, commodity, livestock, medicines, furniture, fixtures, raw material, consumables, spare parts, instruments, machinery, equipment, industrial plant, vehicles, aircrafts, ships, railway rolling stock assemblies, sub-assemblies, accessories, a group of machines comprising an integrated production process or such other categories of goods or intangible, products like technology transfer, licenses, patents or other intellectual properties (but excludes books, publications, periodicals, etc., for a library), procured or otherwise acquired by a procuring entity. Procurement of goods may include certain small work or some services, which are incidental or consequential to the supply of such goods, such as transportation, insurance, installation, commissioning, training and maintenance;
- xiv) "Indenter" (or the term 'User (Department)' in certain contexts) means the entity and its officials initiating a procurement indent, that is, a request to the procuring entity to procure goods, works or services specified therein;
- xv) "Inventory" means any material, component or product that is held for use at a later time;
- xvi) "Invitation to (pre-)qualify" means a document including any amendment thereto published by the procuring entity inviting offers for pre-qualification from prospective bidders;
- xvii) "Invitation to register" means a document including any amendment thereto published by the procuring entity inviting offers for bidder registration from prospective bidders;
- xviii) "Local Content" means the amount of value added in India which shall, unless otherwise prescribed by the Nodal Ministry, be the total value of the item procured (excluding net domestic indirect taxes) minus the value of imported content in the item (including all customs duties) as a proportion of the total value, in percent⁴.

³Notified vide Order No. P-45021/2/2017-PP (BE-II) issued by Department of Promotion of Industry and Internal Trade dated 16.09.2020

⁴Notified vide Order No. P-45021/2/2017-PP (BE-II) issued by Department of Promotion of Industry and Internal Trade dated 16.09.2020

- xix) "Non-consultancy services" includes services of physical and procedural nature and are bid and contracted on the basis of performance of a measurable physical output, and for which performance standards can be clearly identified and consistently applied such as drilling, aerial photography, satellite imagery, mapping and similar operations. It may include small works or supply of goods which are incidental or consequential to such services;
- xx) "Non-Local supplier" means a supplier or service provider, whose goods, services or works offered for procurement, has local content less than that prescribed for 'Class-II local supplier' under the Public Procurement (Preference to Make in India), Order 2017⁵;
- xxi) " Notice inviting tenders" (including the term 'Invitation to bid' or 'request for proposals' in certain contexts) means a document and any amendment thereto published or notified by the procuring entity, which informs the potential bidders that it intends to procure goods, services and/or works.;
- xxii) "Pre-qualification (bidding) procedure" means the procedure set out to identify, prior to inviting bids, the bidders that are qualified to participate in the procurement;
- xxiii) "Pre-qualification document" means the document including any amendment thereto issued by a procuring entity, which sets out the terms and conditions of the pre-qualification bidding and includes the invitation to pre-qualify;
- xxiv) "Procurement" or "public procurement" (or 'Purchase', or 'Government Procurement/ Purchase' in certain contexts) means acquisition by way of purchase, lease, license or otherwise, either using public funds or any other source of funds (e.g. grant, loans, gifts, private investment etc.) of goods, works or services or any combination thereof, including award of Public Private Partnership projects, by a procuring entity, whether directly or through an agency with which a contract for procurement services is entered into, but does not include any acquisition of goods, works or services without consideration, and the term "procure" or "procured" shall be construed accordingly;
- xxv) "Procurement contract" (including the terms 'Purchase Order' or 'Supply Order' or 'Withdrawal Order' or 'Work Order' or 'Consultancy Contract' or 'Contract for Services' under certain contexts), means a formal legal agreement in writing relating to the subject matter of procurement, entered into between the procuring entity and the supplier, service provider or contractor on mutually acceptable terms and conditions and which are in compliance with all the relevant provisions of the laws of the country. The term "contract" will also include "rate contract" and "framework contract";
- xxvi) "(Public) Procurement Guidelines" means guidelines applicable to Public Procurement, consisting of under relevant context a set of – i) Statutory Provisions (The Constitution of India; Indian Contract Act, 1872; Sales of Goods Act, 1930; and other laws as relevant to the context); ii) Rules & Regulations (General Financial Rules, 2017; Delegation of Financial Power Rules and any other regulation so declared by the Government); iii) Manuals of Policies and Procedures for Procurement (of Goods; Works; Consultancy Services or any for other category)

⁵Notified vide Order No. P-45021/2/2017-PP (BE-II) issued by Department of Promotion of Industry and Internal Trade dated 16.09.2020

- promulgated by the Ministry of Finance and iv) Procuring Entity's Documents relevant to the context (Codes, Manuals and Standard/ Model Bidding Documents);
- xxvii) "Procurement process" means the process of procurement extending from the assessment of need; issue of invitation to pre-qualify or to register or to bid, as the case may be; the award of the procurement contract; execution of contract till closure of the contract;
- xxviii) "Procuring authority" means the officer who finally approves as well as those officials and committee members who submit the notes/reports for the approval for any decision.
- xxix) "Procuring entity" means any Ministry or Department of the Central Government or a unit thereof or its attached or subordinate office to which powers of procurement have been delegated;
- xxx) "Prospective bidder" means anyone likely or desirous to be a bidder;
- xxxi) "Public Private Partnership" means an arrangement between the central, a statutory entity or any other Government-owned entity, on one side, and a private sector entity, on the other, for the provision of public assets or public services or both, or a combination thereof, through investments being made or management being undertaken by the private sector entity, for a specified period of time, where there is predefined allocation of risk between the private sector and the public entity and the private entity receives performance-linked payments that conform (or are benchmarked) to specified and predetermined performance standards, deliverables or Service Level agreements measurable by the public entity or its representative;
- xxxii) "Rate contract" (or the term 'framework agreement' in certain contexts) means an agreement between a Central Purchase Organisation or procuring entity with one or more bidders, valid for a specified period of time, which sets out terms and conditions under which specific procurements can be made during the term of the agreement and may include an agreement on prices which may be either predetermined or be determined at the stage of actual procurement through competition or a predefined process allowing their revision without further competition;
- xxxiii) "Registering authority" means an authority which registers bidders for different categories of procurement.
- xxxiv) "Registered Supplier" means any supplier who is on a list of registered suppliers of the procuring entity or a Central Purchase Organisation;
- xxxv) "Reverse auction" (or the term 'Electronic reverse auction' in certain contexts) means an online real-time purchasing technique utilised by the procuring entity to select the successful bid, which involves presentation by bidders of successively more favourable bids during a scheduled period of time and automatic evaluation of bids;
- xxxvi) "Service" means any subject matter of procurement other than goods or works, except those incidental or consequential to the service, and includes physical, maintenance, professional, intellectual, training, consultancy and advisory services or any other service classified or declared as such by a procuring entity but does not include appointment of an individual made under any law, rules, regulations or order issued in this behalf;
- xxxvii) "Subject matter of procurement" means any item of procurement whether in the form of goods, services or works or a combination thereof;
- xxxviii) "Works" refer to any activity, sufficient in itself to fulfil an economic or technical function, involving construction, fabrication, repair, overhaul, renovation, decoration, installation, erection, excavation, dredging, and so on, which make use of a

combination of one or more of engineering design, architectural design, material and technology, labour, machinery and equipment. Supply of some materials or certain services may be incidental or consequential to and part of such works. The term "Works" includes (i) civil works for the purposes of roads, railway, airports, shipping-ports, bridges, buildings, irrigation systems, water supply, sewerage facilities, dams, tunnels and earthworks; and so on, and (ii) mechanical and electrical works involving fabrication, installation, erection, repair and maintenance of a mechanical or electrical nature relating to machinery and plants.

Chapter 1: Introduction – Policies and Principles

1.1 Procurement Rules and Regulations; and this Manual

Various Ministries, Departments, attached and subordinate offices, local urban bodies, public sector enterprises and other Government (including autonomous) bodies (hereinafter referred as 'Procuring Entities') spend a sizeable amount of their budget on procurement of goods, works and services to discharge the duties and responsibilities assigned to them.

The Ministries / Departments have been delegated full powers to make their own arrangements for procurement of goods and services, that are not available⁶ on Government e-Marketplace (GeM). These powers have to be exercised which have to be exercised as per the Delegation of Financial Power Rules and in conformity with the 'Procurement Guidelines' described below. Common use Goods and Services available on GeM are required to be procured mandatorily through GeM as per Rule 149 of GFR, 2017

To ensure that these procurements are made by following a uniform, systematic, efficient and cost-effective procedure and also to ensure fair and equitable treatment of suppliers, there are statutory provisions, rules, financial, vigilance, security, safety, counter- trade and other regulations; orders and guidelines of the Government on the subject of public procurement (hereinafter referred as 'Procurement Guidelines') which provide framework for the public procurement system.

At the apex of the Statutory framework governing public procurement is Article 299 of the Constitution of India, which stipulates that contracts legally binding on the Government have to be executed in writing by officers specifically authorized to do so. The Constitution also enshrines Fundamental Rights (In particular Article 19 (1) (g) – Right to carry on a Profession) which have implications for Public Procurement. Further, the Indian Contract Act, 1872 and the Sale of Goods Act, 1930 are major legislations governing contracts of sale/ purchase of goods in general. There are other mercantile laws (Arbitration and Conciliation Act, 1996; Competition Act, 2002; Information Technology Act, 2000 etc), which may be attracted in Public Procurement Transactions. There is no law exclusively governing public procurement.

However, comprehensive Rules and Regulations in this regard are available in the General Financial Rules (GFR), 2017, especially chapter 6; Delegation of Financial Powers Rules (DFPR); Government orders regarding product reservations or purchase preference or other facilities to sellers in Micro and Small Enterprises, Pharmaceutical Central Public Sector Enterprises, Khadi/ Handlooms goods goods, works and services rendered with more than prescribed local content (Make in India) etc.

Without purporting to be a comprehensive compendium of all such 'Procurement Guidelines', this Manual is intended to serve as a portal to enter this vast area and draw attention to basic norms and practices governing public procurement.

1.2 Clarification, Amendments and Revision of this Manual

⁶Rule 147 of GFR, 2017 amended vide OM No. F.1/26/2018-PPD dated 02.04.2019

For revision, interpretation, clarification and issues relating to this manual, the Procurement Policy Division, Department of Expenditure, Ministry of Finance would be the nodal authority.

1.3 Applicability of this Manual

The term 'goods' used in this manual includes all articles, material, commodity, livestock, medicines, furniture, fixtures, raw material, consumables, spare parts, instruments, machinery, equipment, industrial plants, vehicles, aircraft, ships, railway rolling stock, assemblies, sub-assemblies, accessories, a group of machines comprising an integrated production process or such other goods (but excludes books, publications, periodicals, and so on, for a library), or intangible products like software, technology transfer, licenses, patents or other intellectual properties procured or otherwise acquired by a procuring entity. Procurement of goods may include certain small work or some services, which are incidental or consequential to the supply of such goods, such as transportation, insurance, installation, commissioning, training and maintenance (*Rule 143 of GFR 2017*). What is unique about procurement of goods (as compared to services and works) is the ability to precisely describe the technical specification of the requirement.

The 'Procurement Entities' who can benefit from this manual include Ministries, Departments, or a unit thereof, or an attached or subordinate offices/units; Central Public Sector Enterprises (CPSEs) or undertakings; any other body (including autonomous bodies) substantially owned or controlled by or receiving substantial financial assistance from the Central Government. These procurement guidelines would continue to apply if these procurement entities outsource the procurement process or bundle the procurement process with other contractual arrangements or utilise the services of procurement support agency or procurement agents to carry out the procurement on their behalf. But these procurement guidelines would not apply to procurements by these procuring entities for their own use (but not for purpose of trading/ sale) from their subsidiary companies including Joint Ventures in which they have controlling share.

However by a general or special notification, the Government may permit certain 'Procuring Entities' mentioned in sub-para above, considering unique conditions under which they operate, for all or certain categories of procurement, to adopt detailed approved guidelines for procurement, which may deviate in some aspects but conform with all other essential aspects of 'Procurement Guidelines'.

This Manual is to be taken as generic guidelines, which have to be necessarily broad in nature. Subject to the observance of these generic guidelines, the initiation, authorization, procurement and execution of Goods Contracts undertaken by a particular Ministry or Department shall be regulated by detailed rules and orders contained in the respective Departmental regulations and by other special orders applicable to them. Ministries/ Departments are advised to supplement these manuals to suit their local/ specialized needs, by issuing their own detailed Manuals (including customized formats); Standard Bidding Documents; Schedule of Procurement Powers⁷ and Checklists to serve as practical instructions for their officers and to ensure completeness of examination of cases. Major Goods procuring Ministries/Departments like the Ministry of Defence, Ministry of Railways,

⁷Notified vide OM No.F.1/36/2018-PPD issued by Department of Expenditure dated 28.12.2018

etc. have their own detailed guidelines tailored to unique individual requirements, e.g. Manuals or Procedure Orders. Many other Ministries/ Departments as well as CPSEs also have their own Procurement Manuals. For these Procuring Entities, this Manual would serve as a generic reference.

These guidelines would not be applicable to projects funded by World Bank and other International Funding Agencies, as, such external aid/ loans etc. received are covered under the applicable policies/ legal agreements executed as permitted under Rules 264 of GFR 2017.

For procurements financed by Loans/Grants extended by International Agencies: The Articles of Agreement with the International Agencies, like the World Bank, Asian Development Bank etc. stipulate specific procurement procedures to be followed by the borrowers. The procurement procedures, as finalized and incorporated in the Agreements after consideration and approval of the Ministry of Finance are to be followed accordingly.

1.4 Authorities competent to purchase goods and their Purchase Powers

1.4.1 A Competent authority which is competent to incur expenditure may sanction the purchase of goods required for use in public service in accordance with the Delegation of Financial Rules (DFPR – extracted in Annexure 2A) by following the 'Procurement Guidelines' described in this Manual (*Rule 145 of GFR 2017*). Each 'Procuring Entity' may issue a Schedule of Procurement Powers (SoPP) adding further details to the broad delegations in the DFPR, based on the assessment of risks involved in different decisions/ approvals at various stages of Procurement Cycle. A suggested structure of such SoPP is enclosed as Annexure 2C.

1.5 Basic Aims of Procurement – the Five R's of Procurement

In every procurement, public or private, the basic aim is to achieve just the right balance between costs and requirements concerning the following five parameters called the Five R's of procurement. The entire process of procurement (from the time the need for an item, facility or services is identified till the need is satisfied) is designed to achieve such a right balance. The word 'right' is used in the sense of 'optimal balance'.

i) Right Quality

Procurement aims to buy just the right quality that will suit the needs – no more and no less – with clear specification of the procuring entity's requirements, proper understanding of functional value and cost, understanding of the bidder's quality system and quality awareness. The concept of the right balance of quality can be further refined to the concept of utility/value (Please refer to para 1.6 below). For the Right Quality, Technical Specification is the most vital ingredient. In public procurement, it is essential to give due consideration to Value for Money while benchmarking the specification.

ii) Right Quantity

There are extra costs and systemic overheads involved with both procuring a requirement too frequently in small quantities or with buying large quantities for prolonged use. Hence, the right quantity should be procured (in appropriate size of contract) which balances extra costs associated with larger and smaller quantities.

iii) Right Price

It is not correct to aim at the cheapest materials/ facilities/ Services available. The price should be just right for the quality, quantity and other factors involved (or should not be abnormally low for a facilities/works/ services which could lead to a situation of non-performance or failure of contract). The concept of price can be refined further to take into account not only the initial price paid for the requirement but also other costs such as maintenance costs, operational costs and disposal costs (Also termed as life cycle costing - please also refer to para 1.6 below)

iv) **Right Time and Place**

If the material (or facility or services) is needed by an organisation in three months' time, it will be costly to procure it too late or too early. Similarly, if the vendor delivers the materials/ facilities/ services in another city, extra time and money would be involved in logistics. An unrealistic time schedule for completion of a facility may lead to delays, claims and disputes.

v) **Right Source**

Similarly, the source of delivery of Goods, Works and Services of the requirement must have just right financial capacity and technical capability for our needs (demonstrated through satisfactory past performance of contracts of same or similar nature). Buying a few packets of printer paper directly from a large manufacturer may not be the right strategy. On the other hand, if our requirements are very large, buying such requirements through dealers or middlemen may also not be right.

1.6 Refined Concepts of Cost and Value – Value for Money

The concept of price or cost has been further refined into Total Cost Of Ownership (TCO) or Life Cycle Cost (LCC) or Whole-of-Life (WOL) to take into account not only the initial acquisition cost but also cost of operation, maintenance and disposal during the lifetime of the external resource procured. Similarly, the concept of quality is linked to the need and is refined into the concept of utility/ value. These two, taken together, are used to develop the concept of Value for Money (VfM, also called Best Value for Money in certain contexts). VfM means the effective, efficient, and economic use of resources, which may involve the evaluation of relevant costs and benefits, along with an assessment of risks, non-price attributes (e.g. in goods and/or services that contain recyclable content, are recyclable, minimise waste and greenhouse gas emissions, conserve energy and water and minimize habitat destruction and environmental degradation, are non-toxic etc.) and/or life cycle costs, as appropriate. Price alone may not necessarily represent VfM. *In public procurement, VfM is achieved by attracting the widest competition by way of optimal description of need; development of value-engineered specifications/ Terms of Reference (ToR); appropriate packaging/ slicing of requirement; selection of an appropriate mode of procurement and bidding system.* These advanced concepts are explained in *Appendix 1*.

1.7 Fundamental Principles of Public Procurement

General Financial Rules, 2017 (*Rule 144*) lay down the Fundamental Principles of Public Procurement. These principles and other additional obligations of procuring authorities in public procurement can be organised into five fundamental principles of public procurement, which all procuring authorities must abide by and be accountable for:

i) **Transparency Principle**

All procuring authorities are responsible and accountable to ensure transparency, fairness, equality, competition and appeal rights. This involves simultaneous, symmetric and unrestricted dissemination of information to all likely bidders, sufficient for them to know and understand the availability of bidding opportunities and actual means, processes and time-limits prescribed for completion of registration of bidders, bidding, evaluation, grievance redressal, award and management of contracts. It implies that such officers must ensure that there is consistency (absence of subjectivity), predictability (absence of arbitrariness), clarity, openness (absence of secretiveness), equal opportunities (absence of discrimination) in processes. In essence Transparency Principle also enjoins upon the Procuring Authorities' *to do only that which it had professed to do as pre-declared in the relevant published documents and not to do anything that had not been so declared*'. As part of this principle, all procuring entities should ensure that offers should be invited following a fair and transparent procedure and also ensure publication of all relevant information on the Central Public Procurement Portal (CPPP).

ii) **Professionalism Principle**

As per these synergic attributes, the procuring authorities have a responsibility and accountability to ensure professionalism, economy, efficiency, effectiveness and integrity in the procurement process. They must avoid wasteful, dilatory and improper practices violating the Code of integrity for Public Procurement (CIPP) mentioned in Chapter 3 of this manual. They should, at the same time, ensure that the methodology adopted for procurement should not only be reasonable and appropriate for the cost and complexity but should also effectively achieve the planned objective of the procurement. As part of this principle, the Government may prescribe professional standards and specify suitable training and certification requirements for officials dealing with procurement matters.

In reference to the above two principles - Transparency and Professionalism Principle, It may be useful to refer to the following provisions in the General Financial Rules, 2017:

Rule 144. Fundamental principles of public buying: Fundamental principles of public buying (for all procurements including procurement of works).— Every authority delegated with the financial powers of procuring goods in public interest shall have the responsibility and accountability to bring efficiency, economy, and transparency in matters relating to public procurement and for fair and equitable treatment of suppliers and promotion of competition in public procurement.

The procedure to be followed in making public procurement must conform to the following yardsticks:-

a) *The description of the subject matter of procurement to the extent practicable should --*

1. *be objective, functional, generic and measurable and specify technical, qualitative and performance characteristics;*
2. *not indicate a requirement for a particular trade mark, trade name or brand.*

b) *the specifications in terms of quality, type etc., as also quantity of goods to be procured, should be clearly spelt out keeping in view the specific needs of the procuring organisations. The specifications so worked out should meet the basic*

needs of the organisation without including superfluous and non-essential features, which may result in unwarranted expenditure.

c) Where applicable, the technical specifications shall, to the extent practicable, be based on the national technical regulations or recognized national standards or building codes, wherever such standards exist, and in their absence, be based on the relevant international standards. In case of Government of India funded projects abroad, the technical specifications may be framed based on requirements and standards of the host beneficiary Government, where such standards exist. Provided that a procuring entity may, for reasons to be recorded in writing, adopt any other technical specification⁸.

d) Care should also be taken to avoid purchasing quantities in excess of requirement to avoid inventory carrying costs;

e) offers should be invited following a fair, transparent and reasonable procedure;

f) the procuring authority should be satisfied that the selected offer adequately meets the requirement in all respects;

g) the procuring authority should satisfy itself that the price of the selected offer is reasonable and consistent with the quality required;

h) at each stage of procurement the concerned procuring authority must place on record, in precise terms, the considerations which weighed with it while taking the procurement decision.

i) a complete schedule of procurement cycle from date of issuing the tender to date of issuing the contract should be published when the tender is issued.

j) All Ministries/Departments shall prepare Annual Procurement Plan before the commencement of the year and the same should also be placed on their website”

k) [Notwithstanding anything contained in these Rules, Department of Expenditure may, by order in writing, impose restrictions, including prior registration and/or screening, on procurement from bidders from a country or countries, or a class of countries, on grounds of defence of India, or matters directly or indirectly related thereto including national security; no procurement shall be made in violation of such restrictions.]⁹

iii) Broader Obligations Principle

⁸It has been reiterated by Department of Expenditure vide OM F.N.12/17/2019-PPD dated 12.05.2020 that wherever Indian Technical specifications and Quality Certifications exists, the procuring entity should prescribe them. In those rare or exceptional cases where, despite the existence of Indian technical specifications, the procuring entity intends to specify foreign Technical Certifications and Accreditations, it must record its reasons in writing for adoption of such other technical specifications. This may also be subject to matter of audit.

⁹Inserted vide Department of Expenditure (DoE), Ministry of Finance (MoF) OM No. F.6/18/2019-PPD dated 23.07.2020.

Over and above transparency and professionalism, the procuring authorities have also the responsibility and accountability to conduct public procurement in a manner to facilitate achievement of the broader objectives of the Government - to the extent these are specifically included in the 'Procurement Guidelines':

- a) Preferential procurement from backward regions, weaker sections and MSEs, locally manufactured goods or services, to the extent specifically included in the 'Procurement Guidelines'; and
- b) Reservation of procurement of specified class of goods from or through certain nominated CPSEs or Government Organisations, to the extent specifically included in the 'Procurement Guidelines'.
- c) Support to broader social policy and programme objectives of the Government (for example, economic growth, strengthening of local industry - make-in-India, Ease of Doing Business, job and employment creation, and so on, to the extent specifically included in the 'Procurement Guidelines');
- d) Facilitating administrative goals of other Departments of Government (for example, ensuring tax or environmental compliance by participants, Energy Conservation, accessibility for People With Disabilities etc. to the extent specifically included in the 'Procurement Guidelines').
- e) Procurement policies and procedures must comply with accessibility criteria which may be mandated by the Government from time to time. Keeping this in view, Department of Expenditure amended Rule 144 of GFR, 2017 and introduced a sub-rule (xi) imposing restrictions under the rule [as mentioned under (ii) above]. The detailed provisions were notified through Order (Public Procurement No.1)¹⁰ which are as follows:

1. Requirement of registration

- a) Any bidder from a country which shares a land border with India will be eligible to bid in any procurement whether of goods, services (including consultancy services and non-consultancy services) or works (including turnkey projects) only if the bidder is registered with the Competent Authority, specified in Para 12(c) below.
- b) The Order shall not apply to (i) cases where orders have been placed or contract has been concluded or letter/notice of award/ acceptance (LoA) has been issued on or before the date of the order (23rd July 2020); and (ii) cases falling under para 13 below.

2. Transitional cases

Tenders where no contract has been concluded or no LoA has been issued so far shall be handled in the following manner: -

- a) In tenders which are yet to be opened, or where evaluation of technical bid or the first exclusionary qualifying stage (i.e. the first stage at which the qualifications of tenderers are evaluated and unqualified bidders are excluded) has not been completed: No contracts shall be placed on bidders from such countries. Tenders

¹⁰Inserted vide Department of Expenditure (DoE), Ministry of Finance (MoF) OM No. F.6/18/2019-PPD dated 23.07.2020.

received from bidders from such countries shall be dealt with as if they are non-compliant with the tender conditions and the tender shall be processed accordingly.

- b) If the tendering process has crossed the first exclusionary qualificatory stage, if the qualified bidders include bidders from such countries, the entire process shall be scrapped and initiated *de novo*. The *de novo* process shall adhere to the conditions prescribed in the Order.
- c) As far as practicable, and in cases of doubt about whether a bidder falls under paragraph (1) above, a certificate shall be obtained from the bidder whose bid is proposed to be considered or accepted, in terms of paras 5(c), 5(d) and 6 read with para (1).

3. **Incorporation in tender conditions**

In tenders to be issued after the date (23rd July 2020) of the order, the provisions of paragraph (1) above and of other relevant provisions of the Order shall be incorporated in the tender conditions.

4. **Applicability**

- a) Apart from Ministries/Departments, attached and subordinate bodies, notwithstanding anything contained in Rule 1 of the GFRs 2017, the Order shall also be applicable to all Autonomous Bodies;
- b) to public sector banks and public sector financial institutions; and
- c) subject to any orders of the Department of Public Enterprises, to all Central Public Sector Enterprises; and
- d) to procurement in Public Private Partnership projects receiving financial support from the Government or public sector enterprises/ undertakings.
- e) Union Territories, National Capital Territory of Delhi and all agencies/ undertakings thereof

5. **Definitions**

- a) "Bidder" for the purpose of the Order (including the term 'tenderer', 'consultant' 'vendor' or 'service provider' in certain contexts) means any person or firm or company, including any member of a consortium or joint venture (that is an association of several persons, or firms or companies), every artificial juridical person not falling in any of the descriptions of bidders stated hereinbefore, including any agency, branch or office controlled by such person, participating in a procurement process.
- b) "Tender" for the purpose of the Order will include other forms of procurement, except where the context requires otherwise.
- c) "Bidder from a country which shares a land border with India" for the purpose of the Order means
 - i. An entity incorporated, established or registered in such a country; or
 - ii. A subsidiary of an entity incorporated, established or registered in such a country; or
 - iii. An entity substantially controlled through entities incorporated, established or registered in such a country; or
 - iv. An entity whose beneficial owner is situated in such a country; or
 - v. An Indian (or other) agent of such an entity; or
 - vi. A natural person who is a citizen of such a country; or
 - vii. A consortium or joint venture where any member of the consortium or joint venture falls under any of the above

d) "Agent" for the purpose of the Order is a person employed to do any act for another, or to represent another in dealings with third persons.

6. Beneficial owner for the purposes of point (c) (iv) will be as under:

a) In case of a company or Limited Liability Partnership, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person(s), has a controlling ownership interest or who exercises control through other means. Explanation:-

b) In case of a partnership firm, the beneficial owner is the natural person(s) who, whether acting alone or together, or through one or more juridical person, has ownership of entitlement to more than fifteen percent of capital or profits of the partnership;

c) In case of an unincorporated association or body of individuals, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has ownership of or entitlement to more than fifteen percent of the property or capital or profits of such association or body of individuals;

d) Where no natural person is identified under (6) (a) or (6) (b) or (6) (c) above, the beneficial owner is the relevant natural person who holds the position of senior managing official;

e) In case of a trust, the identification of beneficial owner(s) shall include identification of the author of the trust, the trustee, the beneficiaries with fifteen percent or more interest in the trust and any other natural person exercising ultimate effective control over the trust through a chain of control or ownership.

7. Sub-contracting in works contracts

In works contracts, including turnkey contracts, contractors shall not be allowed to sub-contract works to any contractor from a country which shares a land border with India unless such contractor is registered with the Competent Authority. The definition of "contractor from a country which shares a land border with India" shall be as in paragraph (5) (c) above. This shall not apply to sub-contracts already awarded on or before the date of the Order (i.e. 23rd July, 2020).

8. Certificate regarding compliance

A certificate shall be taken from bidders in the tender documents regarding their compliance with the Order. If such certificate given by a bidder whose bid is accepted is found to be false, this would be a ground for immediate termination and further legal action in accordance with law.

9. Validity of registration

In respect of tenders, registration should be valid at the time of submission of bids and at the time of acceptance of bids. In respect of supply otherwise than by tender, registration should be valid at the time of placement of order. If the bidder was validly registered at the time of acceptance / placement of order, registration shall not be a relevant consideration during contract execution.

10. Government e-Marketplace

The Government E-Marketplace shall, as soon as possible, require all vendors/ bidders registered with GeM to give a certificate regarding compliance with the Order, and after the date fixed by it, shall remove non-compliant entities from GeM unless/ until they are registered in accordance with this Order.

11. Model Clauses/ Certificates

Model Clauses and Model Certificates which may be inserted in tenders / obtained from Bidders are given at Annexure-2F. While adhering to the substance of the Order, procuring

entities are free to appropriately modify the wording of these clauses based on their past experience, local needs etc. without making any reference to Department of Expenditure.

12. **Competent Authority and Procedure for Registration**

- a) The Competent Authority for the purpose of registration under this Order shall be the Registration Committee constituted by the Department for Promotion of Industry and Internal Trade (DPIIT)¹¹.
- b) The Registration Committee shall have the following members¹⁰
 - i. An officer, not below the rank of Joint Secretary, designated for this purpose by DPIIT, who shall be the Chairman;
 - ii. Officers (ordinarily not below the rank of Joint Secretary) representing the Ministry of Home Affairs, Ministry of External Affairs, and of those Departments whose sectors are covered by applications under consideration;
 - iii. Any other officer whose presence is deemed necessary by the Chairman of the Committee.
- c) DPIIT has laid down the method of application, format etc. for such bidders as stated in para (1) (a) above¹². On receipt of an application seeking registration from a bidder from a country covered by para (1) (a) above the Competent Authority shall first seek political and security clearances from the Ministry of External Affairs and Ministry of Home Affairs, as per guidelines issued from time to time. Registration shall not be given unless political and security clearance have both been received.
- d) The Ministry of External Affairs and Ministry of Home Affairs may issue guidelines for internal use regarding the procedure for scrutiny of such applications by them.
- e) The decision of the Competent Authority, to register such bidder may be for all kinds of tenders or for a specified type(s) of goods or services, and may be for as specified or unspecified duration of time, as deemed fit. The decision of the Competent Authority shall be final.
- f) Registration shall not be granted unless the representatives of the Ministries of Home Affairs and External Affairs on the Committee concur¹³.
- g) Registration granted by the Competent Authority of the Government of India shall be valid not only for procurement by Central Government and its agencies/ public

¹¹(i)In respect of application of the Order to procurement by/ under State Governments, all functions assigned to DPIIT shall be carried out by the State Government concerned through a specific department or authority designated by it. The composition of the Registration Committee shall be as decided by the State Government and paragraph G above shall not apply. However, the requirement of political and security clearance as per para D shall remain and no registration shall be granted without such clearance.

(ii) Registration granted by State Governments shall be valid only for procurement by the State Government and its agencies/ public enterprises etc. and shall not be valid for procurement in other states or by the Government of India and their agencies/ public enterprises etc.

¹²Notified vide OM No.P-45021/112/2020-PP (BE-II) (E-43780) issued by DPIIT dated 30.03.2021

¹³(i)In respect of application of the Order to procurement by/ under State Governments, all functions assigned to DPIIT shall be carried out by the State Government concerned through a specific department or authority designated by it. The composition of the Registration Committee shall be as decided by the State Government and paragraph G above shall not apply. However, the requirement of political and security clearance as per para D shall remain and no registration shall be granted without such clearance.

(ii) Registration granted by State Governments shall be valid only for procurement by the State Government and its agencies/ public enterprises etc. and shall not be valid for procurement in other states or by the Government of India and their agencies/ public enterprises etc.

enterprises etc. but also for procurement by State Governments and their agencies/ public enterprises etc. No fresh registration at the State level shall be required.

h) The Competent Authority is empowered to cancel the registration already granted if it determines that there is sufficient cause. Such cancellation by itself, however, will not affect the execution of contracts already awarded. Pending cancellation, it may also suspend the registration of a bidder, and the bidder shall not be eligible to bid in any further tenders during the period of suspension.

i) For national security reasons, the Competent Authority shall not be required to give reasons for rejection/cancellation of registration of a bidder.

j) In transitional cases falling under para (2) above, where it is felt that it will not be practicable to exclude bidders from a country which shares a land border with India, a reference seeking permission to consider such bidders shall be made by the procuring entity to the Competent Authority, giving full information and detailed reasons. The Competent Authority shall decide whether such bidders may be considered, and if so shall follow the procedure laid down in the above paras.

k) Periodic reports on the acceptance/ refusal of registration during the preceding period may be required to be sent to the Cabinet Secretariat. Details will be issued separately in due course by DPIIT.

13. Special Cases [In reference to para (1) (b) above]

a) Bona fide procurements made through GeM without knowing the country of the bidder till the date fixed by GeM for this purpose, shall not be invalidated by the Order.

b) Bona fide small procurements, made without knowing the country of the bidder, shall not be invalidated by the Order.

c) In projects which receive international funding with the approval of the Department of Economic Affairs (DEA), Ministry of Finance, the procurement guidelines applicable to the project shall normally be followed, notwithstanding anything contained in the Order and without reference to the Competent Authority. Exceptions to this shall be decided in consultation with DEA.

d) The Order shall not apply to procurement by Indian missions and by offices of government agencies/ undertakings located outside India.

e) The Order will not apply to bidders from those countries (even if sharing a land border with India) to which the Government of India has extended lines of credit or in which the Government of India is engaged in development projects. Updated lists of countries to which lines of credit have been extended or in which development projects are undertaken are given in the website of the Ministry of External Affairs¹⁴.

f) A bidder is permitted to procure raw material, components, sub-assemblies etc. from the vendors from countries which shares a land border with India. Such vendors will not be required to be registered with the Competent Authority, as it is not regarded as "sub-contracting". However, in case a bidder has proposed to supply finished goods procured directly/ indirectly from the vendors from the countries sharing land border

¹⁴Notified through Order (Public Procurement No. 2) vide F.No.6/18/2019-PPD issued by Department of Expenditure dated 23.07.2020

with India, such vendor will be required to be registered with the Competent Authority¹⁵.

- g) Procurement of spare parts and other essential service support like Annual Maintenance Contract (AMC)/ Comprehensive Maintenance Contract (CMC), including consumables for closed systems, from Original Equipment Manufacturers (OEMs) or their authorized agents, shall be exempted from the requirement of registration as mandated under Rule 144(xi) of GFR, 2017 and Public Procurement orders issued in this regard¹⁶.
14. Clarification to Order (Public Procurement No.1) dated 23rd July 2020¹⁷
- a) For the purpose of (2)(b) above, “qualified bidders” means only those bidders would otherwise have been qualified for award of the tender after considering all factors including price, if the Order (Public Procurement No.1) dated 23rd July 2020 had not been issued.
- b) If bidders from such countries would not have qualified for award for reasons unconnected with the said Orders (for example, because they do not meet tender criteria or their price bid is higher or because of the provisions of purchase preference under any other order or rule or any other reason) then there is no need to scrap the tender/ start the process *de novo*.
- c) The following examples are given to assist in implementation of the Order
1. Example 1: Four bids are received in a tender. One of them is from a country which shares a land border with India. The bidder from such country is found to be qualified technically by meeting all prescribed criteria and is also the lowest bidder. In this case, the bidder is qualified for award of the tender, except for the provisions of the Order (Public Procurement No. 1) dated 23rd July. In this case, the tender should be scrapped and fresh tender initiated.
 2. Example 2: The facts are as in Example 1, but the bidder from such country, though technically qualified is not the lowest because there are other technically qualified bidders whose price is lower. Hence the bidder from such country would not be qualified for award of the tender irrespective of the Order (Public Procurement No. 1) dated 23rd July 2020. In such a case, there is no need to scrap the tender.
 3. Example 3: The facts are as in Example 1, but the bidder from a country which shares a land border with India, though technically qualified, is not eligible for award due to the application of price preference as per other orders/ rules. In such a case, there is no need to scrap the tender.
 4. Example 4: Three bids are received in a tender. One of them is a bidder from a country sharing a land border with India. The bidder from such a country does not meet the technical requirements and hence is not qualified. There is no need to scrap the tender.

iv) **Extended Legal Responsibilities Principle**

¹⁵Notified vide OM No. F.18/37/2020-PPD issued by Department of Expenditure dated 08.02.2021

¹⁶Notified vide OM No. F.12/1/2021-PPD(Pt.) issued by Department of Expenditure dated 02.03.2021

¹⁷Notified through Order (Public Procurement No. 3) vide F.No.6/18/2019-PPD issued by Department of Expenditure dated 24.07.2020

Procuring authorities must fulfil additional legal obligations in public procurement, over and above mere conformity to the mercantile laws (which even private sector procurements have to comply with). The Constitution of India has certain provisions regarding fundamental rights and public procurement. Courts have, over a time, taking a broader view of Public Procurement as a function of 'State', interpreted these to extend the responsibility and accountability of public procurement Authorities. Courts in India thus exercise additional judicial review (beyond contractual issues) over public procurement in relation to the manner of decision making in respect of fundamental rights, fair play and legality. Similarly, procuring authorities have also the responsibility and accountability to comply with the laws relating to Governance Issues like Right to Information (RTI) Act and Prevention of Corruption Act, and so on. Details of such extended legal obligations are given in Appendix 2.

v) **Public Accountability Principle**

Procuring authorities are accountable for all the above principles to several statutory and official bodies in the Country – the Legislature and its Committees, Central Vigilance Commission, Comptroller and Auditor General of India, Central Bureau of Investigations and so on– in addition to administrative accountability. As a result, each individual public procurement transaction is liable to be scrutinised independently, in isolation, besides judging the overall outcomes of procurement process over a period of time. Procuring authorities thus have responsibility and accountability for compliance of rules and procedures in each individual procurement transaction besides the achievement of overall procurement outcomes. The procuring authority, at each stage of procurement, must therefore place on record, in precise terms, the considerations which weighed with it while making the procurement decision from need assessment to fulfilment of need. Such records must be preserved, retained in easily retrievable form and made available to such oversight agencies. The procuring entity shall therefore maintain and retain audit trails, records and documents generated or received during its procurement proceedings, in chronological order, the files will be stored in an identified place and retrievable for scrutiny whenever needed without wastage of time. The documents and record will include:

- a) documents pertaining to determination of need for procurement;
- b) description of the subject matter of the procurement;
- c) Statement of the justification for choice of a procurement method other than open competitive bidding;
- d) Documents relating to pre-qualification and registration of bidders, if applicable;
- e) Particulars of issue, receipt, opening of the bids and the participating bidders at each stage;
- f) Requests for clarifications and any reply thereof including the clarifications given during pre-bid conferences;
- g) Bids evaluated, and documents relating to their evaluation; and
- h) Contracts and Contract Amendments
- i) Complaint handling, correspondences with clients, consultants, banks.

1.8 Standards (Canons) of Financial Propriety

Public Procurement like any other expenditure in Government must conform to the Standards(also called Canons) of Financial Propriety. It may be useful to refer to the relevant provisions in the General Financial Rules, 2017

Rule 21. Standards of financial propriety: Every officer incurring or authorizing expenditure from public moneys should be guided by high standards of financial propriety. Every officer should also enforce financial order and strict economy and see that all relevant financial rules and regulations are observed, by his own office and by subordinate disbursing officers. Among the principles on which emphasis is generally laid are the following:-

- i) Every officer is expected to exercise the same vigilance in respect of expenditure incurred from public moneys as a person of ordinary prudence would exercise in respect of expenditure of his own money.
- ii) The expenditure should not be prima facie more than the occasion demands.
- iii) No authority should exercise its powers of sanctioning expenditure to pass an order which will be directly or indirectly to its own advantage.
- iv) Expenditure from public moneys should not be incurred for the benefit of a particular person or a section of the people, unless -
 - a) a claim for the amount could be enforced in a Court of Law, or b) the expenditure is in pursuance of a recognized policy or custom.
- v) The amount of allowances granted to meet expenditure of a particular type should be so regulated that the allowances are not on the whole a source of profit to the recipients.
- vi) While discharging the duties of financial concurrence of any public expenditure, such authorities subsequent to such decision, shall not be involved in any future financial/audit/payment responsibilities which may create conflict of interest.

1.9 Public Procurement Infrastructure at the Centre

i) Procurement Policy Division

Procurement Policy Division (PPD) in Department of Expenditure; Ministry of Finance has been created to encourage uniformity and harmonisation in public procurement processes by dissemination of best practices, provision of guidance, oversight and capacity building and issuing of procurement manuals. However Centralisation of procurement or involvement in procurement processes is not the intended purpose of creation of PPD.

ii) Central Public Procurement Portal

Central Public Procurement Portal (CPPP) has been designed, developed and hosted by National Informatics Centre (NIC, Ministry of Electronics & Information Technology) in association with Dept. of Expenditure to ensure transparency in the public procurement process. The primary objective of the Central Public Procurement portal is to provide a single point access to the information on procurements made across various Ministries and the Departments. The CPPP has e-publishing and e-procurement modules. It is mandatory for all Ministries / Departments of the Central Government, Central Public Sector Enterprises (CPSEs) and Autonomous and Statutory Bodies to publish on the CPPP all their tender enquiries and information about the resulting contracts. CPPP provides access to information such as documents relating to pre-qualification, Bidders' registration, Bidding documents; details of bidders, their pre-qualification, registration, exclusions/ debarments; decisions taken regarding prequalification and selection of successful bid. It is also now

mandatory to implement end-to-end e-Procurement for all procurements either through CPPP portal or any other suitable portal.

1.10 Product Reservation and Preferential/Mandatory Purchase from certain sources

The Central Government may, by notification, provide for mandatory procurement of any goods or services from any category of bidders, or provide for preference to bidders on the grounds of promotion of locally manufactured goods or locally provided services.

Note: Before considering any Purchase Preference/ product reservation mentioned below, the Procuring Entity should check the latest directives in this regard for necessary action. Product Reservation/ Purchase Preference provision shall invariably be part of the Notice Inviting Tender (NIT) and Instructions to Bidders (ITB).

1.10.1 Reservation of Procurement of certain class of Products from certain agencies-Khadi Goods/Handloom Textiles

The Central Government has reserved¹⁸ all items of hand-spun and hand-woven textiles (Khadi goods) for exclusive purchase from Khadi & Village Industries Commission (KVIC). Of all items of textiles required by the Central Government departments, it shall be mandatory to make procurement of at least 20% from amongst items of handloom origin, for exclusive purchase from KVIC and/ or Handloom Clusters such as Co-Operative Societies, Self Help Group (SHG) Federations, Joint Liability Group (JLG), Producer Companies (PC), Corporations etc. including Weavers having Pehchan Cards¹⁹.

1.10.2 Reservation of Procurement of certain class of Products from certain agencies-Pharmaceuticals from Pharmaceutical CPSEs

The pharmaceuticals Purchase Policy²⁰, 2013 is intended to ensure

- 1) Optimum utilization of the installed capacity and to provide necessary fillip in reviving these ailing pharmaceuticals CPSEs
- 2) Availability of quality medicines at low prices to the masses
- 3) Drug security of the nation.

The salient features of this policy are as follows:

- a) Pharmaceuticals Purchase Policy in respect of 103 (one hundred and three) medicines would be valid for a period of five years from the date of issue (30/10/2013) of orders by Department of Pharmaceuticals.
- b) Pharmaceuticals Purchase Policy will extend only to Central Public Sector Enterprises (CPSEs) under the administrative control of Department of Pharmaceuticals such as Indian Drugs and Pharmaceuticals Limited (IDPL), Hindustan Antibiotics Limited (HAL), Bengal Chemicals and Pharmaceuticals Limited (BCPL), Karnataka Antibiotics and Pharmaceuticals Limited (KAPL) and Rajasthan

¹⁸Ministry of Textiles O. M. No. 4/2/88-DCH/M & E dated 17th February 1992

¹⁹Notified vide OM No. F.10/2/2019-PPD(Pt.) issued by Department of Expenditure dated 17.02.2020

²⁰Department of Pharmaceuticals, Ministry of Chemicals and Fertilizers, OM 50(9)/ 2010-PI-IV Dtd 10/12/2013

Drugs and Pharmaceuticals Limited (RDPL) and their subsidiaries where Government of India owns 51% (fifty one percent) or above shares.

- c) This would be applicable to purchases by Central Government Departments, their Public Sector Undertakings, and Autonomous Bodies, etc. This would also be applicable to purchase of medicines by State Governments under Health Programmes funded by Government of India such as the National Rural Health Mission etc.
- d) The pricing of the products would be done by National Pharmaceutical Pricing Authority (NPPA) using the cost based formula, as mentioned in the Drugs Price Control Order, 1995. A uniform discount of 16% (Sixteen percent) would be extended to all products. All the taxes, whatsoever, would have to be passed on to buyers.
- e) Annual revision of prices would be linked to Wholesale Price Index as per provisions contained in Drugs Prices Control Order, 2013.
- f) The procuring entity would purchase from pharma CPSEs and their subsidiaries subject to their meeting Good Manufacturing Practices (GMP) norms as per Schedule 'M' of the Drugs & Cosmetic Rules.
- g) In case pharma CPSEs and their subsidiaries fail to supply the medicines, the procuring entity would be at liberty to make purchases from other manufacturers. If the pharma CPSEs or their subsidiaries fail to perform as per the purchase order, they would also be subject to payment of liquidated damages or any other penalty as per the terms of the contract.
- h) The list of medicines (please refer to Annexure 27) may be reviewed and revised by the Department of Pharmaceuticals as per requirement.

1.10.3 Reservation of specific items for procurement from Micro and Small Enterprises (MSE)

To enable wider dispersal of enterprises in the country, particularly in rural areas, the Central Government Ministries or Departments or Public Sector Undertakings shall continue to procure items reserved for procurement exclusively from MSE (presently 358 (three hundred and fifty-eight) items including eight items of Handicrafts) from Micro and Small Enterprises, which have been reserved for exclusive purchase from them. The latest list may be seen from the website of the MSME Ministry²¹. Ministry of MSME has clarified that the laminated paper Gr.I,II and III are not covered under the paper conversion product (SI.No.202) of the Public Procurement Policy²². For locating the sources of such reserved items, NSIC may be contacted.

1.10.4 Public Procurement Policy for Micro and Small Enterprises (MSEs)

- i) From time to time, the Government of India (Procuring Entity) lays down procurement policies to help inclusive national economic growth by providing long-term support to micro, small and medium enterprises and disadvantaged sections of society. The Procurement Policy for Micro and Small Enterprises, 2012 [amended 2018 and 2021] has been notified by the Government in exercise of the powers conferred in Section 11 of the Micro, Small and Medium Enterprises Development (MSMED) Act, 2006. Details

²¹ <http://www.dcmsme.gov.in/schemes/Listof358itemsReserved.pdf>

²² Policy Circular No. 21(6)/2016-MA dated 26.05.2016

of the policy along with the amendments issued in 2018 and 2021 are available on the MSME website²³.

- ii) Micro and Small Enterprises (MSEs) registered under Udyam Registration are eligible to avail the benefits under the policy.
- iii) The Policy is applicable to all the Central Government Ministries/ Departments/ CPSUs. However, the policy is not applicable to State Government Ministries/ Departments/ PSUs.
 - 1) To reduce transaction cost of doing business, MSEs will be facilitated by providing them tender documents free of cost, exempting MSEs from payment of earnest money deposit, adopting e-procurement to bring transparency in tendering process. However, exemption from paying Performance Bank Guarantee is not covered under the policy. MSEs may also be given relaxation in prior turnover and prior experience criteria during the tender process, subject to meeting of quality and technical specifications. However, there may be circumstances (like procurement of items related to public safety, health, critical security operations and equipment, etc.) where procuring entity may prefer the vendor to have prior experience rather than giving orders to new entities²⁴.
 - 2) Chapter V of the MSMED Act, 2006 also has provision for ensuring timely payments to the MSE suppliers. The period agreed upon for payment must not exceed forty-five days after the supplies. For delays in payment the buyer shall be liable to pay compound interest to the supplier on the delayed amount at three times of the bank rate notified by the Reserve Bank. For arbitration and conciliation regarding recovery of such payments and interests, Micro and Small Enterprises Facilitation Council has been setup in states.
 - 3) In tender, participating Micro and Small Enterprises (MSE) quoting price within price band of L1+15 (fifteen) per cent shall also be allowed to supply a portion of requirement by bringing down their price to L1 price in a situation where L1 price is from someone other than a MSE and such MSE shall be allowed to supply up to 25(twenty five) per cent of total tendered value. The 25(twenty five) per cent quantity is to be distributed proportionately among these bidders, in case there are more than one MSEs within such price band.
 - 4) Within this 25% (Twenty Five Percent) quantity, a purchase preference of four (4) per cent s reserved for MSEs owned by Scheduled Caste (SC)/ Scheduled Tribe (ST) entrepreneurs and three (3) percent is reserved for MSEs owned by women entrepreneur (if they participate in the tender process and match the L1 price).However, in event of failure of such MSEs to participate in tender process or meet tender requirements and L1 price, four percent sub-target for procurement earmarked for MSEs owned by SC/ST entrepreneurs and three (3) percent earmarked to women

²³<http://dcmsme.gov.in/pppm.htm.aspx>

²⁴Notified vide OM No.F.20/2/2014-PPD(Pt.) issued by Department of Expenditure dated 29.09.2016.

entrepreneur will be met from other MSEs. . MSEs would be treated as owned by SC/ ST entrepreneurs:

- a) In case of proprietary MSE, proprietor(s) shall be SC /ST;
- b) In case of partnership MSE, the SC/ ST partners shall be holding at least 51% (fifty-one percent) shares in the unit;
- c) In case of Private Limited Companies, at least 51% (fifty-one percent) share shall be held by SC/ ST promoters.
- iv) If subcontract is given to MSEs, it will be considered as procurement from MSEs.
- v) In case of tender item cannot be split or divided, etc. the MSE quoting a price within the band L1+15% may be awarded for full/ complete supply of total tendered value to MSE, considering the spirit of the Policy for enhancing Govt. Procurement from MSEs.
- vi) To develop MSE vendors so as to achieve their targets for MSEs procurement, Central Government Ministries /Departments /PSUs shall take necessary steps to develop appropriate vendors by organizing Vendor Development Programmes (VDPs) or Buyer-Seller Meets focused on developing MSEs for procurement through the Government e-Marketplace (GeM) portal. In order to develop vendors belonging to MSEs for Public Procurement Policy, the Ministry of MSME is regularly organizing State Level VDPs and National Level VDPs under the Procurement and Marketing Support Scheme. For enhancing participation of MSEs owned by SCs /STs/ Women in Government procurement, Central Government Ministries/ Departments/ CPSUs have to take the following steps:
 - a) Special Vendor Development Programmes/ Buyer-Seller Meets would be conducted by Departments/ CPSUs for SC/STs and Women.
 - b) Outreach programmes will be conducted by National Small Industries Corporation (NSIC) to cover more and more MSEs from SC/STs under its schemes of consortia formation; and
 - c) NSIC would open a special window for SCs/ STs under its Single Point Registration Scheme (SPRS).
 - d) A National SC/ST hub scheme was launched in October, 2016, for providing handholding support to SC/ST entrepreneur which is being coordinated / implemented by the NSIC under this Ministry.
- vii) Where any Aggregator has been appointed by the Ministry of MSME, themselves quote on behalf of some MSE units, such offers will be considered as offers from MSE units and all such facilities would be extended to these also.
- viii) This Policy is meant for procurement of only goods produced and services rendered by MSEs. Traders/ distributors/ sole agent/ Works Contract are excluded from the purview of the policy.
- ix) **Exemptions from the policy:** Given their unique nature, defence armament imports shall not be included in computing 25(twenty five) per cent goal for Ministry of Defence. In addition, defence equipments like weapon systems, missiles, etc. shall remain out of purview of such Policy of reservation. Monitoring of goals set under the policy will be done, in so far as they related to Defense sector, by Ministry of Defense itself in accordance with suitable procedures to be established by them.

- x) To monitor the progress of procurement by Central Government Ministries/ Departments and CPSUs from MSEs, Ministry of MSME has launched the MSME 'Sambandh'²⁵ Portal on 8th December, 2017 for uploading procurement details by all CPSUs on a monthly and an annual basis which is regularly monitored by the Ministry.
- xi) To redress the grievances of MSEs related to non-compliance of the Policy a Grievance cell named "CHAMPION Portal" has been set up in the Ministry of MSME.

1.10.5 Procurement Preference for Domestically Manufactured Electronic Products (Deleted)²⁶

1.10.6 Preference to Make in India

To encourage 'Make in India' and promote manufacturing and production of goods and services in India with a view to enhancing income and employment, Department of Promotion of Industry and Internal Trade (DPIIT), Ministry of Commerce and Industry, Government of India, issued Public Procurement (Preference to Make in India), Order 2017²⁷. The order is issued pursuant to Rule 153 (iii) of GFR, 2017. The Order is applicable on the procurement of Goods, Works and Services. For the purpose of this Order:-

- a) 'L1' means the lowest tender or lowest bid or the lowest quotation received in a tender, bidding process or other procurement solicitation as adjudged in the evaluation process as per the tender or other procurement solicitation.
 - b) 'Margin of purchase preference' means the maximum extent to which the price quoted by a "Class-I local supplier" may be above the L1 for the purpose of purchase preference. It has been fixed as 20 (twenty) percent.
 - c) 'Nodal Ministry' means the Ministry or Department identified pursuant to this order in respect of a particular item of goods or services or works.
 - d) 'Procuring entity' means a Ministry or department or attached or subordinate office of, or autonomous body controlled by, the Government of India and includes Government companies as defined in the Companies Act.
 - e) 'Works' means all works as per Rule 130 of GFR- 2017, and will also include 'turnkey works'.
- i) **Eligibility of 'Class-I local supplier'/ 'Class-II local supplier'/ 'Non-local suppliers' for different types of procurement**

- a) In procurement of all goods, services or works in respect of which the Nodal Ministry/ Department has communicated that there is sufficient local capacity and local competition, only 'Class-I local supplier', shall be eligible to bid irrespective of purchase value.
- b) Only 'Class-I local supplier' and 'Class-II local supplier', shall be eligible to bid in procurements undertaken by procuring entities, except when Global tender enquiry has been issued. In global tender enquiries, 'Non-local suppliers' shall also be

²⁵https://sambandh.msme.gov.in/PPP_Index.aspx

²⁶Superseded by Public Procurement (Preference to Make in India) Order issued by DPIIT dated 16.09.2020

²⁷Latest revision to the Order notified vide OM No. P-45021/2/2017-PP (BE-II) issued by DPIIT, dated 16.09.2020

eligible to bid along with 'Class-I local suppliers' and 'Class-II local suppliers'. In procurement of all goods, services or works, not covered by sub-para (i)(a) above, and with estimated value of purchases less than Rs. 200 Crore, in accordance with Rule 161(iv) of GFR, 2017, Global tender enquiry shall not be issued except with the approval of competent authority as designated by Department of Expenditure.

- c) For the purpose of this Order, works includes Engineering, Procurement and Construction (EPC) contracts and services include System Integrator (SI) contracts.

ii) **Purchase Preference**

- a) Subject to the provisions of the Order and to any specific instructions issued by the Nodal Ministry or in pursuance of the Order, purchase preference shall be given to 'Class-I local supplier' in procurements undertaken by procuring entities in the manner specified here under.
- b) In the procurements of goods or works, which are covered by para (i)(b) above and which are divisible in nature, the 'Class-I local supplier' shall get purchase preference over 'Class-II local supplier' as well as 'Non-local supplier', as per following procedure:
1. Among all qualified bids, the lowest bid will be termed as L1. If L1 is 'Class-I local supplier', the contract for full quantity will be awarded to L1.
 2. If L1 bid is not a 'Class-I local supplier', 50 (fifty) percent of the order quantity shall be awarded to L1. Thereafter, the lowest bidder among the 'Class-I local supplier' will be invited to match the L1 price for the remaining 50 (fifty) percent quantity subject to the Class-I local supplier's quoted price falling within the margin of purchase preference, and contract for that quantity shall be awarded to such 'Class-I local supplier' subject to matching the L1 price. In case such lowest eligible 'Class-I local supplier' fails to match the L1 price or accepts less than the offered quantity, the next higher 'Class-I local supplier' within the margin of purchase preference shall be invited to match the L1 price for remaining quantity and so on, and contract shall be awarded accordingly. In case some quantity is still left uncovered on Class-I local suppliers, then such balance quantity may also be ordered on the L1 bidder.
- c) In the procurements of goods or works, which are covered by para (i)(b) above and which are not divisible in nature, and in procurement of services where the bid is evaluated on price alone, the 'Class-I local supplier' shall get purchase preference over 'Class-II local supplier' as well as 'Non-local supplier', as per following procedure:
1. Among all qualified bids, the lowest bid will be termed as L1. If L1 is 'Class-I local supplier', the contract will be awarded to L1.
 2. If L1 is not 'Class-I local supplier', the lowest bidder among the 'Class-I local supplier', will be invited to match the L1 price subject to Class-I local supplier's quoted price falling within the margin of purchase preference, and the contract shall be awarded to such 'Class-I local supplier' subject to matching the L1 price.
 3. In case such lowest eligible 'Class-I local supplier' fails to match the L1 price, the 'Class-I local supplier' with the next higher bid within the margin of purchase preference shall be invited to match the L1 price and so on and

contract shall be awarded accordingly. In case none of the 'Class-I local supplier' within the margin of purchase preference matches the L1 price, the contract may be awarded to the L1 bidder.

4. "Class-II local supplier" will not get purchase preference in any procurement, undertaken by procuring entities.

iii) **Applicability in tenders where contract is to be awarded to multiple bidders**

In tenders where contract is awarded to multiple bidders subject to matching of L1 rates or otherwise, the 'Class-I local supplier' shall get purchase preference over 'Class-II local supplier' as well as 'Non-local supplier', as per following procedure:

- a) In case there is sufficient local capacity and competition for the item to be procured, as notified by the nodal Ministry, only Class I local suppliers shall be eligible to bid. As such, the multiple suppliers, who would be awarded the contract, should be all and only 'Class I Local suppliers'.
- b) In other cases, 'Class II local suppliers' and 'Non local suppliers' may also participate in the bidding process along with 'Class I Local suppliers' as per provisions of the Order.
- c) If 'Class I Local suppliers' qualify for award of contract for at least 50 (fifty) percent of the tendered quantity in any tender, the contract may be awarded to all the qualified bidders as per award criteria stipulated in the bid documents. However, in case 'Class I Local suppliers' do not qualify for award of contract for at least 50 (fifty) percent of the tendered quantity, purchase preference should be given to the 'Class I local supplier' over 'Class II local suppliers' / 'Non local suppliers' provided that their quoted rate falls within 20 (twenty) percent margin of purchase preference of the highest quoted bidder considered for award of contract so as to ensure that the 'Class I Local suppliers' taken in totality are considered for award of contract for at least 50 (fifty) percent of the tendered quantity.
- d) First purchase preference has to be given to the lowest quoting 'Class-I local supplier', whose quoted rates fall within 20 (twenty) percent margin of purchase preference, subject to its meeting the prescribed criteria for award of contract as also the constraint of maximum quantity that can be sourced from any single supplier. If the lowest quoting 'Class-I local supplier', does not qualify for purchase preference because of aforesaid constraints or does not accept the offered quantity, an opportunity may be given to next higher 'Class-I local supplier', falling within 20 (twenty) percent margin of purchase preference, and so on.
- e) To avoid any ambiguity during bid evaluation process, the procuring entities may stipulate its own tender specific criteria for award of contract amongst different bidders including the procedure for purchase preference to 'Class-I local supplier' within the broad policy guidelines stipulated in sub-paras above.

- iv) **Exemption of small purchases:** Notwithstanding anything contained in paragraph (i), procurements where the estimated value to be procured is less than Rs. 5 lakhs shall be exempt from the Order. However, it shall be ensured by procuring entities that procurement is not split for the purpose of avoiding the provisions of this Order.

- v) **Minimum local content:** The 'local content' requirement to categorize a supplier as 'Class-I local supplier' is minimum 50 (fifty) percent. For 'Class-II local supplier', the 'local content' requirement is minimum 20 (twenty) percent. Nodal Ministry/ Department may prescribe only a higher percentage of minimum local content requirement to categorize a supplier as 'Class-I local supplier'/ 'Class-II local supplier'. For the items, for which Nodal Ministry/ Department has not prescribed higher minimum local content notification under the Order, it shall be 50 (fifty) percent and 20 (twenty) percent for 'Class-I local supplier'/ 'Class-II local supplier' respectively.
- vi) **Requirement for specification in advance:** The minimum local content, the margin of purchase preference and the procedure for preference to Make in India shall be specified in the notice inviting tenders or other form of procurement solicitation and shall not be varied during a particular procurement transaction.
- vii) **Government E-marketplace:** In respect of procurement through the Government E-marketplace (GeM) shall, as far as possible, specifically mark the items which meet the minimum local content while registering the item for display, and shall, wherever feasible, make provision for automated comparison with purchase preference and without purchase preference and for obtaining consent of the local supplier in those cases where purchase preference is to be exercised.
- viii) **Verification of local content:**
- a) The 'Class-I local supplier'/ 'Class-II local supplier' at the time of tender, bidding or solicitation shall be required to indicate percentage of local content and provide self-certification that the item offered meets the local content requirement for 'Class-I local supplier'/ 'Class-II local supplier', as the case may be. They shall also give details of the location(s) at which the local value addition is made.
 - b) In cases of procurement for a value in excess of Rs. 10 crores, the 'Class-I local supplier'/ 'Class-II local supplier' shall be required to provide a certificate from the statutory auditor or cost auditor of the company (in the case of companies) or from a practicing cost accountant or practicing chartered accountant (in respect of suppliers other than companies) giving the percentage of local content.
 - c) Decisions on complaints relating to implementation of this Order shall be taken by the competent authority which is empowered to look into procurement-related complaints relating to the procuring entity.
 - d) Nodal Ministries may constitute committees with internal and external experts for independent verification of self-declarations and auditor's/ accountant's certificates on random basis and in the case of complaints.
 - e) Nodal Ministries and procuring entities may prescribe fees for such complaints.
 - f) False declarations will be in breach of the Code of Integrity under Rule 175(1)(i)(h) of the General Financial Rules for which a bidder or its successors can be debarred for up to two years as per Rule 151 (iii) of the General Financial Rules along with such other actions as may be permissible under law.
 - g) A supplier who has been debarred by any procuring entity for violation of the Order shall not be eligible for preference under the Order for procurement by any other

procuring entity for the duration of the debarment. The debarment for such other procuring entities shall take effect prospectively from the date on which it comes to the notice of other procurement entities, in the manner prescribed under paragraph (h) below.

- h) The Department of Expenditure shall issue suitable instructions for the effective and smooth operation of this process, so that:
1. The fact and duration of debarment for violation of the Order by any procuring entity are promptly brought to the notice of the Member-Convenor of the Standing Committee and the Department of Expenditure through the concerned Ministry /Department or in some other manner;
 2. on a periodical basis such cases are consolidated and a centralized list or decentralized lists of such suppliers with the period of debarment is maintained and displayed on website(s);
 3. in respect of procuring entities other than the one which has carried out the debarment, the debarment takes effect prospectively from the date of uploading on the website(s) in the such a manner that ongoing procurements are not disrupted.

ix) **Specifications in Tenders and other procurement solicitations:**

- a) Every procuring entity shall ensure that the eligibility conditions in respect of previous experience fixed in any tender or solicitation do not require proof of supply in other countries or proof of exports.
- b) Procuring entities shall endeavour to see that eligibility conditions, including on matters like turnover, production capability and financial strength do not result in unreasonable exclusion of 'Class-I local supplier'/ 'Class-II local supplier' who would otherwise be eligible, beyond what is essential for ensuring quality or creditworthiness of the supplier.
- c) Procuring entities shall review all existing eligibility norms and conditions with reference to sub-paragraphs (viii) (a) and (b) above.

d) **Reciprocity Clause**

1. When a Nodal Ministry/Department identifies that Indian suppliers of an item are not allowed to participate and/ or compete in procurement by any foreign government, due to restrictive tender conditions which have direct or indirect effect of barring Indian companies such as registration in the procuring country, execution of projects of specific value in the procuring country etc., it shall provide such details to all its procuring entities including CMDs/CEOs of PSEs/PSUs, State Governments and other procurement agencies under their administrative control and GeM for appropriate reciprocal action.
2. Entities of countries which have been identified by the nodal Ministry/Department as not allowing Indian companies to participate in their Government procurement for any item related to that nodal Ministry shall not be allowed to participate in Government procurement in India for all items related to that nodal Ministry/ Department, except for the list of items published by the Ministry/ Department permitting their participation.
3. The stipulation in (2) above shall be part of all tenders invited by the Central Government procuring entities stated in (1) above. All purchases on GeM

shall also necessarily have the above provisions for items identified by nodal Ministry/ Department.

4. State Governments should be encouraged to incorporate similar provisions in their respective tenders.
 5. The term 'entity' of a country shall have the same meaning as under the FDI Policy of DPIIT as amended from time to time.
- e) Specifying foreign certifications/ unreasonable technical specifications/ brands/ models in the bid document is restrictive and discriminatory practice against local suppliers. If foreign certification is required to be stipulated because of non-availability of Indian Standards and/or for any other reason, the same shall be done only after written approval of Secretary of the Department concerned or any other Authority having been designated such power by the Secretary of the Department concerned.
- f) "All administrative Ministries/Departments whose procurement exceeds Rs. 1000 Crore per annum shall notify/ update their procurement projections every year, including those of the PSEs/PSUs, for the next 5 years on their respective website."
- x) **Action for non-compliance of the Provisions of the Order:** In case restrictive or discriminatory conditions against domestic suppliers are included in bid documents, an inquiry shall be conducted by the Administrative Department undertaking the procurement (including procurement by any entity under its administrative control) to fix responsibility for the same. Thereafter, appropriate action, administrative or otherwise, shall be taken against erring officials of procurement entities under relevant provisions. Intimation on all such actions shall be sent to the Standing Committee.
- xi) **Assessment of supply base by Nodal Ministries:** The Nodal Ministry shall keep in view the domestic manufacturing / supply base and assess the available capacity and the extent of local competition while identifying items and prescribing the higher minimum local content or the manner of its calculation, with a view to avoiding cost increase from the operation of this Order.
- xii) **Increase in minimum local content:** The Nodal Ministry may annually review the local content requirements with a view to increasing them, subject to availability of sufficient local competition with adequate quality.
- xiii) **Manufacture under license/ technology collaboration agreements with phased indigenization**
- a) While notifying the minimum local content, Nodal Ministries may make special provisions for exempting suppliers from meeting the stipulated local content if the product is being manufactured in India under a license from a foreign manufacturer who holds intellectual property rights and where there is a technology collaboration agreement / transfer of technology agreement for indigenous manufacture of a product developed abroad with clear phasing of increase in local content.
 - b) In procurement of all goods, services or works in respect of which there is substantial quantity of public procurement and for which the nodal ministry has not notified that there is sufficient local capacity and local competition, the concerned nodal ministry shall notify an upper threshold value of procurement beyond which foreign

companies shall enter into a joint venture with an Indian company to participate in the tender. Procuring entities, while procuring such items beyond the notified threshold value, shall prescribe in their respective tenders that foreign companies may enter into a joint venture with an Indian company to participate in the tender. The procuring Ministries/Departments shall also make special provisions for exempting such joint ventures from meeting the stipulated minimum local content requirement, which shall be increased in a phased manner.

xiv) **Powers to grant exemption and to reduce minimum local content:** The administrative Department undertaking the procurement (including procurement by any entity under its administrative control), with the approval of their Minister-in-charge, may by written order, for reasons to be recorded in writing,

1. reduce the minimum local content below the prescribed level; or
2. reduce the margin of purchase preference below 20 (twenty) percent; or
3. exempt any particular item or supplying entities from the operation of this Order or any part of the Order.

A copy of every such order shall be provided to the Standing Committee and concerned Nodal Ministry / Department. The Nodal Ministry / Department concerned will continue to have the power to vary its notification on Minimum Local Content.

xv) **Directions to Government companies:** In respect of Government companies and other procuring entities not governed by the General Financial Rules, the administrative Ministry or Department shall issue policy directions requiring compliance with this Order.

xvi) **Standing Committee.** A standing committee is hereby constituted with the following membership:

Secretary, Department for Promotion of Industry and Internal Trade-Chairman
Secretary, Commerce-Member
Secretary, Ministry of Electronics and Information Technology-Member
Joint Secretary (Public Procurement), Department of Expenditure-Member
Joint Secretary (DPIIT)-Member-Convenor

The Secretary of the Department concerned with a particular item shall be a member in respect of issues relating to such item. The Chairman of the Committee may co-opt technical experts as relevant to any issue or class of issues under its consideration.

xvii) **Removal of difficulties:** Ministries /Departments and the Boards of Directors of Government companies may issue such clarifications and instructions as may be necessary for the removal of any difficulties arising in the implementation of the Order.

xviii) **Ministries having existing policies:** Where any Ministry or Department has its own policy for preference to local content approved by the Cabinet after 1st January 2015, such policies will prevail over the provisions of the Order. All other existing orders on preference to local content shall be reviewed by the Nodal Ministries and revised as needed to conform to this Order, within two months of the issue of this Order.

xix) **Transitional provision:** The Order shall not apply to any tender or procurement for which notice inviting tender or other form of procurement solicitation has been issued before the issue of this Order.

(Rule 153 of GFR 2017)

1.11 Proactive Information Disclosures

Section 4(1) (b) of the RTI Act lays down the information to be disclosed by public authorities on a suo motu or proactive basis and Section 4(2) and Section 4(3) prescribe the method of its dissemination to enhance transparency and also to reduce the need for filing individual RTI applications. The Department of Personnel & Training, Ministry of Personnel, Public Grievances & Pensions, Government of India, has issued “Guidelines on suo motu disclosure under Section 4 of the RTI Act” vide their OM No.1/6/2011-IR dated April 15, 2013.²⁸ The relevant guidelines relating to information disclosure relating to procurement are reproduced below:

“Information relating to procurement made by public authorities including publication of notice/tender enquiries, corrigenda thereon, and details of bid awards detailing the name of the Vendor/ Contractor of goods/services being procured or the works contracts entered or any such combination of these and the rate and total amount at which such procurement or works contract is to be done should be disclosed. All information disclosable as per Ministry of Finance, Department of Expenditure’s O.M. No 10/1/2011-PPC dated 30th November, 2011²⁹ (and 05th March 2012³⁰) on Mandatory Publication of Tender Enquiries on the Central Public Procurement Portal and O.M. No. 10/3/2012- PPC dated 09th January 2014 on implementation of comprehensive end-to-end e-procurement should be disclosed under Section 4 of the Right to Information Act.

1.12 Public Procurement Cycle

The procurement process for goods, works and/or services typically involves the following cycle of activities, undertaken in the order stated below.

- i) **Need Assessment:** Need assessment, formulation of Specifications and Procurement Planning
- ii) **Bid Invitation:** Preparing bid documents, publication, receipt and opening of bids;
- iii) **Bid Evaluation:** Evaluation of bids and award of contract; and
- iv) **Contract Execution:** Contract management and closure.
- v) **Disposal of Scrap:** Disposal of Scrap through various modes of disposal.

Details and procedures of various stages of the procurement cycle would be described in subsequent Chapters of the manuals.

²⁸ <http://cic.gov.in/GuidelinesOnProActive.pdf>

²⁹ http://finmin.nic.in/the_ministry/dept_expenditure/gfrs/pub_tender_enq_cpportal.pdf

³⁰http://eprocure.gov.in/cppp/sites/default/files/instruction_contents/INST_DOC_NO_7/OM_DoE_5thMarch2012.pdf

Chapter 2: Need assessment, formulation of Specifications and Procurement Planning

2.1 Need Assessment

2.1.1 Procurements should be initiated only based on an indent from the user Department. The authority in the user Department initiating the indent for procurement shall first determine the need (including anticipated requirement) for the subject matter of the procurement. Description and Specification of Need assessment is of fundamental importance in ensuring value for money, transparency, competition and level playing field in procurement. The user Department shall maintain all documents relating to the determination and technical/financial/budgetary approvals of the need for procurement. During need assessments, the following matters are decided to comply with the 'Procurement Guidelines':

- i) **The expression/description of the need** keeping in view the Value for Money (VfM) and to ensure wide competition. Therefore to the extent practicable it should be:
 - a) Unambiguous, complete, using common terminology prevalent in relevant trade;
 - b) In accordance with the guidelines prescribed if any in this regard;
 - c) Except in case of proprietary purchase from a selected single source, reference to brand names, catalogue numbers or other details that limit any materials or items to specific manufacturer(s) should be avoided as far as possible. Where unavoidable, such item descriptions should always be followed by the words "or substantially equivalent".
- ii) **Method of satisfying it** (owning/leasing/hiring/outsourcing or through Public Private Partnership (PPP), and so on) may be determined as per policies declared in this regard or based on a techno-economic evaluation (using life cycle cost, if feasible) of various alternative methods of satisfaction of the need and compatibility and inter-operability with existing infrastructure or systems.
- iii) The quantity of the subject matter of procurement, commensurate with economy:
 - a) Care should be taken not to make unnecessary procurements much in advance of actual requirements, if such procurement is likely to be unprofitable to the Government, coupled with unwarranted inventory-carrying cost. Where sales, consumption or usage limits of requirements have been laid down by the Competent Authority (CA), the officer signing the indent should also certify that the prescribed scales or limits are not exceeded. The authority preparing the indent shall neither package nor divide its procurement or take any other action so as to limit competition among potential bidders or to avoid its obligations under 'Procurement Guidelines'. Provided that in the interest of efficiency, economy, timely completion or supply, wider competition or access to MSEs, a indenting or procuring authority may, for reasons to be recorded in writing, divide its procurement into appropriate packages, or club requirements of other users for procurement. Some requirements e.g. IT Systems may have elements of Goods, Works and Services. It could be either sliced into of Goods, Works and Services elements or combined into a package. Such decisions for slicing or packaging should be based on technical and VfM

considerations. It is also necessary to round off the calculated quantity to the nearest wagon load/truck load/package to economise on transportation; and

- b) Units of quantity are a very important parameter. Some items may be manufactured in metric tons but may be used in units of numbers or units of lengths (for example, steel sheets/structural). For the sake of transparency, it is important to buy an item in units of manufacture. For example, it is better to buy steel/structural in units of weight since it has a tolerance in weight per unit of length; this usually works to the disadvantage of the buyer if it is bought in units of length. The buying and issuing units of an item may be different – but should be standardised.
- c) **Time-schedule and place** of product/work/service delivery: Need assessment and generation of indent for procurement should be done sufficiently in advance of the time when goods are required. Delays in need assessment have adverse impact on the value for money and transparency. Great care is required to be exercised in filling up realistic dates for the requirement of material. The procuring entity should be allowed time in accordance with the establishment lead times. In urgent cases, the procuring entity may entertain indents providing shorter periods but such urgencies should be approved by the authority empowered to grant administrative approval for the indent and must be accompanied by proper justification.
- d) **Formulation of Specification** to ensure value for money, transparency, level playing field and ensuring widest competition. This is further detailed in subsequent para.
- e) **Estimation of Cost:**
 - 1. The estimated cost in the indent is a vital element in various procurement processes, approvals and establishing reasonableness of prices at the time of evaluation of the bids. Therefore, it should be worked out in a realistic and objective manner. The prevailing market price ascertained through a market survey or budgetary quotations from one or more prospective suppliers or published catalogues/Maximum Retail Price (MRP) printed on the item is the main source for establishing the estimated cost of items for which there no historic data available. It may be noted that MRPs usually include significant margins for distributors, wholesalers and retailers;
 - 2. For equipment/craft which are uniquely custom-built to buyer's specifications, the best way to get a fair assessment of costs is by obtaining budgetary quotes from potential parties. Ideally, there should be three quotes. However, there is need to have a time schedule for receipt of quotes to ensure some timeframe for this activity. Thus:
 - a) An attempt should be made to obtain as many budgetary quotes as possible from reputed/potential firms and a time of 21 (twenty-one) days be indicated therefore. In the event of receipt of less than three budgetary quotes, two extensions of up to 10 (ten) days each may be considered; and
 - b) In the event of non-availability of three quotes within the above extended period, the estimates should be prepared on the basis of the number of budgetary quote(s) received, which may even be one; and where more than one budgetary quote is received, the estimate should be framed on an average of the quotes which will reduce variations and fluctuations;

3. Other methods for establishing the estimated cost in the indent and tender evaluation are:
 - a) Estimated rate in past indents of the same goods;
 - b) Last purchase price of this or similar or nearly equivalent requirements;
 - c) Costing analysis based on costs of various components/raw materials of the item;
 - d) Rough assessment from the price of the assembly/machine of which the item is a part or vice versa;
 - e) Through the internal or external expert costing agencies; and
 - f) As a last resort, rough assessment from the opportunity cost of not using this item at all;

- iv) These methods are not mutually exclusive and can be supplemented with escalations to cater for inflation, price increases of raw materials, labour, energy, statutory changes, price indices, and so on, to make them usable in conditions prevailing currently. In case of foreign currencies, the rate should be reduced to a common denomination of Indian Rupees. Price indices can be obtained from the following websites. Some may require prior free registration and some paid subscription:
 - a) For price indices of indigenous items: <http://www.eaindustry.nic.in/home.asp.in> (Ministry of Industry);
 - b) For metals and other minerals: <http://www.mmronline.com/> or <http://www.metalprices.com/index.asp> or <http://www.asianmetal.com/>;
 - c) For price trends of nonferrous details; London Metal Exchange - <https://www.lme.com/> gives price trends of nonferrous details, which often show volatile trends;
 - d) Other useful sites: <http://www.tradeintelligence.com/> and <http://www.cmie.com/>. (Centre for Monitoring Indian Economy);
 - e) For price trends of different countries: <http://www.imf.org/external/pubs/ft/weo/2015/01/> (International Monetary Fund) and
 - f) For organisation/chambers of commerce such as the (Indian Electrical and Electronics Manufacturer's Association): www.ieema.org;

2.2 Formulation of Technical specifications (TS)

2.2.1 The procuring authority should ensure that specifications are developed to ensure VfM, level playing field and wide competition in procurement [Rule 173 (ix) of GFR 2017]. The TS constitute the benchmarks against which the procuring entity will verify the technical responsiveness of bids and, subsequently, evaluate the bids. Therefore, well-defined TS will facilitate the preparation of responsive bids by bidders as well as examination, evaluation and comparison of the bids by the procuring entity. It would also help in ensuring the quality of the supplied goods. The procuring authority should ensure that the specification should:

- i) Provides a level playing field and ensures the widest competition; and
- ii) Be unambiguous, precise, objective, functional, broad based/generic, standardised (for items procured repeatedly) and measurable. TS should be broad enough to

avoid restrictions on workmanship, materials and equipment commonly used in manufacturing similar kinds of goods;

- iii) Set out the required technical, qualitative and performance characteristics to meet just the bare essential needs of the procuring entity without including superfluous and non-essential features, which may result in unwarranted expenditure;
- iv) Normally be based on standards set by the Bureau of Indian Standards (BIS), wherever such standards exist. Preference should be given to procure the goods which carry the BIS mark. In the absence of BIS standards, TS may be based on the relevant International standards. Provided that an indenting authority may, for reasons to be recorded in writing, base the TS on equivalent international standards even in cases where BIS standards exist. For any deviations from Indian standards or for any additional parameters for better performance, specific reasons for deviations/modifications should be duly recorded with the approval of the CA. Where the technical parameters are only marginally different, Indian standards may be specified and the Departmental specifications could cover only such additional details as packing, marking, inspection, and so on, as are specially required to be complied for a particular end use;
- v) All dimensions incorporated in the specifications shall be indicated in metric units. If due to some unavoidable reasons, dimensions in FPS units are to be mentioned, the corresponding equivalents in the metric system must also be indicated.
- vi) Comply with sustainability criteria and legal requirements of environment or pollution control and other mandatory and statutory regulations, or internal guidelines, if any, applicable to the goods to be purchased;
- vii) Make use of best practices. examples of specifications from successful similar procurements in the other organisations or sector may provide a sound basis for drafting the TS;
- viii) Commensurate with VfM, avoid procurement of obsolete goods and require that all goods and materials be new, unused and of the most recent or current models and that they incorporate all recent improvements in design and materials, unless provided for otherwise in the bidding documents;
- ix) Should have emphasis on factors such as efficiency, optimum fuel/power consumption, use of environmental-friendly materials, reduced noise and emission levels, low maintenance cost, and so on. Government of India has set up the Bureau of Energy Efficiency (BEE) (<http://www.bee-india.nic.in>) on March 1, 2002 under the provisions of the Energy Conservation Act, 2001, with the primary objective of reducing the energy intensity of the Indian economy. The Bureau initiated the Standards & Labelling Programme for equipment and appliances in 2006 to provide the consumer an informed choice about the energy saving and thereby the cost saving potential of the relevant marketed product. The scheme is invoked for 21 equipment/appliances, i.e. Room Air Conditioners, RAC(Cassette, Floor Standing Tower, Ceiling, Corner AC), Tubular Fluorescent Tube Lights, Frost Free Refrigerators, Distribution Transformers, Direct Cool Refrigerator, Electric storage type geyser, Color TVs, Induction Motors, Ceiling fans, Agricultural pump sets, LPG stoves, Washing machine, Laptops, Ballast, Office automation products, Solid State Inverter, Diesel Engine Driven Monoset Pumps for Agricultural Purposes, Diesel

Generator, Inverter AC and LED Lamps. Of which the first 8 products have been notified under mandatory labelling since 7th January, 2010. The other appliances are presently under voluntary labelling phase. The energy efficiency labelling programs under BEE are intended to reduce the energy consumption of appliance without diminishing the services it provides to consumers. More the stars higher the efficient is the appliance. The threshold ratings prescribed by the Ministry of Finance are:

Appliance	Threshold Star Rating
Split Air conditioners	5 Star (under normal conditions where annual usages are expected to be more than 1000 Hrs) 3 Star (where usage of AC is limited e.g. in conference rooms)
Frost Free Refrigerators	4 Star
Ceiling Fans	5 Star
Water Heaters	5 Star

We should try to build either the BEE Star rating where applicable and minimum energy efficiency where such star ratings are not yet available, into the TS (in accordance with *Rule 173 (xvii) of GFR 2017*). *Such benchmarking illustrates use of neutral and dependable benchmarking in procurement of sustainable environmentally favourable goods by way of appropriately formulated Technical Specifications*. In a similar fashion, other Type III Eco-labels as per ISO 14020 or voluntary Environmental Standard can be used for specifying environmental sustainability criteria.

- x) **Discourage procurement involving evaluation of samples:** According to the existing guidelines on public procurement of goods, purchase in accordance with a sample should not be usually undertaken. Calling³¹ for a sample along with the tender and deciding on the basis of evaluation of the sample may NOT be done. In certain specifications, there may be a built-in sample clause. Usually such clauses are stipulated to illustrate indeterminable characteristics such as shade/ tone, make-up, feel, finish and workmanship, and so on. In some specifications, there may not be a sample clause but such indeterminable characteristics are left to be agreed to between the seller and buyer. One way to procure/indigenise certain spares whose drawings/specifications are not available is to procure in accordance with an available sample of the part. In such cases, supply must be in conformity with an agreed reference sample in such respects only, whereas for the remaining characteristics it must be in conformity with the laid down drawings/specifications. Procurement of such items should be decided on the basis of detailed specifications/drawings and no sample should be called for or evaluated along with the bids. If desired, a purchaser's reference sample may be displayed for prospective tenderers to illustrate the desired indeterminable characteristics, which final supplies from successful bidder(s) will have to meet in addition to the specifications/drawings. If required, in addition to the purchaser's reference sample, the provision for the submission of a pre-production sample matching the purchaser's sample by

³¹CVC's circular: 2EE-1-CTE-3 dated 15 October 2003, URL: <http://cvc.gov.in/eecte32k3.pdf>

successful bidder(s) may be stipulated for indeterminable characteristics, before giving clearance for bulk production of the supply. The Indent for items which are to be procured in accordance with a sample must be accompanied with three sealed samples as far as possible;

2.2.2 Essential Technical particulars

The essential Technical particulars to be specified in the tender document shall include the following to the extent applicable for a particular purchase:

- i) Scope of supply and, also, end use of the required goods;
- ii) All essential technical, qualitative, functional, environmental and performance characteristics and requirements (such as material composition, physical, dimensions and tolerances, workmanship and manufacturing process wherever applicable; test schedule; if any), including guaranteed or acceptable maximum or minimum values, as appropriate. Whenever necessary, the user may include an additional format for guaranteed technical parameters (as an attachment to the bid submission sheet), where the bidder shall provide detailed information on such technical performance characteristics in reference to the corresponding acceptable or guaranteed values;
- iii) Drawings;
- iv) Requirement of the BIS mark, where applicable, mentioning all parameters where such a specification provides options;
- v) Requirement of an advance sample, if any, at the post contract stage before bulk production;
- vi) Special requirements of preservation, packing and marking, if any;
- vii) Inspection procedure for goods ordered and criteria of conformity;
- viii) Requirements of special tests or type test certificate or type approval for compliance of statutory requirements with reference to pollution, emission, noise, if any;
- ix) Other additional work and/or related services required to achieve full delivery/completion, installation, commissioning, training, technical support, after-sales service and Annual Maintenance Contract (AMC) requirements, if any;
- x) Warranty requirements;
- xi) Qualification criteria of the bidders, if any; and
- xii) Any other aspects peculiar to the goods in question such as shelf life of the equipment, and so on.

2.2.3 Need Assessment and Technical Specification - Risks and Mitigations	
<i>Risk</i>	<i>Mitigation</i>
Need is either artificially created or exaggerated , with the intention to channel benefits to an individual or an organisation. For example, demand is created for a good that is not needed simply to benefit the company's owner.	Keep records and involve stakeholders: Records of decision making and data used should be kept. Involve procurement and finance functions at this stage also. End user and stakeholder consultations should be part of the process.
Delays in Assessment of Need and generation of Indent for Procurement , may lead to shortcut procurement procedures that	Need assessment should be done sufficiently in advance of the time when goods are required. In case or urgent

dilutes transparency and prevent achievement of value for money. It may also lead to delays in delivery of goods.	requirements, the urgency certificate should be approved by authority empowered to grant administrative approval for the indent, recording justification – why the need could not be formulated earlier.
The estimate of the costs may be inadequate. This may lead to inadequate response from the bidders and may delay finalisation of procurement. It may also adversely affect the quality of supplies.	Estimates of procurement should be prepared with due diligence, keeping in view inflation, technology changes, profit margins etc.
Need Description/ Specifications involving subjectivity: Procurements where samples are asked to be submitted along with the offer and the evaluation is based on the subjective evaluation of samples – may lead to allegations of corruption.	If required, a stock sample for indeterminable parameters such as, shade/tone, size, make-up, feel, finish and workmanship, may be displayed during procurement to which the offers must conform. If necessary, provide for submission of an advance sample by successful bidder(s) before giving clearance for bulk production of the supply.
Need Description/ Specifications and terms of reference are disproportionate to the need identified or made to tilt in favour one or a group of vendor(s) or contractor(s) to artificially restrict competition.	Use a formal market discovery tool: Pre-bid conference and/ or well publicised EoI may be used for discovery of the market. Otherwise, encourage and invite comments on the technical and commercial conditions in the bid document or hold pre-bid conference.
Asymmetric dissemination of vital need information: Dialogue for determining solutions available in the market is held only with selected prospective bidders, giving them undue advantage in preparing for the bidding. Selected prospective bidders get access to inside information not disclosed or disclosed late to others.	

2.3 Obtaining Technical, Administrative and Budgetary Sanctions/ Approvals and signing of Indents

Procuring Entities may lay down a schedule of powers for administrative and budgetary approval of indents generated for procurement of goods (Please refer to Annexure 2C for suggested Structure of SoPP). Before granting such approvals, it should be certified that funds in the budget are available and liability for this indent is noted against the total available budget. In case the time schedule of delivery is urgent (or shorter than usual lead-time) an urgency certificate should be recorded justifying the urgency. The indenting authority may submit an indent in form of a Purchase Requisition (Annexure 3) to the procuring entity, giving it adequate time for procurement. Indenters should monitor the progress of the Indents submitted by them. For this purpose, a register may be maintained in the format provided in *Annexure 4A*. On receipt in the procuring authority, progress of such

Indents should be monitored for which a register may be maintained in the format provided in *Annexure 4B*.

2.4 Procurement Planning

2.4.1 After receipt of the Indent, the procuring entity should take following decisions to initiate procurement, to ensure conformity to the Procurement Guidelines:

- i) Within 10 (Ten) working days of receipt of the indent from the user Department, the procuring authorities should critically review the description and TS enclosed with the indent for completeness/approvals/funding, VfM and possibility of the widest competition and seek clarifications from the indenting officer, if needed, before initiating such procurement;
- ii) **Reassessment of the quantity and appropriate aggregation of quantities of various users:** The procuring authority shall normally neither package nor divide its procurement or take any other action so as to limit competition among bidders or to avoid the necessity of obtaining the sanction of higher authority required with reference to the estimated value of the total demand (*Rule 157 of GFR 2017*). Provided that in the interest of efficiency, economy, timely completion or supply, wider competition or access to MSEs, a procuring authority may, for reasons to be recorded in writing, divide its procurement into appropriate packages, or club requirements of other users for procurement. Packaging of the contract and procurement planning should be done keeping in view the availability and possibility of eliciting the interest of the qualified firms; effective competition for the type and size of the contract; and access to MSEs. For example for a particular contract, material to be procured may constitute more than 50 (fifty) per cent of the total cost of works or there are services which are a mix of consultancy services with substantial element of goods, such as procurement of an IT system. Such procurement could be done as a single composite contract comprising all components or divided into separate contracts for each category of procurement. In all such situations, the dominant aspect of the requirement and value for money aspects of a composite all-inclusive contract versus dividing the contract into respective categories should be carefully examined at the time of Need assessment/ Procurement Planning. This is a crucial stage of decision-making in procurement planning for a better outcome and for VfM considerations;
- iii) Determine and declare in documents, any limitation on participation of bidders as per the Government's procurement policy regarding preference to certain sections of industry, if any. The procuring entity shall not establish any requirement aimed at limiting participation of bidders in the procurement process that discriminates against or amongst bidders or against any category thereof except to lay down a reasonable and justifiable eligibility or pre-qualification criteria for the bidders;
- iv) Selection of a system of bidding (single/two stage; single/two bids; suitability for e-procurement or reverse auction);
- v) Select the mode of procurement (open tenders, limited tenders, single tenders, and so on);
- vi) Decisions on the timeframe for completing various stages of procurement, which should be declared in the pre-qualification/bidder registration or bidding documents.

The procuring entity should endeavour to adhere to the time limit so decided and record reasons for any modification of such limits; and

- vii) Integrated procurement plan should be prepared for goods, works and services for the ensuing financial year based on the latest cost estimates, and realistic time schedule for procurement activities and contract implementation and thus schedule and stagger the procurements over the year with a view to ensure an even load on the procuring entity and the market and also to co-ordinate matching procurements of Goods, Works and Services for a project;

2.4.2 The procuring entity may publish information regarding the planned procurement activities for the forthcoming year or years on the central public procurement portal and website/ e-Procurement portal used by the procuring entity with a caveat that such publication shall not be construed as initiation of a procurement process and cast any obligation on the procuring entity to issue the bidding document or confer any right on prospective bidders.

2.4.3 Procurement Planning - Risks and Mitigations	
<i>Risk</i>	<i>Mitigation</i>
Procurement Planning	
Packaging, bundling and slicing of requirement is done to avoid open competition or reduce competition. Or it is too large to make it difficult for MSEs to participate. Possible clubbing/collaboration among different units having the same needs are not explored.	Lay down a clear policy for packaging and bundling of requirements. In large packages, the affordability of EMD and resultant restriction on competition may be kept in view and bidders may be allowed to bid for slices of the package by depositing proportional EMD.

Chapter 3: Supplier Relationship Management

3.1 Supplier Relationship Management

Supplier Relationship Management comprises the following functions:

- i) Ensuring compliance of suppliers to the Code of Integrity for Public Procurement and Integrity Pact (CIPP) if stipulated in Bid Documents;
- ii) Holiday listing; removal from the list of registered suppliers and banning/debarment of firms; and
- iii) Development of new sources and registration of suppliers.

3.2 Code of Integrity for Public Procurement (CIPP)

3.2.1 Public procurement is perceived to be prone to corruption and ethical risks. To mitigate this, the officials of Procuring Entities involved in procurement and the bidders/ suppliers must abide by the following Code of Integrity for Public Procurement (CIPP). All Procuring officials may be asked to sign declarations to this effect periodically and in various Procurement decisions (including Need Assessment). The bidders/ suppliers should be asked to sign a declaration about abiding by a Code of Integrity for Public Procurement in registration applications and in bid documents, with a warning that, in case of any transgression of this code, its name is not only liable to be removed from the list of registered suppliers, but it would be liable for other punitive actions such as cancellation of contracts, banning and blacklisting or action in Competition Commission of India, and so on.

(Rule 175 of GFR 2017)

3.2.2 **Code of Integrity for Public Procurement:** Procuring authorities as well as bidders, suppliers, contractors and consultants should observe the highest standard of ethics and should not indulge in the following prohibited practices, either directly or indirectly, at any stage during the procurement process or during execution of resultant contracts:

- i) **“Corrupt practice”:** making offers, solicitation or acceptance of bribe, rewards or gifts or any material benefit, in exchange for an unfair advantage in the procurement process or to otherwise influence the procurement process or contract execution;
- ii) **“Fraudulent practice”:** any omission or misrepresentation that may mislead or attempt to mislead so that financial or other benefits may be obtained or an obligation avoided. This includes making false declaration or providing false information for participation in a tender process or to secure a contract or in execution of the contract;
- iii) **“Anti-competitive practice”:** any collusion, bid rigging or anti-competitive arrangement, or any other practice coming under the purview of The Competition Act, 2002, between two or more bidders, with or without the knowledge of the procuring entity, that may impair the transparency, fairness and the progress of the procurement process or to establish bid prices at artificial, non-competitive levels;
- iv) **“Coercive practice”:** harming or threatening to harm, persons or their property to influence their participation in the procurement process or affect the execution of a contract;

- v) **“Conflict of interest”**: participation by a bidding firm or any of its affiliates that are either involved in the consultancy contract to which this procurement is linked; or if they are part of more than one bid in the procurement; or if the bidding firm or their personnel have relationships or financial or business transactions with any official of procuring entity who are directly or indirectly related to tender or execution process of contract; or improper use of information obtained by the (prospective) bidder from the procuring entity with an intent to gain unfair advantage in the procurement process or for personal gain; and
- vi) **“Obstructive practice”**: materially impede the procuring entity’s investigation into allegations of one or more of the above mentioned prohibited practices either by deliberately destroying, falsifying, altering; or by concealing of evidence material to the investigation; or by making false statements to investigators and/or by threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or by impeding the procuring entity’s rights of audit or access to information;

3.2.3 **Obligations for Proactive Disclosures**

- i) Procuring authorities as well as bidders, suppliers, contractors and consultants, are obliged under Code of Integrity for Public Procurement to suo-moto proactively declare any conflicts of interest (coming under the definition mentioned above – pre-existing or as and as soon as these arise at any stage) in any procurement process or execution of contract. Failure to do so would amount to violation of this code of integrity; and
- ii) Any bidder must declare, whether asked or not in a bid document, any previous transgressions of such a code of integrity with any entity in any country during the last three years or of being debarred by any other procuring entity. Failure to do so would amount to violation of this code of integrity.
- iii) To encourage voluntary disclosures, such declarations would not mean automatic disqualification for the bidder making such declarations. The declared conflict of interest may be evaluated and mitigation steps, if possible, may be taken by the procuring entity. Similarly voluntary reporting of previous transgressions of Code of Integrity elsewhere may be evaluated and barring cases of various grades of debarment, an alert watch may be kept on the bidder’s actions in the tender and subsequent contract.

3.2.4 **Punitive Provisions:** Without prejudice to and in addition to the rights of the procuring entity to other penal provisions as per the bid documents or contract, if the procuring entity comes to a conclusion that a (prospective) bidder/supplier, directly or through an agent, has violated this code of integrity in competing for the contract or in executing a contract, the procuring entity may take appropriate measures including one or more of the following:

- i) if his bids are under consideration in any procurement
 - a) Forfeiture or encashment of bid security
 - b) calling off of any pre-contract negotiations, and;
 - c) rejection and exclusion of the bidder from the procurement process

- ii) if a contract has already been awarded
 - a) Cancellation of the relevant contract and recovery of compensation for loss incurred by the procuring entity,;
 - b) Forfeiture or encashment of any other security or bond relating to the procurement;
 - c) Recovery of payments including advance payments, if any, made by the procuring entity along with interest thereon at the prevailing rate;
- iii) Provisions in addition to above:
 - a) Removal from the list of registered suppliers and banning/debarment of the bidder from participation in future procurements of the procuring entity for a period not less than one year;
 - b) In case of anti-competitive practices, information for further processing may be filed under a signature of the Joint Secretary level officer, with the Competition Commission of India;
 - c) Initiation of suitable disciplinary or criminal proceedings against any individual or staff found responsible.

3.2.5 Conduct of Public Servants in Public Procurement - Risks and Mitigations	
<i>Risk</i>	<i>Mitigation</i>
<p>Hospitality: Hospitality (including facilitation of travel, lodging, boarding and entertainment during official or unofficial programs) from suppliers may tend to cross the limits of ethical/ occasional/ routine/modest/ normal business practice. Officials sent to firm's premises for inspections/ meetings may mistakenly presume entitlement to hospitality from the firm, even if other arrangements are available at the location.</p>	<p>Hospitality must never be solicited, directly or indirectly. The frequency, scale and number of officials availing hospitality should not be allowed to identify the recipient in a public way with any particular contractor, supplier or service provider or raise doubts about its neutrality. It should not involve significant travel, overnight accommodation or trips abroad. Particular care should be taken in relation to offers of hospitality from firms (say participating in current or imminent tenders or its execution) who stand to derive a personal or commercial benefit from their relationship with the recipient.</p>
<p>Gifts: Gifts from suppliers may tend to cross the limits of ethical/ occasional/ routine/modest/ normal business practice, especially on festive season. Since the value of the gift may not be known to the recipient, it may cause inadvertent violation of Conduct rules.</p>	<p>Gifts must never be solicited, directly or indirectly. An official should not accept and retain gifts more valuable than the limit as laid down in the conduct rules. Cash, gift cheques or any vouchers that may be exchanged for cash may not be accepted regardless of the amount. Particular care should be taken in relation to gifts from firms (say participating in current or imminent tenders or its execution) who stand to derive a personal or commercial benefit from their relationship with the recipient. Any gift received inadvertently in violation of</p>

3.2.5 Conduct of Public Servants in Public Procurement - Risks and Mitigations

<i>Risk</i>	<i>Mitigation</i>
	above, must immediately either be returned or else reported and deposited in Toshakhana/ Treasury.
Private Purchases from Official Suppliers: Procuring Officials may mistakenly consider it innocuous to seek discounts in private procurements from suppliers having official dealings or its associates(especially from Rate Contract holders).	Officials involved in Public Procurement must never indulge in any non-official pecuniary transaction with the contractors, suppliers or service providers with whom they have official dealings; including seeking or accepting special facilities or discounts on private purchases (particularly same items which are being ordered officially on rate contracts).
Sponsorship of Events: Procuring Officials may mistakenly consider it innocuous to seek financial favours (donations, advertisements for souvenirs, and contributions in cash or kind) in relation to sponsoring of cultural, social, charitable, religious, or sporting events, in the false belief that since he/she is personally not benefitted, it would not be a violation of CIPP.	Officials involved in Public Procurement must never indulge in any non-official pecuniary transaction with the contractors, suppliers or service providers with whom they have official dealings; including soliciting of sponsorship for unofficial and private cultural, social, sporting, religious, charitable or similar organisations or events.

3.3 Integrity Pact (IP)

The Pre-bid Integrity Pact is a tool to help Governments, businesses and civil society to fight corruption in public contracting. It binds both buyers and sellers to ethical conduct and transparency in all activities from pre-selection of bidders, bidding and contracting, implementation, completion and operation related to the contract. This removes insecurity of Bidders, that while they themselves may abjure Bribery, but their competitors may resort to it and win contract by unfair means.

Ministry of Finance, Department of Expenditure have mandated³² Ministries/ Departments and their attached/ subordinate offices (including autonomous bodies) to incorporate Integrity Pact by, depending on the nature of procurements/ contracts above a threshold value. The nature of procurement and threshold of value is to be decided by the Ministries/ Departments with approval of the Minister in charge. As guidance, the threshold should be such as to cover bulk (80-90% - eighty to ninety percent by value) of its procurement expenditure.

“The pact essentially envisages an agreement between the prospective vendors/bidders and the buyer, committing the persons/officials of both sides, not to resort to any corrupt

³²OM No.14(12)/ 2008- E-II(A) dated 19th July 2011

practices in any aspect/stage of the contract. Only those vendors/bidders, who commit themselves to such a Pact with the buyer, would be considered competent to participate in the bidding process. In other words, entering into this Pact would be a preliminary qualification. The essential ingredients of the Pact include:

- 1) Promise on the part of the Procuring Entity to treat all bidders with equity and reason and not to seek or accept any benefit, which is not legally available;
- 2) Promise on the part of bidders not to offer any benefit to the employees of the Procuring Entity not available legally and also not to commit any offence under Prevention of Corruption Act, 1988 or Indian Penal Code 1860;
- 3) Promise on the part of Bidders not to enter into any undisclosed agreement or understanding with other bidders with respect to prices, specifications, certifications, subsidiary contracts, etc;
- 4) Undertaking (as part of Fall Clause) by the Bidders that they have not and will not sell the same material/ equipment at prices lower than the bid price;
- 5) Foreign bidders to disclose the name and address of agents and representatives in India and Indian Bidders to disclose their foreign principals or associates;
- 6) Bidders to disclose the payments to be made by them to agents / brokers or any other intermediary;
- 7) Bidders to disclose any past transgressions committed over the specified period with any other company in India or Abroad that may impinge on the anti corruption principle;
- 8) Integrity Pact lays down the punitive actions for any violation;
- 9) **Integrity Pact (IP) would be implemented through a panel of Independent External Monitors (IEMs):** shall be appointed by the organization in consultation with Central Vigilance Commission. Names and contact details of the Independent External Monitor(s) should be listed in Notice Inviting Tender (NIT). The IEM would review independently and objectively, whether and to what extent parties have complied with their obligations under the Pact. Government of India organizations and Public Sector Undertakings desirous of implementing Integrity Pact are required to select at most three persons (below the age of 70 (seventy) years) of high integrity and reputation as Independent External Monitors (IEM) after due diligence and forward to the CVC for its approval. Only those officers of Government of India Departments or Public Sector Undertakings, who have retired from top management positions, would be considered for appointment as IEM, provided they are neither serving or retired from the same organization. Eminent persons, retired judges of High/ Supreme Courts, executives of private sector of considerable eminence could also be considered for functioning as Independent External Monitors. The appointment of Independent External Monitors would be for an initial period of three years and could be extended for another term of two years (maximum tenure of five years). Names and contact details of the Independent External Monitor(s) should be listed in Notice Inviting Tender (NIT).
- 10) **In tenders meeting the criteria of threshold value/ nature of procurement:** Integrity Pact clause and format should be included in the Bid Documents. Each page of such Integrity pact proforma would be duly signed by Purchaser's competent signatory. All

pages of the Integrity Pact are to be returned by the bidder (along with the technical bid) duly signed by the same signatory who signed the bid, i.e. who is duly authorized to sign the bid and to make binding commitments on behalf of his company. Any bid not accompanied by Integrity Pact duly signed by the bidder shall be considered to be a non-responsive bid and shall be rejected straightway.

11) **Role / Functions of IEMs:** The Monitors would not be subject to instructions by the representatives of the parties and should perform their functions neutrally and independently. They would review independently and objectively, whether and to what extent parties have complied with their obligations under the Integrity Pact. For this purpose, they would have access to all contract documents / books of accounts of the bidders in case of any allegation of violation of any provisions of the Integrity Pact or payment of commission, whenever required. The IEMs will have the option to participate in such meetings among the parties related to the project provided such meetings could have an impact on the contractual relations between the parties. Ideally all IEMs of an organization should meet once every two months to take stock of ongoing tendering process. The IEMs would examine all complaints received by them and give their recommendations / views to the designated officer of the Procuring Entity, at the earliest. The Monitors would also inform the Procuring Entity, if they notice or have reason to believe, a violation of the Integrity Pact. They may also send their report directly to the Central Vigilance Commission, in case of suspicion of serious irregularities requiring legal/ administrative action. At least one IEM would be invariably cited in the NIT. However for ensuring the desired transparency and objectivity in dealing with the complaints arising out of any tendering process, the matter should be examined by the full panel of IEMs, who would look into the records, conduct an investigation, and submit their joint recommendations. The recommendations of IEMs would be in the nature of advice and would not be legally binding. IEMs may not be equated with consultants in the Procuring Entity. Their role is independent in nature and the advice once tendered would not be subject to review. The role of the Chief Vigilance Officer (CVO) of Procuring Entity shall remain unaffected by the presence of IEMs. A matter being examined by the IEMs can be separately investigated by the CVO, if a complaint is received by him or directed to him by the CVC. As per para 5.13 of CVC OM No. 05/01/22 issued vide letter No. 015/VGL/091 dated 25.01.2022, in the event of any dispute between the management and the contractor relating to those contracts where Integrity Pact is applicable, in case, both the parties are agreeable, they may try to settle dispute through mediation before the panel of IEMs in a time bound manner. If required, the organizations may adopt any mediation rules for this purpose. In case, the dispute remains unresolved even after mediation by the panel of IEMs, the organization may take further action as per the terms & conditions of the contract.

3.4 Development of New Sources and Registration of Suppliers

3.4.1 Ensuring an up-to-date and current list of registered, capable and competent suppliers facilitates efficiency, economy and promotion of competition in public procurement, especially where open tendering is not resorted to. The list may be referred to while floating a limited tender/local purchase/direct contracting. For such tenders, it may be possible to skip bidder qualification so as to avoid unnecessary repetition/duplication of records thereby saving time, especially in the case of emergency procurement. *For goods and services not available on GeM*, Head of Ministry/ Department may also register suppliers of goods and

services which are specifically required by that Department or Office, periodically. Registration of the supplier should be done following a fair, transparent and reasonable procedure and after giving due publicity. Such registered suppliers should be boarded on GeM as and when the item or service gets listed on GeM. The list of registered suppliers for the subject matter of procurement be exhibited on websites of the Procuring Entity/ their e-Procurement portals.]³³.

3.4.2 Ministries / Departments with a significant volume of procurements may follow their own policies and procedures for registration of vendors, if already existing. The policies and procedures for registration described below is for guidance of Ministries/ Departments, who do not have their own laid down policies/ procedures for registration. The Ministry/ Department shall notify the authorities competent to deal with the applications and grant registrations, along with their jurisdictions. The appellate authority shall be at least one level above the registering authority or as designated by the Ministry/ Department.

3.4.3 All Ministries/ Department may use such lists prepared by other Ministries / Departments as and when necessary. Registered suppliers are ordinarily exempted from furnishing earnest money deposit/bid security with their tenders in tenders for items, and Monetary Limits for which they are registered. The list of registered suppliers for the subject matter of procurement be exhibited on the Central Public Procurement Portal and websites of the Procuring Entity/ e-procurement/ portals.

3.4.4 Categories for Registration

In case of procurement of goods, the Administrative Department shall register firms as suppliers of goods in different trade groups of goods in the following broad categories:

- i) Manufacturers, who supply indigenous items;
- ii) Agents/distributors of such manufacturers, who desire to market their production only through their agents;
- iii) Foreign manufacturers with/without their accredited agent in India;
- iv) Stockists of imported spares or other specified items; and
- v) Suppliers of imported goods as are having regular arrangement with foreign manufacturers.

3.4.5 One of the main prerequisites for registration as a manufacturer is that the firm should possess its own in-house testing facilities. In case of MSE units, the firm need not have its own testing facilities but regular arrangements with other reputed Government or Government-approved or private agencies in its area for testing of products. Before the manufacturer is included in the list of registered suppliers, Procuring Entity shall verify the bona fides and standing of the firm. Procuring Entity may also seek assistance from the inspection wing of other inspecting agencies. In case of firms having an established quality maintenance system with ISO 9001- 2000 certification (latest version) by authorised agencies, Procuring Entity may consider registration of such firms without carrying out capacity assessment.

3.4.6 Grades (Monetary Limits) for Registration

Registration should be done by grading the firms (Grade A, B, and so on) on their capability for executing contract orders of different monetary limits in the relevant category of

³³ Amended vide DoE OM No. F.1/26/2018-PPD dated 02.04.2019.

requirements. The monetary limits should be carefully fixed keeping in view the banker's reports, capacity and capability of the firm and other financial information indicated in the balance sheets, profit and loss statements:

- i) Grade-A: Rs. 25 (Rupees twenty-five) lakh and above;
- ii) Grade B: Rupees five lakh to Rs.25(Rupees twenty-five) lakh; and
- iii) Grade C: Rupees One lakh and up to Rupees five lakh

3.4.7 The firms that are registered for supply of orders valued above Rupees five lakh should invariably be manufacturers or their authorised agents. Procuring Entity shall register the manufacturers and not agents or middlemen. A sole selling agent/authorised agent could be considered for registration, subject to the condition that Procuring Entity is satisfied that he is the sole selling agent of manufacturers, and financial and technical capabilities of the manufacturers are ascertained by Procuring Entity. The availability of a suitable arrangement with the sole selling agent for after-sales service shall also be ensured and Procuring Entity shall also satisfy itself that a valid legal agreement exists between the applicant unit and its sole selling agent, during the period for which he is registered.

3.4.8 **Procedure for Registration:** The procedure to be adopted in this regard by the Central Purchase Organization or by any Ministry / Department in case it desires to register suppliers of goods which are exclusively needed by it. Registration of suppliers should be done ensuring fundamental principles of public procurement in view (especially the transparency principle - transparency, fairness, equality, competition and appeal rights) with the approval of CA after carefully assessing and verifying credentials, capability, quality control systems, past performance, after-sales service facilities, financial background, and so on, of the supplier/contractor/ service provider(s):

- i) Registration of the suppliers should be done following a fair, transparent and reasonable procedure and after giving due publicity. Details of the procedure for registration of new firms may be uploaded on the website and also published in the form of a booklet for information of the suppliers. Timeframes and criteria for registration of new suppliers may be clearly indicated;
- ii) Possible sources for any category/group of requirements can be identified based on internal and external references. Data of new suppliers can be obtained from the response received from suppliers, open tender advertisements, pre-qualification bids, Expression of Interest (EoI), against various enquiries on the website, dedicated websites, exhibitions, buyer-seller meets, various publications of NSIC , Development Commissioner of the Small Industries Service Institute, BIS, trade journals, and so on. The e-procurement portal does pre-registration of suppliers online. Such data can be a source of information on prospective suppliers;
- iii) New supplier(s) may be considered for registration at any time, provided they fulfil all the required conditions. For any larger scale or critical registration or development of new suppliers, Procuring Entity should call for EoI by publicising its need for development of sources. The stages to be followed together with the applicable guidelines for EoI have been detailed in Chapter 5;
- iv) While registering the firms, an undertaking may be obtained from them that they will abide by the CIPP enclosed with the application with a clear warning that, in case of transgression of the code of integrity, their names are likely to be deleted from the list

of registered suppliers, besides any other penalty or more severe action as deemed fit; and

- v) Along with the new/renewal application for registration, the suppliers should also be asked to declare that, if awarded a contract in any LTE in which they participate, they bind themselves to abide by the Procuring Entity's General Conditions of Contract (GCC). Such GCC should be part of the application.

vi) **Eligibility**

- a) Any firm, situated in India or abroad, which is in the business of providing goods/works/services of specified categories of interest, shall be eligible for registration;
- b) Where registration is granted based on partly outsourced arrangements/ agreements, it shall be the responsibility of the registered unit, to keep such arrangements/agreements renewed/alive at all times, to keep their registration valid for the period for which it has been granted. Any failure in this regard may make the registration null and void ineffective retrospectively from any such dates which the registering authority considers appropriate;
- c) Suppliers should possess valid Digital Signature Certificate (DSCs) Class III with the company name at the time of registration/ renewal, so as to enable them to participate in e-procurements
- d) Firm, against whom punitive action has been taken, shall not be eligible for re-registration during the currency of punitive action. Registration requests may not be entertained from such firms, stakeholders of whom have any interest in deregistered/banned firms;
- e) The application form, complete in all respects and accompanied with the requisite processing fee and prescribed documents shall be submitted by the firms to the registering authority. The registration application form, duly filled-in, when received from the firms shall be scrutinised carefully for assessing the capacity and capability of the firms including credentials, manufacturing capability, quality control system, past performance, after-sales service facilities, financial background, and so on, of the applicant. References shall be made to other firms of standing of whom the applicant firm claims to be a supplier/contractor. Likewise, the applicant firm's bankers may also be requested to advice about the financial standing of the firm. Registration of suppliers should be done with the approval of CA.
- f) In cases where the firm is not considered capable and registration cannot be granted, the concerned authority shall communicate the deficiencies and shortcomings direct to the firms under intimation to the appellate authority. Where a request for re- verification and review is made by the firm, along with any fee as prescribed and within the period prescribed by the Department, review shall be undertaken. Requests for re-verification after expiry of the said period would be treated as a fresh application and processing fee, if any prescribed, charged accordingly;

- g) Registration should be for specific trade groups of goods/works/services. For this purpose, all goods/ works/services should be divided into trade groups and the information published on the relevant portals/ websites;
- h) It should be mentioned in the letter of registration that the registration is valid for a period of one to three years and would be considered for extension based (on application by the supplier/contractor/service provider) on satisfactory performance of the firm. However, the registration would be initially treated as provisional and it would be treated as confirmed only after the firm has satisfactorily executed one order of the relevant category and value from Procuring Entity. The extension of validity of registration is not a matter of right and Procuring Entity reserves the right not to extend such registration without assigning any reason. New supplier(s) may also be considered for registration at any time, provided they fulfil all the required conditions;
- i) All registered suppliers should be allocated a unique registration number. Once the firms are registered, a circular shall be issued by the registration authority indicating the names and addresses of the registered suppliers with details of the requirements and monetary value they will supply as well as the validity period, and so on, for which they are registered. The list of registered suppliers for the subject matter of procurement be exhibited on the Central Public Procurement Portal and websites of the Procuring Entity/ e-Procurement/ portals;
- j) Within the monetary limits so prescribed, as also for the category of registration, the registered firm may be exempted from depositing the Earnest Money Deposit (EMD). In other categories and higher monetary limits, the supplier would be treated as any unregistered supplier and not be entitled to the privileges of a registered supplier. The monetary limit or category, so laid down, does not, however, debar a firm from getting orders in excess of the monetary limit or for other categories, provided the Procuring Entity is satisfied about the capacity and capability of the firm but a requisite security deposit should be obtained, as is being done in the case of unregistered firms;
- k) Performance and conduct of every registered supplier is to be watched by the concerned Department. Procuring Entity should also reserve the right to remove firms who do not perform satisfactorily, even during the validity of registration (after giving due opportunity to the supplier to make a representation) if they fail to abide by the terms and conditions of the registration or fail to execute contracts on time or supply substandard goods or make any false declaration to any Government agency or for any ground which, in the opinion of the Government, is not in public interest;
- l) Procuring Entity shall retain its option to reassess firms already registered, at any later date, to satisfy itself about the current financial soundness/credit worthiness, facilities available, and so on. Thereafter, Procuring Entity may decide to retain them as registered suppliers for the requirements and monetary limit earlier considered or with necessary changes as deemed fit. In case of adverse reports from the team of Procuring Entity officers who

reassess the firm, Procuring Entity shall delete such firm from the registered suppliers list;

(Rule 150 of GFR 2017)

3.4.9 Empanelment of contractors: Public authorities may empanel/ register contractors of those specific goods and services which are required by them regularly. Performance of such empanelled contractors should be reviewed periodically. The list of registered contractors shall be updated on a regular basis. The category/ class of contractors may be upgraded/ downgraded or contractors may be de-listed based on their performance. Empanelment of contractors shall be done in a fair and equitable manner, preferably online after giving due publicity.

3.5 Debarment of Suppliers

3.5.1 Registration of suppliers and their eligibility to participate in Procurement Entity's procurements is subject to compliance with Code of Integrity for Public Procurement and good performance in contracts. Rule 151 of General Financial Rules (GFR), 2017 states the following regarding the 'Debarment from Bidding':-

- i. A bidder shall be debarred if he has been convicted of an offence-*
 - (a) under the Prevention of Corruption Act, 1988; or*
 - (b) 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 a public procurement contract.*
- ii. A bidder debarred under sub-section (i) or any successor of the bidder shall not be eligible to participate in a procurement process of any procuring entity for a period not exceeding three years commencing from the date of debarment. Department of Commerce (DGS&D) will maintain such list which will also be displayed on the website of DGS&D as well as Central Public Procurement Portal.*
- iii. A procuring entity may debar a bidder or any of its successors, from participating in any procurement process undertaken by it, for a period not exceeding two years, if it determines that the bidder has breached the code of integrity. The Ministry/Department will maintain such list which will also be displayed on their website.*
- iv. The bidder shall not be debarred unless such bidder has been given a reasonable opportunity to represent against such debarment*

3.5.2 Since, DGS&D had been wind up on 31.10.2017, PPD, DoE did consultations on the issue of Debarment with major procuring Ministries/ Departments and issued the following 'Debarment Guidelines' in suppression to all earlier instructions on this subject³⁴.

3.5.3 Guidelines on Debarment of firms from Bidding

1. The guidelines are classified under following two types:-
 - i) In cases where debarment is proposed to be limited to a single Ministry, the appropriate Orders can be issued by that Ministry itself, thereby banning all its business dealing with the debarred firm.

³⁴Notified vide OM No. F.1/20/2018-PPD issued by Department of Expenditure dated 02.11.2021

- ii) Where it is proposed to extend the debarment beyond the jurisdiction of the particular Ministry i.e. covering to all central Ministries/ Departments, the requisite Orders shall be issued by Department of Expenditure (DoE), Ministry of Finance (MoF).

Definitions

- a) Firm: The term 'firm' or 'bidder' has the same meaning for the purpose of these Guidelines, which includes an individual or person, a company, a cooperative society, a Hindu undivided family and an association or body of persons, whether incorporated or not, engaged in trade or business.
- b) Allied firm: All concerns which come within the sphere of effective influence of the debarred firms shall be treated as allied firms. In determining this, the following factors may be taken into consideration:
 1. Whether the management is common;
 2. Majority interest in the management is held by the partners or directors of banned/ suspended firm;
 3. Substantial or majority shares are owned by the banned/ suspended firm and by virtue of this it has a controlling voice.
 4. Directly or indirectly controls, or is controlled by or is under common control with another bidder.
 5. All successor firms will also be considered as allied firms.

The terms "banning of firm", 'suspension', 'Black-Listing' etc. convey the same meaning as of "Debarment".

2. Debarment by a Single Ministry/ Department

Orders for Debarment of a firm(s) shall be passed by a Ministry/ Department/organizations, keeping in view of the following:

- i) A bidder or any of its successors may be debarred from participating in any procurement process for a period not exceeding two years.
- ii) Firms will be debarred if it is determined that the bidder has breached the code of integrity as per Rule 175 of GFRs 2017. (Refer to para 3.2 of this Manual for further reading on Code of Integrity).
- iii) A bidder can also be debarred for any actions or omissions by the bidder other than violation of code of integrity, which in the opinion of the Ministry/Department, warrants debarment, for the reasons like supply of sub-standard material, non-supply of material, abandonment of works, sub-standard quality of works, failure to abide "Bid Securing Declaration" etc.
- iv) It shall not be circulated to other Ministries/ Departments. It will only be applicable to all the attached/ subordinate offices, Autonomous bodies, Central Public Sector Undertakings (CPSUs) etc. of the Ministry/ Department issuing the debarment Order.
- v) The concerned Ministry/ Department before issuing the debarment order against a firm must ensure that reasonable opportunity has been given to the concerned firm to represent against such debarment (including personal hearing, if requested by firm).
- vi) Secretary of Ministry/Department may nominate an officer at the rank of Joint Secretary/Additional Secretary as competent authority to debar the firms.
- vii) Ministry/ Department that issued the order of debarment can also issue an Order for revocation of debarment before the period of debarment is over, if there is adequate justification for the same. Ordinarily, the revocation of the Order before expiry of

debarred period should be done with the approval of Secretary concerned of Ministry/Department.

viii) The Ministry/Department will maintain list of debarred firms, which will also be displayed on its website.

ix) Debarment is an executive function and should not be allocated to Vigilance Department.

3. It is possible that the firm may be debarred concurrently by more than one Ministry/ Department. Ministries/ Departments at their option may also delegate powers to debar bidders to their CPSUs, Attached Offices/ Autonomous Bodies etc. In such cases, broad principles for debarment in para 2 as above are to be kept in mind. Debarment by such bodies like CPSUs etc. shall be applicable only for the procurements made by such bodies. Similarly, Government e-Marketplace (GeM) can also debar bidders up to two years on its portal. In case of debarments done by CPSUs, revocation of the debarment orders before expiry of debarred period should be done only with the approval of Chief Executive Officer of concerned CPSUs etc.

4. Debarment across All Ministries/ Departments

i) Where a Ministry/ Department is of the view that business dealings with a particular firm should be banned across all the Ministries/ Departments by debarring the firm from taking part in any bidding procedure floated by the Central Government Ministries/ Departments, the Ministry/ Department concerned, should after obtaining the approval of the Secretary concerned, forward to DoE a self-contained note setting out all the facts of the case and the justification for the proposed debarment, along with all the relevant papers and documents. DoE will issue the necessary orders after satisfying itself that proposed debarment across all the Ministries/ Departments is in accordance with Rule 151 of GFRs, 2017. This scrutiny is intended to ensure uniformity of treatment in all cases.

ii) The firm will remain in suspension mode (i.e. debarred) during the interim period till the final decision taken by DoE, only in the Ministry/ Department forwarding such proposal.

iii) Ministry/ Department before forwarding the proposal to DoE must ensure that reasonable opportunity has been given to the concerned firm to represent against such debarment (including personal hearing, if requested by firm). If DoE realizes that sufficient opportunity has not be given to the firm to represent against the debarment, such debarment requests received from Ministries/ Departments shall be rejected.

iv) DoE can also give additional opportunity, at their option, to firm to represent against proposed debarment. DoE can also take suo-moto action to debar the firms in certain circumstances.

v) No contract of any kind whatsoever shall be placed on the debarred firm, including its allied firms by any Ministries/ Departments/ Attached/Subordinate offices of the Government of India including autonomous body, CPSUs etc. after the issue of a debarment order.

vi) DoE will maintain list of such debarred firms, which will be displayed on Central Public Procurement Portal.

5. Revocation of Orders

- i) An order for debarment passed shall be deemed to have been automatically revoked on the expiry of that specified period and it will not be necessary to issue a specific formal order of revocation.
 - ii) A debarment order may be revoked before the expiry of the Order, by the competent authority, if it is of the opinion that the disability already suffered is adequate in the circumstances of the case or for any other reason.
6. **Other Provisions (common to both types of debarment)**
- i) No contract of any kind whatsoever shall be placed to debarred firm including its allied firms after the issue of a debarment order by the Ministry/ Department. Bids from only such firms shall be considered for placement of contract, which are neither debarred on the date of opening of tender (first bid, normally called as technical bid, in case of two packet/two stage bidding) nor debarred on the date of contract. Even in the cases of risk purchase, no contract should be placed on such debarred firms.
 - ii) If case, any debar firms has submitted the bid, the same will be ignored. In case such firm is lowest (L-1), next lowest firm shall be considered as L-1. Bid security submitted by such debarred firms shall be returned to them.
 - iii) Contracts concluded before the issue of the debarment order shall, not be affected by the debarment Orders.
 - iv) The Debarment shall be automatically extended to all its allied firms. In case of joint venture/ consortium is debarred all partners will also stand debarred for the period specified in Debarment Order. The names of partners should be clearly specified in the "Debarment Order".
 - v) Debarment in any manner does not impact any other contractual or other legal rights of the procuring entities.
 - vi) The period of debarment shall start from the date of issue of debarment order.
 - vii) The Order of debarment will indicate the reason(s) in brief that lead to debarment of the firm.
 - viii) Ordinarily, the period of debarment should not be less than six months.
 - ix) In case of shortage of suppliers in a particular group, such debarments may also hurt the interest of procuring entities. In such cases, endeavour should be to pragmatically analyze the circumstances, try to reform the supplier and may get a written commitment from the supplier that its performance will improve.
 - x) All Ministries/ Departments must align their existing Debarment Guidelines in conformity with these Guidelines. Further, bidding documents must also be suitably amended, if required.

3.5.4 **Safeguarding Procuring Entity's Interests during debarment of suppliers:**

Suppliers are important assets for the procuring entities and punishing delinquent suppliers should be the last resort. It takes lot of time and effort to develop, register and mature a new supplier. In case of shortage of suppliers in a particular group of materials/equipment, such punishment may also hurt the interest of Procuring Entity. Therefore, views of the concerned Department may always be sought about the repercussions of such punitive action on the continuity of procurements. Past records of performance of the supplier may also be given due weightage. In case of shortage of suppliers and in cases of less serious misdemeanours, the endeavour should be to pragmatically analyse the circumstances, reform the supplier and get a written commitment from the supplier that his performance will improve. If this fails, efforts should be to see if a temporary debarment can serve the purpose.

(Rule 151 of GFR 2017)

3.6 Compulsory Enlistment of Indian Agents

Ministries/ Departments if they so require, may enlist Indian agents, who desire to quote directly on behalf of their foreign principals³⁵. *(Rule 152 of GFR 2017)*

³⁵Rule 52 of GFR, 2017 amended vide OM No. F.26/2/2016-PPD issued by Department of Expenditure dated 25.07.2017.

Chapter 4: Modes of Procurement and Bidding Systems

4.1 Modes of Procurement

Offers from prospective bidders in public procurement must be invited according to a procedure that achieves a balance between the need for the widest competition, on one hand, and complexity of the procedure, on the other hand. Different modes of procurement and bidding systems are used to suit various procurement circumstances to achieve this balance. There are laid down procedures for delegation of powers of procurement to various competent authorities under different modes as shown in DPFR. Each procuring entity may also publish its own Schedule of Procurement Powers (SoPP) delegating such powers within the entity.

However, as mentioned in Para 1.3 (Applicability of this Manual), for procurements financed by Loans/Grants extended by International Agencies, like the World Bank, Asian Development Bank etc., the procurement procedures, as finalized and incorporated in the Articles of Agreements with such agencies for relevant Loans/ grants after consideration and approval of the Ministry of Finance are to be followed.

The various modes of procurement that can be used in public procurement are:

1) Open Tenders

- a) Open Tender Enquiry (OTE); and
- b) Global Tender Enquiry (GTE)

2) Procurement through Selected Suppliers

- a) Limited Tender Enquiry - LTE (up to Rs. 25 (Rupees twenty-five) lakh); and
- b) Special Limited Tender Enquiry (SLTE above Rs. 25 (Rupees twenty-five) lakh under special circumstances)

3) Nomination Basis Tenders

- a) Proprietary Article Certificate (PAC); and
- b) Single Tender Enquiry (STE) without PAC

4) Procurements without Calling Tenders

- a) Direct Procurement without Quotation;
- b) Direct Procurement by Purchase Committee;

5) Mandatory Procurement of Goods and Services for Goods or Services available on GeM

(Rule 158 of GFR 2017)

4.2 Open Tender Enquiry(OTE)

4.2.1 In OTE, an attempt is made to attract the widest possible competition by publishing the NIT simultaneously on the designated websites. This is the default mode of procurement and gives the best value for money but the procedure is relatively complex and prolonged. *The systemic cost of this procedure may be high enough to be unviable for smaller value*

procurements. OTE procedures through e-procurement or through traditional tendering should be adopted in the following situations:

- i) Procurements exceeding the threshold of Rs. 25 lakh (Rupees Twenty Five Lakh);
- ii) All common use requirements with clear technical specifications;
- iii) For requirements that are ordinarily available in the open market but it is necessary to evaluate competitive offers to decide the most suitable and economical option available; and
- iv) When requirements are not available from known sources or sources are presently limited and need to be broad based. In such situations, even for procurements below Rs. 25 (Rupees twenty-five) lakh, OTE mode may be used, if warranted.

(Rule 161 of GFR 2017)

4.2.2 Terms and Conditions

- i) Bidders already registered are also free to participate;
- ii) Advertisement in such cases should be given on Central Public Procurement Portal (CPPP) at www.eprocure.gov.in and on GeM. An organisation having its own web site should also publish all its advertised tender enquiries on the web site. The procuring entity should also post the complete bidding document in its web site and on CPPP to enable prospective bidders to make use of the document by downloading from the web site. The advertisements for invitation of tenders should give the complete web address from where the bidding documents can be downloaded. In order to promote wider participation and ease of bidding, no cost of tender document may be charged for the tender documents downloaded by the bidders.; and
- iii) The sale/ availability for downloading of tender documents against NIT should not be restricted and should be available freely. Tender documents should preferably be sold/ available for download up to the date of opening of tenders.
- iv) The tender documents should be prepared on the basis of the relevant approved SBD for the category of procurement. Further details on preparing tender documents are provided in Chapter 6.
- v) The procuring entity shall maintain proper records about the number of tender documents sold, list of parties to whom sold, details of the amount received through sale and, also, the number of unsold tender documents, which are to be cancelled after the opening of the tenders.

4.2.3 OTE - Risks and Mitigations	
Risk	Mitigation
Since the crux of this mode of procurement is attracting bids from all possible prospective bidders. The risk is that this may not be achieved, even after incurring extra cost of open tendering. This	It should be ensured that the NIT on the website is easily searchable and visible, not hidden under layers of clicks. The matter should not be left entirely to the website or media publicity alone. Due diligence should be done to locate likely bidders (including past bidders) and their attention should be drawn through SMS/mail/email. All registered vendors/contractors (in

4.2.3 OTE - Risks and Mitigations

Risk	Mitigation
<p>could be due to</p> <ul style="list-style-type: none"> • Insufficient publicity; • Hindrances in availability of bid documents; • insufficient time for bid preparation; or • Due to onerous cost of bid-documents or EMD 	<p>particular past successful vendors/contractors) should be given intimation about forthcoming tenders via SMS/mail/ email.</p> <p>Further a limited or open tender which results in only one effective offer shall be treated as a single tender enquiry situation, with relevant powers of approval etc.</p> <p>It should be also ensured that there is no impediment to issue/access of bid documents.</p> <p>The due date fixed for opening of the tender shall be minimum 21 (twenty-one) days from the date of advertisement which may vary, taking into account the nature of material called for and delivery requirements. The due date may be subsequently extended with the approval of the CA, only if it is felt necessary to have better competition.</p> <p>The tender documents, shall be priced minimally (if at all priced, refer Para 5.2.1 Cost and Availability of Tender Documents) keeping in view the value of the tender as also the cost of preparation and publicity of the tender documents.</p> <p>EMD should be sufficient to ensure that bidders honour their bids but at the same time should not be large enough to reduce competition.</p>
<p>Lack of clarity in description/ specification of requirement or undue stringency in qualifying criteria or other conditions</p>	<p>Mitigations of such risks can be addressed at the time of need assessment and procurement planning (please refer to Chapter 2), so as to attract adequate competition.</p>

4.3 Global Tender Enquiry(GTE)

4.3.1 GTE is similar to OTE but, through appropriate advertising and provision for payment in Foreign Currencies through Letter of Credit, it is aimed at inviting the participation of inter-alia foreign firms. *The point of balance between VfM and cost/ complexity of procedure is further aggravated as compared to OTE. Development of local industry also needs to be kept in mind. Hence, it may be viable only in following situations:*

- i) Where Goods of required specifications/quality are not available within the country and alternatives available in the country are not suitable for the purpose;
- ii) Non-existence of a local branch of the global principal of the manufacturer/vendors/contractors;
- iii) Requirement for compliance to specific international standards in technical specifications; and

- iv) Absence of a sufficient number of competent domestic bidders likely to comply with the required technical specifications, and in case of suspected cartel formation among indigenous bidders.

(Rule 161 of GFR 2017)

4.3.2 Terms and Conditions

- i) Advertisement in such cases should be given on Central Public Procurement Portal (CPPP) at www.eprocure.gov.in and on GeM. An organisation having its own web site should also publish all its advertised tender enquiries on the web site. The procuring entity should also post the complete bidding document in its web site and on CPPP to enable prospective bidders to make use of the document by downloading from the web site. The advertisements for invitation of tenders should give the complete web address from where the bidding documents can be downloaded. In order to promote wider participation and ease of bidding, no cost of tender document may be charged for the tender documents downloaded by the bidders.; and
- ii) The sale/ availability for downloading of tender documents against NIT should not be restricted and should be available freely. Tender documents should preferably be sold/ available for download upto the date of opening of tenders; and
- iii) The tender documents, shall be priced minimally (if at all priced, refer Para 5.2.1 Cost and Availability of Tender Documents) keeping in view the value of the tender as also the cost of preparation and publicity of the tender documents;
- iv) GTE tender documents must be in English and the price should be asked in Indian Rupees or US Dollars or Euros or Pound Sterling or Yen or in currencies under the Reserve Bank of India's notified basket of currencies;
- v) GTE tender documents must contain technical specifications which are in accordance with national requirements or else based on an international trade standard;
- vi) In such cases e-procurement may not be mandatorily insisted upon.
- vii) The due date fixed for opening of the tender shall be minimum four weeks from the date of advertisement which may vary taking into account the nature of material called for as well as the time required to prepare the bids. The due date may be subsequently extended with the approval of the CA only to promote better competition and also considering account delivery requirement; and
- viii) Relevant INCOTERMS should be included in the tender.

4.3.3 **No Global Tender Enquiry (GTE) up to Rs. 200 crores³⁶** shall be invited or such limit as may be prescribed by the Department of Expenditure from time to time. In exceptional cases where the Ministry or Department feels that there are special reasons for inviting GTE, for tenders below such limit, it may record its detailed justification and seek prior approval for relaxation from the Competent Authority specified by the Department of Expenditure.

- a) The proposal for approval shall be submitted by Administrative Ministry with the concurrence of Financial Advisor and approval of Secretary concerned. The

³⁶Rule 161 of GFR, 2017 Amended vide DoE OM No. F.12/17/2019-PPD dated 15.05.2020.

proposals submitted by individual offices/ organisation (e.g. autonomous bodies, Central Public Sector Undertakings and subordinate offices of Central Government etc.) will not be entertained.

- b) The proposals shall be submitted along with duly filled format³⁷ (placed at Annexure-2D).

4.3.4 Before sending the proposals for approvals of the Global Tenders, following is to be ensured:-

- a) Domestic open tender must be floated to identify the domestic manufacturers/ service providers for the items/ services for which approval is being sought for issuance of Global Tenders. In case, if the Ministry/ Department has not floated a domestic open tender after 15.05.2020 for the items to be procured through GTE, such proposals will not be entertained. The proposal must contain the details of domestic open tenders, issued after 15.05.2020. These details shall cover tender number, date of opening, number of offers received, details of offers received, reasons why domestic suppliers were not considered etc.
- b) The proposal must contain the details of deliberations with DPIIT/ relevant industrial bodies for identification of domestic manufacturers/ service providers.
- c) The 3/5-year procurement plan as mandated by Public Procurement (Preference to Make in India) (PPP-MII) order issued by DPIIT must be published on website, before forwarding proposals for the purpose of procurement through GTE. Web-link of published procurement plan should be provided in proposal.

4.3.5 Exemptions/ Clarifications

- a) For procurement of specialised equipments required for research purposes, and spares and consumables, for such equipments up to Rs. 200 crore for the use of Educational and Research Institutes, Secretary of Ministry/ Department concerned shall be the competent authority to approve issue of Global Tender Enquiries for such requirements subject to fulfilment of conditions as laid down in para 4.3.6 below. The equipment should be of specialized nature required for research purposes and not the routine equipment used in offices³⁸.
- b) On procurement of spare parts of the equipments/ Plants & Machinery etc. on nomination basis from Original Equipments Manufacturers (OEMs) or Original Equipment Suppliers (OES) or Original Part Manufacturers (OPMs) as no competitive tenders are invited in such cases³⁹.
- c) On procurement of services like Annual Maintenance Contract (AMC) and auxiliary/ add-on components for existing equipments/ Plant & Machinery etc. , which are procured from OEM/ OES/ OPM on nomination basis, as no competitive tenders are invited in such cases⁴⁰.
- d) Where procuring entities need to issue GTEs to fulfil contractual commitments/ obligations entered by them before 15.05.2020 i.e. bid has been submitted by them to their clients before 15.05.2020. similarly, where procuring entities need to issue

³⁷ Issued by Cabinet Secretariat vide ID No. 213/2/1/2020-C.A.IV dated 06.10.2020

³⁸ Notified vide OM No. 4/1/2021-PPD issued by Department of Expenditure dated 11.06.2021)

³⁹ Notified vide OM No. 12/17/2019-PPD issued by Department of Expenditure dated 29.10.2020

⁴⁰ Notified vide OM No.F.4/1/2021-PPD issued by Department of Expenditure dated 01.09.2021

GTEs in view of existing collaboration agreements entered by them with foreign suppliers before 15.05.2020⁴¹.

- e) Based on the reference received from Ministry of Health & Family Welfare (MoHFW), GTE can be floated for 128 Medical Devices (placed at Annexure-2E). The exemptions is provided for such items till 31.03.2023. MoHFW will review domestic availability of these items at the end of 2022, keeping in view the Production Linked Incentive (PLI) scheme etc. launched by Department of Pharmaceuticals in Medical Devices and other relevant factors, in consultation with Department of Expenditure⁴².
- f) For projects funded by Multilateral Development Banks (MDBs like The World Bank, Asian Development Bank etc.)/ Bilateral Funding Agencies (BFAs), where the procurement is governed by the conditions negotiated in the loan agreement, and where the project executing agencies from time to time further award works to various Autonomous Bodies (ABs)/ Central Public Sector Enterprises (CPSEs) etc., the Secretary of the Ministry/ Department responsible for execution of such project shall be the Competent Authority for approval for issuance of GTEs by such Autonomous Bodies/ CPSEs etc⁴³.
- g) Exemption to semiconductor..

4.3.6 [Refer to para 4.3.5 (a) above]

4.3.6.1 Educational, Research institutions and other units will make full efforts towards reducing of imports in following manner. This will result in substantial effects both within the institutions and also through impact on the eco-system:-

- a) Identification of equipment being procured time and again from abroad, and help developing them in India by identifying potential manufacturers and providing them technical help and expertise for developing the equipment. This programme will be coordinated by the Empowered Technology Group (constituted by Cabinet and chaired by the Principal Scientific Advisor (PSA).
- b) Efforts to promote technology transfer through agreements or to encourage technological collaboration with foreign manufacturing in India at the Start-ups set up in Research Parks.
- c) Sharing and updating of information about the availability of research equipment across various Indian Institutes on a single portal (the I-STEM⁴⁴ portal has been developed for this purpose) so that those can be utilized by the needy institutes.
- d) Without compromising quality, Institutes should indicate alternative/ equivalent technical specifications that could suit their requirement, so that there are more chances of local manufacturers participate in the tendering process.
- e) Regular interaction between academia and Indian industry organizations at the level of the institution about the requirement of equipment of foreign origin and for encouraging the domestic manufacturing.
- f) Regular requirement of proprietary/ non-proprietary research consumables may be assessed and domestic alternatives are explored for use.

⁴¹Notified vide OM No. 4/1/2021-PPD issued by Department of Expenditure dated 12.03.2021

⁴²Notified vide OM No. F.4/1/2021-PPD issued by Department of Expenditure dated 06.01.2022

⁴³Notified vide OM No. F.7/12/2021-PPD-I issued by Department of Expenditure dated 27.07.2021

⁴⁴<https://www.istem.gov.in/>

- g) A national level programme for indigenous development of scientific equipment be initiated by the Office of PSA.
- h) Without compromising quality, institutes should be flexible with specifications so that domestic manufactures are encouraged to meet requirements.

4.3.6.2 Guidelines for resorting to GTE

- a) Market assessment should be done by the concerned institution, as certified by the Head of the Institution. Only after no Indian manufacturer is found, a GTE should be issued.
- b) In case no Indian manufacturer/ suppliers are found, procurement may be done, through GTE, subject to compliance of provisions of GFR and requirement of procurement through GeM.
- c) DEAN (R&D) or an appropriate authority within the institute will issue certificates as per para 4.3.6.3 below, before inviting GTE. As a reporting matter in the Board of Governors, such certificates should be tabled, and also shared with Office of the PSA, DPIIT and concerned Administrative Ministry.
- d) The information about the procurement of equipment should be shared across various Educational and Research Institutes, through the I-STEM portal, already established for this purpose by the PSA's office. This will allow the equipment to be used by other institutions too, for research purposes.
- e) Analyze the equipment being procured time and again from abroad, and help developing them in India by identifying potential manufacturers and providing them technical assistance and expertise for developing the equipment. Half yearly reports on this action to be shared by the Institutes with the Office of the PSA, DPIIT and concerned Administrative Ministry/ A national level scheme will also be initiated by the Office of PSA for indigenous development of scientific equipment.
- f) Preference to local suppliers over foreign supplier as per the existing Government of India guidelines, should be observed as applicable.

4.3.6.3 Certificates to be issued

- a) Confirmation of non-availability in India of particular equipment/ consumables of foreign origin through GeM and other sources.
- b) Certification that locally available alternatives with equivalent specifications are not suitable for research purposes.
- c) The non-availability of such equipment for research purposes with nearby research institutes or within the institute.
- d) Certification of the requirement of proprietary items of foreign origin for research purposes (where applicable).

4.3.7 GTE - Risks and Mitigations	
Risks	Mitigations
Risks are same as in OTE	Same mitigation as in case of OTE also applies here.
Moreover, publicity may not reach targeted foreign bidders	NIT should also be sent to commercial attachés in foreign embassies in India and to Indian embassies in relevant foreign countries for inviting the attention of likely foreign bidders. The selection of the embassies will depend on the possibility of availability of the required goods in such countries.

4.3.7 GTE - Risks and Mitigations

Risks	Mitigations
Involvement of agents of foreign bidders in GTE procurements is also a major risk area	Procurements should preferably be made directly from the manufacturers. Either the agent on behalf of the foreign principal or the foreign principal directly could bid in a tender, but not both. Further, in cases where agents participate in a tender on behalf of one manufacturer, they should not be allowed to quote on behalf of another manufacturer along with the first manufacturer. Commissions and scope of services to/by the agents should be explicit and transparent in the bids/contracts

4.4 Limited Tender Enquiry(LTE)

4.4.1 LTE is a restricted competition procurement, where a preselected list of vendors is directly approached for bidding; bids from uninvited bidders are treated as unsolicited and are normally not entertained, except in special circumstances. *This mode provides a short and simple procedure, but may not provide as good a VfM as in case of open tendering – still a good balance for procurements below a threshold. LTE procedures should be default mode of procurement when the estimated value of procurement is between Rs. 2.5lakh to Rs. 25 lakh (Rupees two and a half Lakh to Twenty-five Lakh).* The bidding documents should be simple normally consisting a single page with terms and conditions printed overleaf.

(Rule 162 of GFR 2017)

4.4.2 Terms and Conditions

- i) Copies of the bidding documents should be sent free of cost (except in case of priced specifications/ drawings) directly by speed post/courier/e-mail to firms which are registered vendors/ contractors. Further, Procuring Entity should also mandatorily publish its limited tender enquiries on Central Public Procurement Portal (CPPP). Apart from CPPP, the organisations should publish the tender enquiries on the Department's or Ministry's web site.
- ii) A simplified single Page Bid Document (Annexure 5) should be used, instead of a detailed Bid Document. The minimum number of bidders to whom LTE should be sent is more than three. In case less than three approved vendors/contractors are available, LTE may be sent to the available approved vendors/contractors with approval of the CA, duly recording the reasons. The requirement should then be marked for development of more sources by the Supplier Registration section.

4.4.3 LTE - Risks and Mitigations

Risk	Mitigation
Major risk in this mode is that the demand may be artificially split to avoid OTE or higher level approvals	The e-procurement portal maybe programmed to raise an alert if the same item is attempted to be procured through

4.4.3 LTE - Risks and Mitigations	
Risk	Mitigation
	LTE repeatedly. Audit should take up a larger percentage of cases in LTE for review.
There is a risk that LTE may not attract sufficient number of bids and sometimes there may be a single acceptable offer. This may be because of an insufficient database of registered/known vendors. It could also be due to bid documents not reaching the targeted bidders – intentionally or otherwise. It could also be due to bidders not getting adequate time for submission of bids. On the other hand, unsolicited bidders may also quote – causing a transparency dilemma about consideration of such offers.	<p>Maintenance of list of registered suppliers is a sine-qua-non for LTE. The List of registered vendors needs to be reviewed perpetually to ensure adequate number of qualified suppliers To ensure sufficient response, in addition to mails/emails to selected vendors, web-based publicity should be given for limited tenders, with suitable clarifications that unsolicited bids shall not be considered. Further a limited or open tender which results in only one effective offer shall be treated as a single tender enquiry situation, with relevant powers of approval etc.</p> <p>Adequate time should be given for submission of quotes, which should not be less than three weeks. A longer period (six weeks) could be given in case of import of the materials and, in complex cases, if justifications are given and allowed.</p>
There is also a risk that the selection of vendors may not be transparent. At the evaluation stage, some invited bidders may be passed over on grounds of being ineligible/unreliable.	All major procuring Departments must keep a list of registered bidders for use in restricted bidding. Suppliers or contractors should be selected in a non-discriminatory manner. All past successful vendors/bidders should invariably be invited. In case it is proposed to exclude any registered/approved vendor/ contractor from being shortlisted for inviting LTE, detailed reasons, such as failure in supply, should be duly recorded and approval of the CA be taken before exclusion. The selection of bidders should be with due diligence, to ensure that bidders who do not meet eligibility criteria do not get shortlisted. At the evaluation stage, in LTE, passing over of a duly shortlisted bidder on grounds of poor past performance or eligibility may raise questions about transparency.

4.5 Special Limited Tender Enquiry for Procurements More than Rs. 25 (Rupees twenty-five) Lakh

4.5.1 LTE mode, even for values higher than Rs. 25lakh (Rupees Twenty-five Lakh) (*Rule 162 of GFR 2017*), where normally OTE should have been done, is permissible in certain special circumstances as follows. Powers to sanction procurement on LTE basis in such special cases may be laid down in SoPP based on a certificate of urgency signed by the indenter. *This mode has the merit of being quicker but VfM obtained may be less than in case of OTE; hence it should be restricted to rare situations:*

- i) The competent authority in the Ministry / Department certifies that there is an existing or prospective urgency for operational or technical requirements and any additional expenditure involved by not procuring through advertised tender enquiry is justified in view of urgency. The Ministry/Department should also put on record the nature of the urgency and reasons why the procurement could not be anticipated earlier.
- ii) There are sufficient reasons, to be recorded in writing by the competent authority, indicating that it will not be in public interest to procure the goods through advertised tender enquiry.
- iii) The sources of supply are definitely known and possibility of fresh source(s) beyond those being tapped is remote.
- iv) Nature of items to be procured is such that pre-verification of competence of firm is essential, hence requires registration of firms.; and
- v) Government policy designates procurement from specific agencies.

4.5.2 Terms and Conditions

- i) The tendering process would be same as in the case of a normal LTE described above. However, the bidding documents are more detailed as in the case of OTE; and
- ii) The indenter should certify that there is an existing or prospective urgency for operational or technical requirements and any additional expenditure involved by not procuring through an advertised tender enquiry is justified in view of urgency. The indenter should also put on record the nature of the urgency and reasons why the procurement could not be anticipated.

4.5.3 SLTE - Risks and Mitigations	
<i>Risk</i>	<i>Mitigation</i>
Risks as applicable in both LTE and OTE are also applicable here. In addition there is a risk that this mode may be used unjustifiably to avoid open tendering (OTE).	All mitigation strategies of LTE and OTE would apply here also. In addition the systems of checks and balances should be tighter by way of enhanced and severely restricted delegation of powers in this regard for certification of urgency and approval of this mode of procurement. A system of reports from the authority signing the urgency certificate and post facto review of utilisation of received goods/works/services

4.5.3 SLTE - Risks and Mitigations	
Risk	Mitigation
	to tackle the expressed urgency may be laid down. Audit should take up the bulk of such cases for review to judge the genuineness of urgency certification.

4.6 Proprietary Article Certificate

4.6.1 In procurement of goods, certain items are procured only from Original Equipment Manufacturers (OEMs) or manufacturers having proprietary rights (or their authorised dealers/stockists) against a PAC certificate (Annexure 6) signed by the appropriate authority. Once a PAC is signed at the designated level as per SoPP, the powers of procurement are the same as in normal conditions as per the delegation of powers. *This mode may be shortest but since it may provide lesser VfM as compared to LTE/OTE and also strains the transparency principle, it should be used only in justifiable situations.*

(Rule 166 of GFR 2017)

4.6.2 Terms and Conditions

- i) Users should enclose, with their Indent, a PAC certificate indicating the justification and approval at the appropriate level as per DPFR/ SoPP, for sourcing an item from OEM or PAC firms or their authorised agents;
- ii) Proprietary items shall be purchased only from a nominated manufacturer or its authorised dealer as recorded in the PAC certificate;
- iii) In certain unavoidable cases, the procuring authority may have no alternative but to waive payment of EMD/SD for procurement on a proprietary basis;
- iv) To the extent feasible, the firm may be asked to certify that the rates quoted by them are the same and not higher than those quoted with other Government, public sector or private organisations;
- v) In case of PAC/single tender procurements⁴⁵:
 - a) Reports relating to such awards should be submitted to the Ministry every quarter;
 - b) Internal audit may be required to check at least 10 (ten) per cent of such cases; and
 - c) Details of such contracts should be published on the website of the Procuring Entity.

4.6.3 PAC - Risks and Mitigations	
Risk	Mitigation
There is a risk that this mode may get used unjustifiably to restrict competition. Such risks get aggravated, in case of secrecy about such procedures as alternative	The delegation of powers should be restricted for signing of PAC. Audit may take-up 10 (ten) per cent of cases of PAC procurements for review. Even in PAC

⁴⁵<http://cvc.nic.in/005crd19.pdf>; <http://cvc.nic.in/OfficeOrderNo23-7-07.pdf>; <http://cvc.gov.in/Transparency20052010.pdf>

4.6.3 PAC - Risks and Mitigations	
<i>Risk</i>	<i>Mitigation</i>
vendor/contractors may not even come to know about such opportunities	procurements the NIT and the Award of Contract should be put on the website of CPPP and Procuring Entity.
Once approved, there is a risk of a nexus getting developed and the mode may continue to be used for many years, without fresh application of mind	No item should be procured on PAC basis for more than three years, after which a mandatory OTE mode may be used, to test the market
The bidder may charge a price higher than the market	The firm should be asked to accept a “fall clause” undertaking that, in case it supplies or quotes a lower rate to other Governments, public sector or private organisations, it would reimburse the excess. Negotiations may be called for to get prices reduced

4.7 Single Tender Enquiry (STE) without a PAC

4.7.1 A tender invitation to one firm only without a PAC certificate is called a single tender. *This mode may be shortest but since it may provide lesser VFM as compared to LTE/OTE and may also strain the transparency principle, it should be resorted to only under following conditions:*

- i) In a case of existing or prospective emergency relating to operational or technical requirements to be certified by the indenter, the required goods are necessarily to be purchased from a particular source subject to the reason for such decision being recorded and approval of the competent authority obtained.
- ii) For standardization of machinery or components or spare parts to be compatible to the existing sets of machinery/equipment (on the advice of a competent technical expert and approved by the competent authority), the required goods are to be purchased only from a selected firm.

(Rule 166 of GFR 2017)

4.7.2 Terms and Conditions

- i) The reasons for a STE and selection of a particular firm must be recorded and approved by the CA as per the delegation of powers laid down at in DPFR/SoPP, prior to single tendering. Unlike in PAC, powers of procurement of STE are more restricted; and
- ii) Other terms and conditions of PAC procurement mentioned above would also apply in this case.
- iii) All works/purchase/ consultancy contracts awarded on nomination basis should be brought to the notice of following authorities for information-
 - (a) The Secretary, in case of ministries/departments.

(b) The Board of directors or equivalent managing body, in case of Public Sector Undertakings, Public Sector Banks, Insurance companies, etc;

(c) The Chief Executive of the organisation where such a managing body is not in existence.

1. The report relating to such awards on nomination basis shall be submitted to the Secretary/Board/Chief Executive /equivalent managing body, every quarter.
2. The audit committee or similar unit in the organisation may be required to check at least 10% of such cases.

4.7.3 STE - Risks and Mitigations	
<i>Risk</i>	<i>Mitigation</i>
Same but more heightened risks than PAC are present in this mode. Selection of a single vendor may be non-transparent and unjustified	Same mitigation strategies as in the case of PAC should apply. Procurements on a STE basis should be made from reputed firms after determining reasonableness of rates. Powers of procurement of STE should be severely restricted.

4.8 Drawals against Rate Contract (RC)/Framework Contract (FC)

- a) 4.8.1 RC is essentially a price agreement with the vendors/contractors at a specified price and terms and conditions during the period covered by the RC. No quantity is mentioned nor is any minimum commitment guaranteed in the RC. RC is most frequently used in procurement of goods, but can as well be used mutadis mutandis in works, services and consultancy – where it is commonly known as a Framework Contract (FC). *For appropriate items (please see para 4.8.3 below), drawals against an existing RC exploits the power of collaboration/ clubbing of numerous small and frequent requirements and thus provides best VfM along with a simple and quick procedure.* However, entering into a new RC may have the same procedural complexity, prolonged timeframe and systemic cost as in OTE, which may not be viable for low volumes. In view of Government e Marketplace (please see para 4.17 below) coming into operation, Rate Contract is not required to be executed for common use items like computers, printers, photocopiers, paper and stationary, other office items like furniture, bottled water etc., which are being placed on GeM and will now be applicable only for specialized and engineering items which are not available on GeM, and are identified as common use items and are needed on recurring basis by various Central Government Ministries or Departments..

4.8.2 Rate Contracts - Risks and Mitigations	
Risk	Mitigation

4.8.2 Rate Contracts - Risks and Mitigations

Risk	Mitigation
<p>Rate contract is not a right mode of procurement for critical, strategic and vital requirements, since the buyer – seller relationships is tripartite and the timely supply of requirements and penalties thereof can be so strictly enforced as in other modes of procurements. Moreover the RC holder is more beholden to the Central Purchase Organisation than to end-customer.</p> <p>In situations of items with inadequate annual or seasonal capacities in market, the RC holders may dump material on Procuring entity at wrong seasons and starve them in working seasons. This happens in say Cement, when Government Buyers are likely to be saddled with huge supplies during rainy season, but RC holders may divert bulk of supplies to private market in working season.</p> <p>RC Purchase is not suitable for requirements of dynamic Technological and price changes e.g. PCs, Laptops, Tablets, Servers, Mobile Phones – where the price of older models may crash as soon as a model is announced. RC holders may slow down supplies initially, but dump supplier when prices crash in the market.</p>	<p>RCs may be avoided for critical/ strategic and vital requirements. Central Purchase Organisation may also tighten up enforcement of delivery performance and penalties thereof.</p> <p>For seasonal and short-supply items CPO may monitor and provide clauses to prevent dumping and starving of supplies.</p> <p>In Technologically fast changing products, CPO may keep watch on the market prices and renegotiate prices as soon as market prices fall significantly due to new arrivals.</p>
<p>The existence of RCs may not be adequately made known to possible users. Moreover, the reverse risk is that many different offices may keep procuring the same item independently, thus missing the potential benefits of bulk prices and simplified processes if such items were brought under an RC</p>	<p>The descriptions, specifications and other salient details of all RC appropriately updated, should be available on the website of DGS&D and Procuring Entity as well as the e-Procurement portal. The e-procurement system should be able to offer alerts about availability of RC, if an attempt is made to float a tender for the same item. To derive benefit from bulk prices in RC, all offices should furnish to the RC agency, their annual requirement of items to enable finalising of RCs after inviting quotations. DGS&D may also extract information from e-procurement portals.</p>

4.8.2 Rate Contracts - Risks and Mitigations

Risk	Mitigation
<p>RC procurements are at risk of being ordered in excess of actual requirements, since the procurement scrutiny may not be as intense as in case of other modes of procurements.</p>	<p>The quantity being ordered should be subject to the same level of scrutiny as in other modes of procurement to ensure that there is no abnormal unexplainable trend in procurement.</p>
<p>Wherever there are parallel RCs for the same item from a number of firms, there may be intense and often unhealthy lobbying (including corrupt practices) from them to seek orders.</p>	<p>Departments must put in place adequate guidelines to handle RC procurements, including a transparent system of choosing the RC holders by rotation in a transparent manner in case of parallel RCs. The delegation of powers in this regard should also be restricted keeping these risks in view. A suggest guidelines is given below:</p> <ol style="list-style-type: none"> 1 For selecting the DGS&D Rate contract holders for ordering, following factors may be kept in view: <ol style="list-style-type: none"> (i) The Rate Contract Price; (ii) The past performance of firm with reference to their capacity, quality of supplies as well as timely delivery of the goods; (iii) The delivery date committed by the firm with respect to the deli very requirement of the Procuring Entity; (iv) The proximity of the rate contract holder wherever the proximity is considered crucial for timely deli very, ease of progressing and from the point of view of logistics and contract management etc.; and (v) The need for reputed brands in the case of sensitive, critical and selective applications. (vi) In case of number of firms meeting such criteria, orders may be split or rotated in a transparent manner. 2. The Procuring Entity should maintain suitable records of RC firms for past performance in respect of timely delivery and quality. 3. Wherever, there are failures against the rate contract in terms of timely deli very

4.8.2 Rate Contracts - Risks and Mitigations

Risk	Mitigation
	and quality of goods, such failures should be reported to DGS&D and direct alternate procurement action may be taken in order to ensure timely availability of quality materials to meet the needs of the Procuring Entity.

4.9 Direct Procurement without Quotation

4.9.1 Direct procurement of goods without formal quotations is normally done for the smallest value procurements. This is also called petty purchase. It should be used for off-the-shelf goods of simple and standard specifications and when the required goods (of required specification or within required delivery period etc.) are not available on GeM⁴⁶. However, it is mandatory for a buyer to generate a “GeM Availability Report and Past Transaction Summary” (GeMAR&PTS)⁴⁷ with a unique ID on GeM portal using his login credentials on GeM for procurement outside GeM. *The procedure is the simplest and quickest but VfM may be poor; hence it is suitable only in very low value, urgent and simple requirements in the following situations:*

- i) Procurements do not exceed the threshold (for each requirement) of Rs. 25,000 (Rupees Twenty-five Thousand) for each case;
- ii) The requirement is urgent but was not covered in the procurement plan; and
- iii) The requirement is for off-the-shelf goods of simple and standard specifications. Examples of procurement are day-to-day needs of the office and field units, and so on.

(Rule 154 of GFR 2017)

4.9.2 Terms and Conditions

- i) The competent officer of the procuring entity can initiate and complete this purchase after diligent enquiries from the market and filling the certificate prescribed (Annexure 7). Such powers to a limited extent can also be given to various user sections for operational needs.
- ii) Normally an imprest amount (with facilities for cheque payments) sufficient for two months' estimated procurements can be sanctioned for such officers to handle such procurements. The imprest amount can be recouped on monthly basis by submission of expense vouchers.
- iii) In a summary form, records should be kept of the vendors/contractors approached and prices indicated by them.

⁴⁶As stipulated in Department of Expenditure OM No. 6/1/2018-PPD dated 19.01.2018

⁴⁷Notified vide OM No. F.6.18.2019-PPD issued by Department of Expenditure dated 11.06.2021.

- iv) Selection of seller by diligent market enquiry is of essence of this mode of procurement.
- v) In larger cities, the presence of reputed Shopping Malls may also be included in the market survey. Reputed internet shopping portals may also be explored.

4.9.3 Direct Procurement without Quotations - Risks and Mitigations	
<i>Risk</i>	<i>Mitigation</i>
The main risk is splitting of demand to avoid higher approvals or higher modes of procurements.	Supervisors should carry out periodic review of such procurements to ensure that the demand is not split into small quantities for the sole purpose of avoiding the necessity of getting an approval from the higher authority required for sanctioning the purchase of the original demand or for avoiding LTE or OTE mode of procurement. An annual review of such procurements shall be carried out to ensure that future anticipated requirements are clubbed and procured through LTE/ OTE/ RC. To keep a better control, an annual ceiling may be fixed for each office for such a mode of procurement say Rupees five Lakh for each office per year Each office should maintain records to monitor such limits
Over a period of time intentionally or otherwise, the due diligence of enquiries from market may degenerate into a mechanical obtaining of quotations, leading to development of nexus and crony suppliers. Vendor selection may actually be manipulated with fake supporting vouchers. Since such small value materials do not undergo accounting and inventory control, the risk of development of a nexus, leakages and fake procurements and payments are there. The same set of vendors may get patronised repeatedly for a wide variety of requirements. Since only cursory visual inspections are done, quality may be at risk.	Supervisors should cross check a percentage of cases in the market for prices, fake vouchers, and so on. Supervisors should also check that the same vendor(s) is not being patronised repeatedly. For the sake of transparency, payments should be made by cheque or through Electronic Clearance Service except that cash payment may be allowed up to Rs. 5,000 (Rupees Five thousand). Staff involved with such procurements should not continue in the same role for long and should be rotated frequently.

4.10 Direct Procurement by Purchase Committee

4.10.1 This mode of procurement is used for procurements valued above Rs. 25,000/- (Rupees Twenty-five Thousand) and upto Rs. 2,50,000 (Rupees Two Lakh Fifty Thousand) only on each occasion. It is made by a local purchase committee constituted by HOD only in

case when a certain item is not available on the GeM portal (of required specification or within required delivery period etc.)⁴⁸. However, it is mandatory for a buyer to generate a “GeM Availability Report and Past Transaction Summary” (GeMAR&PTS)⁴⁹ with a unique ID on GeM portal using his login credentials on GeM for procurement outside GeM. This mode of procurement is described in parlance of procurement of goods; however, in principle, it is equally applicable to contingency expenditure on small works/services also. *This procedure is slightly more complex and is likely to provide better VfM than direct procurement without quotation and hence is suitable for marginally higher thresholds*

(Rule 155 of GFR 2017)

4.10.2 Terms and Conditions

- i) The controlling ministry may lay down an annual ceiling value per office/unit for such procurements;
- ii) In case of emergency procurement, facility of withdrawing requisite advance cash amount and its subsequent accountal may also be considered.
- iii) This is intended to be fast track, simple mode of procurement. The committee will survey the market to ascertain the reasonableness of rate, quality and specifications and identify the appropriate supplier.
- iv) Selection of suitable product and supplier by actual market survey (not by calling of tenders like a mini LTE) is of essence of this mode.
- v) Before recommending placement of the purchase order, members of the committee will jointly record the certificate prescribed (Annexure 8); and
- vi) In larger cities, the presence of reputed Shopping Malls may also be included in the market survey. Reputed internet shopping portals may also be explored.

4.10.3 Direct Procurement by Purchase Committee - Risks and Mitigations	
<i>Risk</i>	<i>Mitigation</i>
Risks are the same as in the case of direct procurement without quotation mentioned above, with mitigation due to involvement of three members. Over a period of time intentionally or otherwise, the due diligence of enquiries from market may degenerate into a system of floating and obtaining of limited tenders, leading to delays, development of nexus and crony suppliers.	Mitigation strategies are also the same as in direct procurement without quotation.

4.11 Purchase through Central Purchase Organisation or other Organizations

⁴⁸As stipulated in Department of Expenditure OM No. 6/1/2018-PPD dated 19.01.2018

⁴⁹Notified vide OM No. F.6.18.2019-PPD issued by Department of Expenditure dated 11th June, 2021.

4.11.1 Departments/ Organisations, who have not built-up their own infrastructure for purchase, may place their indents on its behalf with the approval of its Secretary on other Canalized agencies authorised by the Government or other Government Ministries/ Departments, if mutually agreed. *Procurements by such agencies would have to conform to these Procurement Guidelines.* Possibilities of other Ministries/ Departments or Sister Organisations having spare-able quantities of required material may be explored. In such cases Indents can be placed on them for supply of requirements, at mutually agreed terms.

4.11.2 Terms and Conditions

- i) Usual formalities for Preparation, Budgetary Provisions and approval/ signing of Indents
- ii) The Indent in such cases, in the format prescribed by such Organisations, should be signed by an officer to whom such powers have been delegated.
- iii) FA of the Department may sign a declaration about availability and reserving of Budgetary provisions required
- iv) Modalities of Procurement, Inspection, Tracking of Supplies and Payment may be settled with the Organisation

4.11.3 Purchase through CPO - Risks and Mitigations

Risk	Mitigation
Since it is a purchase by a third party, the Indent must be detailed and self-sufficient to ensure all Technical and Commercial requirements.	Mitigation strategies are to ensure vetting and certificates from technical, finance and procurement wing about completeness of Indent, before despatch. In critical and large procurements, liaison may be maintained with the procuring organisation.
There is also a risk of delays in finalisation of contract by the Procuring Entity, which may not be responsive to indenting organisations urgencies, especially if procurement involves clubbing of Indents from a number of organisations.	To mitigate such risk liaison may be maintained with the Procuring Entity. In case abnormal delay is taking place, small procurement to tide over urgencies may be made directly.
Another risk is that the Supplier may not feel answerable to the Indenter and may not be responsive towards delivery, quality and after sales support. If problems arise, it may require a dilatory tripartite correspondence.	To mitigate this, proper commercial clauses may be included in the Indent to ensure responsiveness of supplier to the Indenter. Liaison with Procuring Organisation would also mitigate such risks.

4.12 Bidding Systems

Bidding systems are designed to achieve an appropriate balance between the countervailing needs for Right Quality, Right Source and the Right Price under different complexities/ criticality of Technical requirements and value of procurements. In certain critical and complex requirements, the technical and financial capability of Source of supply becomes an important determinant for value for money. Depending on the complexity and criticality Technical of requirement, Criticality of capability of Source and value of procurement, following types of bidding systems may be used.

4.13 Single Stage Bidding System

In single stage bidding, all bids are invited together in a single envelope or in multiple envelopes system. This bidding system is suitable where technical requirements are simple or moderate; capability of source of supply is not too crucial and the value of procurement is not too high;

4.13.1 Single Stage Single Envelop System: Where qualitative requirements and technical specifications are clear; capability of source of supply isn't critical and value of procurement is low or moderate, the single envelop system, where eligibility, technical/commercial and financial details are submitted together in the same envelop may be followed. This is the simplest and the quickest bidding system and should be the default system of bidding. The lowest responsive priced bid that meets the eligibility criteria, technical and commercial requirements laid down in the bid documents is declared as successful.

4.13.2 Single Stage Two Envelops System (Two Bid System) (Rule 163 of GFR 2017):In technically complex requirements but where capability of source of supply is still not crucial and value of procurement is not low, a two envelop system may to be followed.

- i) The tenderers should be asked to bifurcate their quotations in two envelopes. The first envelop, called the techno-commercial bid, contains the eligibility, technical quality and performance aspects, commercial terms and conditions and documents sought in the tender, except the price and relevant financial details. In the second envelop, called the financial bid, the price quotation along with other financial details are submitted. Both the envelopes are to be submitted together in a sealed outer envelope;
- ii) If required, Technical specification and techno-commercial conditions should be modified, in a pre-bid conference in the two envelop tender and it would be desirable not to invite fresh financial bids after opening of the techno-commercial bids;
- iii) The techno-commercial bids are to be opened in the first instance on the bid opening date and time, and scrutinised and evaluated by the TC with reference to parameters prescribed in the tender documents and responsive, eligible and technically compliant bidders are decided;
- iv) Thereafter, in the second instance, the financial bids of only the techno-commercially compliant offers (as decided in the first instance above) are to be opened on a pre-announced date and time for further scrutiny, evaluation, ranking and placement of contract. The financial bids of technically non-compliant bidders should be returned unopened to the respective bidders by registered acknowledgement due/reliable courier or any other mode with proof of delivery. In e-Procurement, financial bids of technically non-compliant offers would not get opened;

4.13.3 Single Stage Multiple Envelops System with pre-qualification: As discussed below, where the procurement is moderately complex and the time, effort and money required from the bidder to participate in a tender is not very high, instead of a separate stage of Pre-Qualification bidding (as described below, a clear-cut, fail-pass qualification criteria can be asked to be submitted as the first (additional) envelop in a three envelop single stage bidding, so that a bidder's risk of having his bid rejected on grounds of qualifications is remote if due diligence is exercised him. Strictly speaking, this is not a pre-qualification but a Post-qualification of bidders. In the first instance on the bid opening date

only the PQB envelopes (also containing the EMD and other eligibility documents) are opened and evaluated to shortlist the responsive bidders who pass the Pre-qualification. Rest of procedure is same as two envelop system for only qualified bidders. Rest two envelopes of unqualified bidders are returned unopened to the respective bidders by registered acknowledgement due/reliable courier or any other mode with proof of delivery;

4.13.4 Pre-qualification Bidding (PQB)

- i) In complex technical requirements where capability of source of supply is crucial (for example in procurement of complex machinery and equipments), for the successful performance of the contract, besides considering techno-commercial suitability, it is necessary to ensure that competition is only among bidders with requisite capabilities matching the challenges of the task. In case bidders with inadequate capability are allowed to compete, the better qualified bidders would be eliminated since their bid price is likely to be higher commensurate with their higher capability infrastructure. Such situations a separate stage of PQB bidding system may be considered (or single stage multiple envelop bidding – please refer para above). In PQB stage, competent qualified tenderers are shortlisted by using a Pre-qualification Criterion (PQC – for example, i) past experience of similar contracts, ii) performance capability and iii) financial strength) prior to the issue of the bid document exclusively to shortlisted bidders in the second stage. Pre-qualification Bids (PQBs) should meet the norms of transparency, fairness and maintenance of competition. *Since PQB system may strain the transparency principle and there is heightened risk of cartelization among shortlisted bidders, PQB should be done only as an exception under specified circumstances. It should not be a routine/ normal mode of procurement of goods and an eligibility criteria clause as part of single/two envelop/cover tendering should suffice in normal/ routine situations. PQB bidding as a separate stage is contraindicated in the following circumstances:*
 - a) Where procurement can be done through limited tender enquiries;
 - b) Where the Procuring Entity has at least three registered bidders of the category and grade matching tendered scope of procurement and financial limit;
 - c) Where the requirement is technically and commercially simple enough that pre-qualification of the bidder is not crucial for the performance of the contract, for example, Commercially Off The Shelf (COTS) requirements; and
 - d) Where the procurement is moderately complex and the time, effort and money required from the bidder to participate in a tender is not very high. A clear-cut, fail-pass post-qualification criteria can be specified in a three envelop single stage bidding (instead of two stage bidding), so that a bidder's risk of having his bid rejected on grounds of qualifications is remote if due diligence is exercised him.
- ii) **Pre-qualification Criteria:** PQC should be unrestrictive enough so as not to leave out even one capable vendor/contractor. Otherwise, it can lead to higher prices of procurement/works/services. However, on the other hand, these criteria should be restrictive enough so as not to allow even one incapable vendor/contractor and thus

vitiating fair competition for capable vendors/contractors to the detriment of the buyer's objectives. A misjudgement in either direction may be detrimental. Certain guidelines⁵⁰ regarding the framing of PQC have been laid down. A sample PQC is given in Annexure 9. Due consideration should be given while framing PQC, to its effect on adequacy of competition. To encourage MSEs, past successful bidders, a call may be taken – whether PQC should apply to full quantity/packages or be proportional to part quantity/package quoted by a bidder. In case requirement is suddenly a multiple times the past procurements, blind adoption of past PQCs may lead to disqualification of successful past vendors leading to inadequate competition. PQC should therefore be carefully decided for each procurement with the approval of CA for acceptance of the tender. It should be clarified in the PQB documents that bidders have to submit authenticated documents in support of eligibility criteria.

- iii) **Advertisement and Notification:** The invitation for PQB shall be processed (advertised, bid document preparation, publicity and evaluation, and so on) in the same manner as a normal GTE or OTE (as the situation calls for) tender, ensuring the widest possible coverage. The PQC and evaluation criterion should be notified clearly in the PQB documents. The PQB documents should also indicate a complete schedule of requirements for which this PQB is being done, including approximate likely quantities of requirements. A minimum period of 45 (forty-five) days may be allowed for the submission of PQBs. In the case of urgency, duly approved by CA, the time limit may be reduced to 30 (thirty) days.
- iv) **Evaluation:** At least in high value and critical procurements, the credentials regarding experience and past performance, submitted by the successful bidder, may be verified as per eligibility criteria, as far as reasonably feasible, from the parties for whom work has been claimed to be done. The procuring entity shall evaluate the qualifications of bidders only in accordance with the PQC specified and shall give due publicity to the particulars of the bidders that are qualified on the relevant portals/ websites.
- v) **Subsequent Procurement Tender:** The pre-qualification shall be valid for such period as may be specified in the pre-qualification document and for a single subsequent procurement within this period, except when it is determined that engaging in fresh pre-qualification shall not result in enhanced competition. During the period of such validity, the procuring entity shall invite bids for procurement (Request for Proposals – RfP) from pre-qualified bidders and all other bids may be treated as unsolicited offers which are normally rejected. In case bids are not invited within such a period, fresh pre-qualification shall be done. It is desirable that the time gap between the pre-qualification approval and floating of the linked main procurement tender is less than six months.

4.13.5 Pre-Qualification Bidding –Risks and Mitigations:	
<i>Risk</i>	<i>Mitigation</i>
Pre-qualification criteria: PQB has the potential of getting misused or being applied without considering the restrictive	Lay down criteria when prequalification in single stage or two stage bidding is warranted. Also lay down model PQC

⁵⁰ <http://cvc.nic.in/six.pdf>

4.13.5 Pre-Qualification Bidding –Risks and Mitigations:	
<i>Risk</i>	<i>Mitigation</i>
nature of competition. PQC should be relevant to the quality requirements and neither is very stringent nor very lax to restrict/facilitate the entry of bidders. These criteria should be clear, unambiguous, exhaustive and yet specific. Also, there should be fair competition.	criteria for different types of procurements.
Dangers of Anti-competitive bidding: Since in a two stage PQB, shortlisted bidders are announced, there is heightened possibility of these bidders forming a cartel and quoting anti-competitive prices in the second stage of bidding.	Two stage PQB should be done only in appropriately justified situations. Alternatively Single Stage multiple envelop system may be used for prequalification, in which chances of anti-competitive behaviour and time-taken is significantly lesser.
Two Stage PQB is a time-consuming process.	
Contentious and Disputes: Both the successful and unsuccessful bidders tend to view PQB process as a means for creating rights/ privileges/ entitlement for them by way of hair-splitting, contentious or viciously legalistic interpretations of PQC criteria, disregarding the very rationale of the PQB and PQC.	In the PQC a caveat against such tendencies may be included, asserting the right of procuring agency to interpret the PQC on common usage of terminologies and phrases in public procurement instead of legalistic and hair-splitting judgements and that their decision in this regard would be final.

4.14 Two Stage Bidding - Expression of Interest Tenders – Market Exploration

4.14.1 There are instances where the equipment/ plant to be procured is of complex nature and the procuring organization may not possess the full knowledge of either the various technical solutions available or the likely sources for such products in the market. To meet the desired objectives of a transparent procurement that ensures value for money simultaneously ensuring upgradation of technology & capacity building- it would be prudent to invite a two-stage Expression of Interest (EoI) Bids and proceed to explore the market and to finalise specifications based on technical discussions/presentations with the experienced manufacturers/suppliers in a transparent manner. Expression of Interest (EoI) bids may be invited in following situations:

- i) It is not feasible for the procuring entity to formulate detailed specifications or identify specific characteristics for the subject matter of procurement, without receiving inputs regarding its technical aspects from bidders;
- ii) The character of the subject matter of procurement is subject to rapid technological advances or market fluctuations or both;

- iii) The procuring entity seeks to enter into a contract for the purpose of research, experiment, study or development, except where the contract includes the production of requirements in quantities sufficient to establish their commercial viability or to recover research and development costs; or
- iv) The bidder is expected to carry out a detailed survey or investigation and undertake a comprehensive assessment of risks, costs and obligations associated with the particular procurement.

(Rule 164 of GFR 2017)

4.14.2 The procedure for two stage bidding shall include the following, namely:

- i) In the first stage of the bidding process, the procuring entity shall invite EoI bids containing the broad objectives, technical and financial eligibility criteria, terms and conditions of the proposed procurement etc without a bid price. On receipt of the Expressions of Interest, technical discussions/presentations may be held with the short-listed manufacturers/suppliers, which are prima facie considered technically and financially capable of supplying the material or executing the proposed work, giving equal opportunity to all such bidders to participate in the discussions. During these technical discussions stage the procurement agency may also add those other stakeholders in the discussions who could add value to the decision making on the various technical aspects and evaluation criteria. Based on the discussions/ presentations so held, one or more acceptable technical solutions could be decided upon laying down detailed technical specifications for each acceptable technical solution, quality benchmarks, warranty requirements, delivery milestones etc. in a manner that is consistent with the objectives of the transparent procurement. At the same time care should be taken to make the specifications generic in nature so as to provide equitable opportunities to the prospective bidders. Proper record of discussions/presentations and the process of decision making should be kept;
- ii) In revising the relevant terms and conditions of the procurement, if found necessary as a result of discussions with the shortlisted bidders, the procuring entity shall not modify the fundamental nature of the procurement itself;
- iii) In the second stage of the bidding process, the procuring entity shall invite bids from all those bidders whose bids at the first stage were not rejected, to present final bid with bid prices in response to a revised set of terms and conditions of the procurement; and
- iv) Any bidder, invited to bid but not in a position to supply the subject matter of procurement due to modification in the specifications or terms and conditions, may withdraw from the bidding proceedings without forfeiting any bid security that he may have been required to provide or being penalised in any way, by declaring his intention to withdraw from the procurement proceedings with adequate justification.
- v) If the procuring entity is of the view that after EoI stage, there is likelihood of further participation by many more bidders and to avoid getting trapped into a legacy technology, the second stage bidding may not be restricted only to the shortlisted bidders of EoI stage and it may be so declared in the EoI document

ab-initio. Thereafter in the second stage, normal OTE/ GTE bidding may be done. Such variant of EoI called 'Non-committal' EoI.

4.14.3 **Invitation of EoI Tenders:** In EoI tenders, an advertisement inviting expression of interest should be published. The invitation to the EoI document should contain the following information:

- i) A copy of the advertisement;
- ii) **Objectives and scope of the requirement:** This may include a brief description of objectives and broad scope of the requirement. It may also include the validity period of empanelment;
- iii) **Instructions to the bidders:** This may include instructions regarding the nature of supply, fees for empanelment (if any), last date of submission, place of submission and any other related instructions;
- iv) **Formats for submission:** This section should specify the format in which the bidders are expected to submit their EoI;
- v) The EoI document should be made available to the interested bidder as a hard copy as well as on its website in a downloadable form; and
- vi) **Eligibility criteria:** The invitation to EoI should clearly lay down the eligibility criteria, which should be applied for shortlisting. Supporting documents required need to be clearly mentioned. An example of EoI eligibility criteria is shown in Table 1. However, appropriate eligibility criteria have to be designed, keeping in mind the specific objectives of the EoI.

Table 1: An example of EoI eligibility criteria

Criteria	Sub-criteria	Weightage*	Break-up of Weightage
Past experience of the firm with similar requirements		A*	
Financial strength of the vendor		B*	
	Turnover figures of the last three years		B1*
	Net profit figures of the last three years		B2*
Quality accreditations, licensing requirements		C*	
Manufacturing capabilities/tie-ups		D*	
After-sales support infrastructure		E*	

Criteria	Sub-criteria	Weightage*	Break-up of Weightage
Product support		F*	

* Weightage (out of 100) should be pre-decided and declared in EoI documents by the CA based on assessment of the required profiles of the potential bidders. The marking/grading scheme for allotting marks (out of 100) for various parameters should also be laid down.

4.14.4 Evaluation of EoI: The bidders should be evaluated for shortlisting, inter-alia, based on their past experience of performance in a similar context, financial strength and technical capabilities, among others. Each bidder should be assigned scores based on the sum of marks obtained for each parameter multiplied by the weightage assigned to that parameter. All bidders who secure the minimum required marks (normally 60 (sixty) per cent) should be shortlisted. The minimum qualifying marks should be specified in the EoI document. Alternatively, instead of weighted evaluation, the EoI document may specify a 'fail-pass criteria' with the minimum qualifying requirement for each of the criteria, such as minimum years of experience, minimum number of assignments executed and minimum turnover. Under such circumstances, all bidders who meet the minimum requirement, as specified, should be shortlisted. The short list should normally comprise at least four firms.

Pre-Notice Inviting Tender (NIT) Conference: In complex and innovative procurement cases or where the procuring entity may not have the required knowledge to formulate tender provisions, a pre-NIT conference may help the procuring entity in obtaining inputs from the industry. Such conferences should be widely publicised so that different potential suppliers can attend.

4.15 Electronic Procurement (e-Procurement)

It is mandatory for Ministries/ Departments to receive all bids through e-procurement portals in respect of all procurements. Ministries/ Departments which do not have a large volume of procurement or carry out procurements required only for day-to-day running of offices and also have not initiated e-procurement through any other solution provided so far may use e-procurement solution developed by NIC. Other Ministries/ Departments may either use e-procurement solution developed by NIC or engage any other service provider following due process⁵¹. In individual cases where national security and strategic considerations demands confidentiality, Ministries/ Departments may exempt such cases from e-procurement after seeking approval of concerned Secretary and with concurrence of Financial Advisers. In case of tenders floated by Indian Missions Abroad, Competent Authority to decide the tender may exempt such case from e-procurement. National Informatics Centre (NIC) has an e-Procurement portal called Government e-Procurement of NIC (GePNIC). There are other service providers in Public Sector (e.g. MSTC) and Private sector which can be utilized for e-Procurement. Details about the process of e-procurement are available from the service providers. *Appendix 3 also gives such generic details of the e-Procurement process.(Rule 160 of GFR 2017)*

⁵¹ Rule 160 (iii) of GFR, 2017 stating that the condition for mandatory e-procurement will not apply to procurements made by Ministries / Departments through DGS&D rate contracts has been deleted vide OM No.F.1/26/2018-PPD issued by Department of Expenditure dated 02.04.2019

4.16 Electronic Reverse Auction (RA)

Electronic Reverse Auction is a type of auction (classified as dynamic procurement method) where the starting price, bid decrement, duration of auction, maximum number of automatic extensions are announced before start of online reverse auction. If required, RA may be preceded by an e-Procurement stage of eligibility/ PQB to shortlist competent bidders who would be allowed to participate in the RA. The shortlisted bidders can after the start of RA start bidding online in an iterative process wherein the lowest bidder at any given moment can be displaced by an even lower bid of a competing bidder, within the duration of the RA. If a new lower bid is received within last few minutes (say two minutes) of closing time, the closing time may get automatically extended by few minutes (say five minutes) for others to respond. Maximum number of such extensions may be stipulated (say five). The most favourable bid at the end of stipulated / extended time is declared as successful. While permitting use of RA, CVC has asked the Departments/organisations to themselves decide on reverse auction for purchases or sales and work out the detailed procedure in this regard⁵². It has, however, to be ensured that the entire process is conducted in a transparent and fair manner. A procuring entity may choose to procure a subject matter of procurement by the electronic reverse auction method, if:

- i) Items for Reverse Auction may be selected carefully. Items of strategic, critical and vital nature, items in short supply in market and where there are only a few suppliers are not good candidates for reverse auction. Items in the nature of commodities, Commercially-off-the-shelf items, items having large number of suppliers and high value procurements may be more amenable to reverse auction;
- ii) It is feasible for the procuring entity to formulate a detailed description of the subject matter of the procurement;
- iii) There is a competitive market of bidders anticipated to be qualified to participate in the electronic reverse auction, so that effective competition is ensured;
- iv) The criteria to be used by the procuring entity in determining the successful bid are quantifiable and can be expressed in monetary terms;
- v) In cases where pre-qualification of bidders is considered necessary, reverse auction may be carried out after a separate PQB (electronic or otherwise) among the successful bidders only.

4.16.1 Subject to more detailed guidelines in the category-specific manual or other guidelines, the procedure for electronic reverse auction shall include the following, namely:

- i) The procuring entity shall solicit bids through an invitation to the electronic reverse auction to be published or communicated in accordance with the provisions similar to e-procurement; and
- ii) The invitation shall, in addition to the information as specified in e-procurement, include details relating to:
 - a) Access to and registration for the auction;

⁵² <http://cvc.gov.in/ord46903.pdf>

- b) Opening and closing of the auction;
- c) Norms for conduct of the auction; and
- d) Any other information as may be relevant to the method of procurement.

(Rule 167 of GFR 2017)

4.17 One Stop Government e-Marketplace (GeM)

4.17.1 An online marketplace (or e-commerce marketplace) is a type of e-commerce site where product or services are offered by a number of sellers and all the buyers can select the product/ services offered by any one of the seller, based on his own criteria. In an online marketplace, Purchaser's transactions are processed by the marketplace operator and then product/ services are delivered and fulfilled directly by the participating retailers. Other capabilities might include auctioning (forward or reverse), catalogues, ordering, posting of requirements by Purchasers, Payment gateways etc. In general, because online marketplaces aggregate products from a wide array of providers, selection is usually wider, availability is higher, and prices are more competitive than in vendor-specific online retail stores.

4.17.2 Ministry of Commerce has developed an online Government e-Market Place for common use goods and services. The procurement process on GeM is end to end from placement of supply order to payment to suppliers. This is to ensure better transparency and higher efficiency. All the process will be electronic and online. The Procurement of Goods and Services by Ministries or Departments is mandatory for Goods or Services available on GeM as per Rule 149 of GFR, 2017.

4.17.3 **Products and services are listed on GeM by various suppliers as on other e-Commerce portals:** The registration of suppliers on GeM is online and automatic based on PAN, MCA-21, Aadhar authentication etc. The suppliers offer their products on GeM and the Government buyer are able to view all the products as well as compare them. Tools of reverse bidding and e-auction are also available which can be utilised for the procurement of bulk quantities.

4.17.4 **Demand Aggregation:** The best prices to a user can be available if same requirement demands of various organizations are aggregated. This acts as an incentive for the supplier to quote their best price. For the same products, the demand of various Govt. Departments can be clubbed together and reverse auction done on the basis of aggregated demand which will provide the best prices to the Govt. Department.

4.17.5 **Authority of procurement through GeM:** Procurement through GeM has been authorised as per GFR, 2017 Rule 149:-

“Government e-Market Place (GeM): Government of India has established the Government e-Marketplace (GeM) for common use Goods and Services. GeM SPV will ensure adequate publicity including periodic advertisement of the items to be procured through GeM for the prospective suppliers. The Procurement of Goods and Services by Ministries or Departments will be mandatory for Goods or Services available on GeM. The credentials of suppliers on GeM shall be certified by GeM SPV. The procuring authorities will certify the

reasonability of rates. The GeM portal shall be utilized by the Government buyers for direct on-line purchases as under⁵³:-

- i) *Up to {Rs.25,000/-}⁵⁴ through any of the available suppliers on the GeM, meeting the requisite quality, specification, and delivery period (in case of procurement of Automobiles only the ceiling of direct purchase will be Rs.30 lakh instead of Rs. 25,000/-⁵⁵);*
- ii) *Above Rs.25,000/- and up to Rs.5,00,000/- through the GeM Seller having lowest price amongst the available sellers (excluding Automobiles where current limit of 30 lakh will continue), of at least three different manufacturers, on GeM, meeting the requisite quality, specification, and delivery period. The tools for online bidding and online reverse auction available on GeM can be used by the Buyer even for procurements less than Rs 5,00,000.*
- iii) *Above Rs.5,00,000/- through the supplier having lowest price meeting the requisite quality, specification, and delivery period after mandatorily obtaining bids, using online bidding or reverse auction tool provided on GeM (excluding Automobiles where current limit of 30 lakh will continue).⁵⁶*
- iv) *The invitation for the online e-bidding/reverse auction will be available to all the existing Sellers or other Sellers registered on the portal and who have offered their goods/services under the particular product/service category, as per terms and conditions of GeM.*
- v) *The above mentioned monetary ceiling is applicable only for purchases made through GeM. For purchases, if any, outside GeM, relevant GFR Rules shall apply.*
- vi) *The Ministries/Departments shall work out their procurement requirements of Goods and Services on either “OPEX” model or “CAPEX” model as per their requirement/suitability at the time of preparation of Budget Estimates (BE) and shall project their Annual Procurement Plan of goods and services on GeM portal within 30 (thirty) days of Budget approval.*
- vii) *The Government Buyers may ascertain the reasonableness of prices before placement of order using the Business Analytics (BA) tools available on GeM including the Last Purchase Price on GeM, Department’s own Last Purchase Price etc.*
- viii) *A demand for goods shall not be divided into small quantities to make piecemeal purchases to avoid procurement through L-1 Buying / bidding / reverse auction on GeM or the necessity of obtaining the sanction of higher authorities required with reference to the estimated value of the total demand.”*

It may be noted that . itis the responsibility of the Procuring Entity to do due diligence for ensuring reasonableness of rates.

⁵³Amended vide DoE OM No. F.1/26/2018-PPD dated 02.04.2019.

⁵⁴ In case of procurement of Automobiles only, the ceiling of direct purchase will be Rs. 30,00,000/- instead of Rs. 25,000/- . Refer DoE OM No. F.1/26/2018-PPD dated 09.08.2021.

⁵⁵Notified vide OM No. F.1/26/2018-PPD dated 9th August, 2021.

⁵⁶ Amended vide DoE OM No. F.1/26/2018-PPD dated 02.04.2019.

4.17.6 **GeM Portal:** <https://gem.gov.in>. Detailed instructions for user organization registration, supplier registration, listing of products, terms and conditions, online bidding, reverse auction, demand aggregation, call centre, etc. are available on this portal.

4.17.7 **Payment Procedure in GeM:** The payment procedure in GeM is governed by O.M. No. F.26/4/2016-PPD dated 23rd January, 2020⁵⁷ issued by D/o. Expenditure, M/o. Finance, New Delhi. The following procedures are prescribed for making payments to the Sellers/ Service Providers in GeM which shall be complied and adhered to by all concerned for different type of contracts such as:

- a. Supply of Goods & Services
 - b. Supply, Installation, Testing and Commissioning of Goods
 - c. Supply, Installation, Testing, Commissioning of Goods and Training of operators and providing Statutory Clearances required (if any)
- i) In respect of contracts for Supply of Goods, 100% payment including GST should be made after receipt and acceptance of Goods and generation of “Goods CRAC” (Consignee Receipt and Acceptance Certificate) subject to recoveries, if any, either on account of short supply and Liquidated Damages etc. for delay in supply.
 - ii) In respect of contracts for Services, payment should be made as per periodicity defined in the contract i.e. Monthly, Quarterly or any other pre-defined payment periodicity. 100% payment including GST for the particular payment cycle should be made after receipt and acceptance of the Services and generation of “Service CRAC” (Consignee Receipt and Acceptance Certificate) subject to recoveries, if any, either on account of short supply, SLA (Service Level Agreement) deviations and Liquidated Damages for delay in supply etc.
 - iii) In respect of contracts for Supply, Installation, Testing, Commissioning of Goods and Training of operators etc. the complete cost break-up indicating Basic price, GST, Installation and commissioning charges, Incidental Services, training etc. is to be indicated separately in the bid. In order to cater to installation intensive products, the different configurable payment terms will have to be incorporated in GeM functionalities (depending upon the quantum of installation and turnkey work required).
 - a. First Milestone - On delivery of goods: 80 to 90% payment (lower initial payment if installation scope is very extensive) of the basic price of Goods along with 100% GST on the Goods Price but excluding installation, testing and commissioning and other charges should be paid after receipt Goods and generation of “Delivery CRAC for initial payment”. This will be issued after physical verification of quantity only but without commitment about quality or functionalities etc. which would be verified after installation/ commissioning etc. While creating the bid, Buyer shall have functionality to define the percentage of payment linked with delivery of Goods.

57 Accessible from https://doe.gov.in/sites/default/files/Procedures%20for%20payments%20for%20Goods-Services%20to%20sellers-%20service%20providers%20in%20Government%20e-Marketplace%20%28GeM%29%20-%20through%20PFMS%20and%20by%20non-PFMS%20Agencies-Entities%20%28NPAE%29_1.pdf

- b. Second Milestone - On Acceptance after installation, testing and commissioning : Balance 10 % to 20% payment of the basic price of Goods and 100% charges for installation, testing and commissioning and other charges along with GST on these charges should be paid after installation and final Acceptance of Goods and generation of "Installation CRAC" to be issued by the End User/ Consignee. Recoveries, if any, either on account of short supply and Liquidated Damages etc. for delay in supply and I or installation etc. shall be made from the payment due under this milestone. While creating the bid, Buyer shall have functionality to define the deliverables in this milestone and the percentage of payment linked with this milestone.
 - c. Third (and subsequent) milestones - Payment of Incidental Costs: 100% Payment related to Incidental costs at consignee site towards Incidental Services (such as providing training, or other work/ service as per scope defined in the contract), to be paid on submission of "Final CRAC" by the End User / Consignee. While creating the bid, Buyer shall have functionality to define the deliverables in this milestone. In exceptional cases, Buyer may choose to split this milestone as required.
- iv) In case of contracts for Supply, Installation, Testing, Commissioning of Goods bundled with one or more Services such as Comprehensive Maintenance, Human Resource hiring for pre-defined time periods etc., the payments for Goods shall be governed by Para (iii) above while payment for Services shall be Governed as per Para (ii) above.
 - v) In case of Milestone Based Payments, separate timelines / delivery periods for each milestone will be provided. In case of supply and installation contracts, the delivery period may be specified by filling up the blanks as under:
 - a. First Milestone - For delivery of goods at site:-----days/ months from date of issue of contract with provision for staggered / multiple delivery period for same consignee.
 - b. Second milestone - Installation, Testing and Commissioning etc. of goods: - days / months from the date of handing over of site complete in all respect as per contract.
 - c. Third (and subsequent) milestones - Incidental Services etc.: - days after installation and commissioning.
 - vi) The payments on GeM are primarily categorized under two heads i.e. through PFMS or GeM Pool Account. The detailed instructions for both type of payment system are as under:

A. Payments through PFMS:

1. The Central Government Buyer i.e. the concerned Programme Division or Administrative Unit in a Ministry/ Department will place the Contract online after taking prior approval of the Competent Authority for procuring a particular Good or Service. Inter-alia, the Contract form will also contain the following fields including fields required for payment related processes:

- a) Administrative approval of the Competent Authority indicating the designation of the approving authority,
- b) Approval of Competent Financial Authority indicating designation of the officer;
- c) Whether IFD concurrence required? (Yes/No)
- d) If yes, then IFD Diary No. & Date
- e) Budget Head of Account and Year, Major/Minor/Sub-head/Detailed Head/Object Head as in Detailed Demands for Grants.
- f) Budget availability as on date (Yes/No)
- g) Amount (Contract Value) Rs (Budget to be blocked)
- h) If expenditure is committed for more than a year, the year-wise details (portal should generate a Liability Register for recording multi-year payment commitments, the format for which is prescribed in Rule 53 of the GFR)

2. When these fields are duly captured, the Buyer will be in a position to place the Contract online. The GeM portal will generate a Sanction Order and the Contract which will be digitally/e-signed by the Buyer. These documents duly digitally/e-signed by the Buyer will be made available online to the concerned DDO and PAO or Paying Authority as defined in the contract and Seller/ Service Provider. The DDO and PAO/Paying Authority shall have access to the Contract online in order to ensure that the Bill is generated at the stage of payment in accordance with the contractual provisions.

3. The GeM portal will send the Sanction Order details to PFMS.

4. On issue of Sanction order and placing the Contract for goods, the full amount required from the relevant Budget Head should be blocked in the PFMS. In cases of Services, amount should be blocked for one payment cycle as defined in the contract. Before releasing payment for any cycle, the funds required for the next payment cycle should be blocked so as to ensure availability of payable funds for the next payment cycle. Blocked fund will be treated as accrued expenditure by PFMS for the financial year in question and it will not be withdrawn for any other purpose other than the one for which the amount is Blocked. In order to alleviate the operational issues as well as to ensure optimum utilization of available funds, the following additions⁵⁸ are made in para 9.7.7 (vi) (A) (4)

- a. The provision of fund blocking equivalent to full contract value is applicable only for contracts with delivery periods of up to 20 days. For contracts with longer delivery periods, fund blocking of appropriate amounts shall be initiated at a date 20 days prior to expected delivery date or on the date of invoice generation by the Seller in GeM whichever is earlier. In case of non-availability of required funds at that point of time, both buyer and seller shall be alerted, and the Buyer, the HoD, the DDO/ PAO and finally up to AS&FA of concerned Ministry/ Department shall be alerted by email and SMS by GeM. On failure in making available the required funds in the appropriate head of account within 10 days, seller has right to decline supply and to seek contract cancellation without any administrative action against the seller. Also,

⁵⁸ Notified vide OM No. F.6/18/2019.PPD issued by Department of Expenditure dated 29.12.2020

in such a case, any delay in delivery by the seller will also become exempt from the provision of Liquidated Damages.

- b. Functionality to un-block the blocked funds in exceptional cases/ emergency cases with some validations: Head of Department (HoD) of the organization on GeM can unblock certain % of blocked funds of a contract (may be upto 100%) with the approval of associated finance of the Ministry/ Department or the CPSE in exceptional cases/ emergency cases after giving a clear undertaking that he will ensure timely availability of funds and unblocking will not lead to delay payments to sellers. However, such unblocking will not allowed if the seller has already raised an invoice (before 1st March of Financial Year).
- c. **Funds for the relevant financial year should be blocked only if the delivery period is such that the delivery is scheduled before the 1st of March of that financial year.** If the delivery is scheduled in March of that financial year or scheduled in the next financial year then fund blocking is optional for buyer in current financial year and mandatory only in the next financial year in the 1st week of April.

5. Should it be necessary to amend the Contract, such Amendment in the Contract with due approval of the Competent Authority and acceptance of the Seller/Service Provider (wherever required) shall be made available to the Seller /Service Provider/DDO/PAO/Paying Authority on the GeM portal.

6. Similarly, in the event of complete/ partial cancellation of the Contract the information would be made available to the Seller/Service Provider, DDO and PAO on the GeM portal. In that event, funds so blocked earlier would be released to the extent of cancelled amount.

7. The Programme Division/Administrative Unit in the Ministries/Departments shall periodically review the blocked budget to ensure that funds are utilized within the same financial year.

8. The Performance Security (if any) would be obtained from the Seller/Service Provider as per Contract, and their details would be reflected on the GeM portal by the Buyer.

9. Provisional Receipt of Stores on GeM:

- a. On dispatch of Goods, the Seller would enter the Dispatch Details and date of Dispatch and will upload documentary evidence of Dispatch against each consignment on GeM Portal. All these documents and details shall be shown to the Consignee on his dashboard and shall also be notified to the consignee on his e-mail and on his registered mobile number.
- b. The Seller shall prepare an electronic Invoice, digitally/e-signed, on GeM portal and shall submit the same on-line to the Buyer. GeM portal will send an SMS/ email alert to the Buyer, on submission of Invoice. This Invoice will contain mode of dispatch of goods, dispatched/delivered quantity with date and all inclusive price claimed based on digitally/e-signed Contract. In case Services are procured, the required data as per Contract may be incorporated in the Invoice.

- c. After actual delivery of goods at consignee destination/ milestone achievement (such as completion of installation/ commissioning or training etc. as defined in the contract)/ service delivery, Seller would enter the actual date of delivery/ milestone achievement/ Service Log-sheet (as applicable) and will upload documentary evidence for the same duly digitally signed / e-signed. All these documents and details shall be shown to the Consignee on his dashboard and shall also be notified to the consignee on his e-mail and on his registered mobile number. In case of Services Contracts, the Service Provider will fill up the required data as per the contract (such as log sheets and /or Invoice etc duly digitally signed/ e-signed).
- d. Immediately upon above entry by Seller I Service Provider regarding delivery of goods/ milestone achievement/ service delivery, an alert will be flashed on the Dashboard of the consignee and an email and an SMS Alert will be sent to Consignee informing that consignee has to mandatorily acknowledge receipt of stores/ milestone achievement/ service delivery through generation of PRC on GeM. The Buyer/Consignee should receive the Goods/Services and issues an online Provisional Receipt Certificate (PRC), within 48 hours, on 'said to contain basis' on the GeM portal with his/her digital signature / e-sign, mentioning the date of Receipt. (From this date of receipt mentioned in PRC, the period of ten (10) days for consignee's/buyer's right of rejection and return policy would be applicable unless otherwise specified in a particular contract)
- e. In case the consignee does not issue PRC within 48 hrs from entry of delivery of goods/ milestone achievement/ service delivery by Seller/ Service Provider, an alert will be flashed on the dashboard of the consignee and an email and an SMS Alert will be sent to Consignee and Buyer informing that consignee has to mandatorily acknowledge receipt of stores/ milestone achievement/ service delivery through generation of PRC on GeM.
- f. After expiry of 72 hrs. from the first alert, another alert will be flashed on the dashboard of the Consignee, Buyer including HoD and an email along with an SMS Alert to Consignee , Buyer, HoD informing that consignee has to mandatorily acknowledge receipt of stores/ milestone achievement/ service delivery through generation of PRC on GeM and if the time limit of 96 hrs expires from the date of delivery of goods/ milestone achievement/ service delivery as per entry made by Seller/ Service provider and if the consignee does not acknowledge receipt of stores/ milestone achievement/ service delivery by generating PRC or disputes the same by rejecting receipt, it would be presumed that goods have been delivered/milestone achievement I service delivery has been made to consignee and PRC will be auto generated by the system (Deemed PRC).
- g. However, if the consignee does not issue PRC within 96 hrs from delivery of goods/ milestone achievement/ service delivery as per entry made by Seller/ Service provider ,GeM System/Portal would auto generate unsigned PRC considering the date of delivery of goods/ milestone achievement/ service delivery as indicated by the seller as deemed date of receipt for issuance of PRC. GeM portal shall also send periodic notifications every 24 hrs. to the

Consignee, Buyer and the HoD about issuance of auto generated Deemed PRC for next 48 hrs.

- h. In case the PRC is auto-generated, the consignee shall have the provision on GeM to respond back within 48 hrs, if the goods have not been received or short received recommending to cancel or amend/correct the date of receipt/ quantity in the auto-generated Deemed PRC. In case nothing is reported/ corrected by consignee on the system, it will be presumed that the consignee has nothing to say and the auto-generated Deemed PRC will be considered as final for all purposes.
- i. If it is found at any stage that seller/ service provider has sent/ uploaded wrong information on GeM, based on which PRC has been wrongly auto generated, the seller/ service provider will be dealt severely and should be debarred by GeM for three years.

10. Consignee Receipt and Acceptance of Stores on GeM:

After issue of PRC/ Deemed PRC, the system will start sending an alert on the Dashboard of the consignee and an email and an SMS Alert will be sent as per escalation matrix specified below to issue the CRAC within 10 days:

- a. Level 1 - Upto 3 days - Consignee
- b. Level 2-4 and 5th day - Consignee and Buyer
- c. Level 3 - 6 to 10th day - Consignee, Buyer, HOD

After verification including assessment of quality and quantity of goods /verification of completion of all deliverables defined in the milestone/ completion of service for the defined period, the Consignee(s) will issue an on-line digitally/e-signed Consignee's Receipt & Acceptance Certificate (CRAC) (Goods CRAC/Service CRAC/ Delivery CRAC/ Installation CRAC/ Final CRAC as the case may be) (within 10 days (unless otherwise specified in a particular contract) of date of receipt indicated in PRC/deemed date of receipt as indicated in Deemed PRC. The CRAC would clearly indicate the Order quantity/ milestone achievement/ service delivery, rejected quantity/ unacceptable milestone achievement /unacceptable service delivery (if any, with reasons for rejection including shortages/damaged/unaccepted quality), quantity/ milestone achievement/ service delivery accepted and cleared for payment. However, if the consignee does not issue CRAC within 10 days (unless some other time line is specified in a particular contract for issue of CRAC), on 11th day from the date of receipt/ deemed date of receipt of quantity/ milestone achievement / service delivery as indicated in PRC, GeM System/Portal would auto generate unsigned CRAC which, backed with digitally/e-signed PRC or deemed PRC based on Seller Evidence for the corresponding quantity/ milestone achievement/ service delivery shall be taken as deemed acceptance for payments in lieu of the requirement of digitally/e-signed CRAC. This will be made available on GeM to the Buyer/ Seller and also the concerned DDO (if applicable) and PAO/Paying Authority. The GeM portal would generate a unique serial number for CRAC relating to concerned DDO (if applicable) & PAO/Paying Authority, so that the payments are made seriatim.

In case the CRAC is auto-generated, the consignee shall have the provision on GeM to cancel or amend the auto-generated CRAC within 72 hrs, if the goods have not been accepted or found defective/ short received. In case nothing is corrected by consignee on

the system, it will be presumed that the consignee has nothing to say and the auto-generated CRAC will be considered as final for all purposes including payments.

11. After generation of CRAC, the Buyer shall prepare 'Payment advice' on GeM Portal, indicating any contractual deductions such as penalties for violation of Service Level Agreement (as applicable)/Liquidated Damages for delayed supplies/ milestone achievement/ service delivery etc. which will be used by GeM portal to compute the net amount payable for the accepted quantity/milestone achievement/service delivery after factoring in the contractual deduction(s) and generate claims for payments digitally/e-signed by the Buyer. This claim for payment shall be made available to the DDO on GeM Portal and the requisite data will also be pushed online in the PFMS. DDO will log into PFMS and generate the Bill against the said claims and forward the same to the PAO/Paying Authority for payment, after deducting any statutory deductions including TDS as applicable.

12. It is obligatory to make payments without any delay for purchases made on GeM. In no case should it take longer than the prescribed timelines. The timelines after Consignee Receipt and Acceptance Certificate (CRAC) issued on-line and digitally/e-signed by consignee, will be two (2) working days for Buyer, one (1) working day for concerned DDO and two (2) working days for concerned PAO for triggering payment through PFMS for crediting to the supplier's account. In case of return of Bills by PAO/Paying authority, the discrepancies should be addressed by concerned Buyer/DDO within one working day and thereafter on re- submission of Bill the PAO should also not take more than one (1) working day for triggering payment to the Seller/ service provider Any matter needing a resolution will be escalated to the next higher level in each agency (Buyer, DDO and PAO) where the matter should be resolved within 24 hours. In the entire process, time taken for payment should not exceed ten (10) days including holidays

13. After online pre-check of all relevant documents, PAO/Paying Authority shall debit the Government account, releasing the corresponding payment through PFMS/ to be credited into the bank account of the Seller/service Provider. The payment so released shall be credited to the Seller/Service Provider account within 24 hours (excluding public holidays), by the Bank. SMS alerts shall be sent to the Seller/Service Provider and Buyer after the payment is authorized by PAO and also after the confirmation of the payment by the Bank. The payment authorization as well as payment confirmation details shall be shared by PFMS on the GeM portal. The PAO/Paying Authority and DDO shall comply with the provisions of General Financial Rules for budget implementation.

14. In case of return of Bill, if necessary by PAO/Paying Authority, it should be made online with all queries/discrepancies/reasons for rejections indicated in one go with the approval of competent authority, to the DDO/Buyer for the needful corrections at their end.

15. The DDO shall also be responsible for issuing TDS certificate (as per Income Tax Act, 1961 amended from time to time) to the Seller after release of the payment to the Seller/Supplier. The DDO shall also be responsible for deduction of TDS on GST as per GST provisions and to deposit the same with the Govt, as per GST rules and issue Form GSTR 7A to the person whose TDS has been deducted.

16. GeM System/Portal would also have on-line provisions for generating supplementary Invoice(s) for claim/refund of statutory changes in Duties and taxes, if any, as above. A provision for all types of refunds/claims should be available on-line through PFMS.

17. In terms of the provisions of the Information Technology Act 2000 as amended from time to time, digitally/e-signed online documents generated on GeM shall be treated at par with ink-signed documents for release of payment to the Seller/Service Provider and no ink signed paper/documents shall be demanded/insisted.

18. The multi-year liabilities so created as referred to in Para 4.17.7 (vi) (A) (1) (h) above shall be reviewed regularly by the Programme Division/Administrative unit in consultation with the Financial Adviser. The consolidated information on the total committed liabilities, year-wise, shall be submitted by the Financial Adviser to the Budget Division, Department of Economic Affairs, Ministry of Finance for suitably reflecting in the Budget Estimates for the relevant financial year and in the Medium Term Expenditure Framework (MTEF).

19. For all contracts placed through GeM, the payment through PFMS to all Sellers/ Service Providers must be released online only against electronic bill generated on GeM. No offline payment should be made in such cases to avoid double payment. Only in exceptional cases such as non-availability of the GeM platform or long shutdown of internet services at Buyer location or similar force majeure conditions, such off-line payments can be resorted to subject to the condition that immediately after resolution of the problem, necessary entries would be made on-line in GeM portal to obviate the possibility of double payment.

B. Payment for Non-PFMS Agencies/ Entities (NPAE)

1. Non-PFMS Agency/ Entity (NPAE) is a Government of India (GoI) not using PFMS for its payments of transactions and having their own payment system for making payments against contracts placed for goods/services placed by the NPAE on GeM. All NPAE shall open & operate a special purpose account namely GeM Pool Account for the purpose of ensuring prompt payment to Seller/Service Provider of GeM who supply Goods/ Services to the NPAE through GeM.

2. Accordingly, all the Organisations/ Departments including CPSUs, Municipalities, Educational Institutions, Autonomous bodies, Societies, etc. not operating through PFMS shall be covered under these instructions. These organisations are hereby directed to open, operationalize and operate a GeM Pool Account (GPA) for all procurement. GPA is a special purpose bank account (interest bearing savings/current Account) opened, operated and controlled exclusively by each NPAE. GeM Pool Account shall be mandatory for all procurement irrespective of value. The GeM Pool Account shall be opened, operated and controlled exclusively and completely by the buyer entity/agency subject to certain restrictions on withdrawals of funds as explained in succeeding paragraphs. The Account shall carry interest applicable to savings/ current account. Such account shall be opened in any scheduled bank having already integrated the pool account with GeM.

3. The following are the core elements of GPA that should be incorporated during the opening and operations/ procurement stages:

- a. The NPAE will open the GPA (as a savings or current account) which will be utilized by buyer through the online integration of Bank with the platform owned and maintained by GeM SPV, as per Service Level Agreement (SLA), and solely for procurement of goods and services on GeM.
- b. The terms and conditions of procurement on GeM will be part of the operations agreement between the bank and the NPAE.

- c. The role of the bank will be limited to ensuring operations of the account on the instruction of the NPAE through the authorized NPAE nodal officer for GeM/ buyer.
- d. Real time details of all operations of the account will be shared by the bank, in a mutually accepted format (to be amended from time to time) with the NPAE, only through the GeM Platform.
- e. Once a sub-account/ transaction specific account is credited with an amount, the NPAE cannot withdraw this amount, apart from transfer to the designated Seller/Service Provider, till such a time that the transaction is live.
- f. Any withdrawal/transfer by the NPAE from this account, except for payment to the Seller I Service Provider, would be permitted in the following conditions.
 - 1. Order cancellation
 - 2. Order rejection
 - 3. Refund

All the above situations would first be required to be enabled/ flagged on the GeM Platform for the NPAE to be able to act accordingly.

4. While procuring goods & services through GeM, the NPAEs should credit 100% of the projected Contract Value in case of Goods Contract in their GeM Pool Account before award of contract. In cases of Services, amount should be credited for one payment cycle as defined in the contract and before releasing payment for any cycle, the funds required for the next payment cycle should be credited so as to ensure availability of payable funds for the next payment cycle. Payment so credited will not be withdrawn for any other purpose other than the one for which the amount is credited into GeM Pool Account.

5. After placement of contract on GeM, the process for PRC and CRAC will be same for NPAE category also as indicated in Para 4.17.7 (vi) (A) (9) above regarding Provisional Receipt of Stores on GeM and Para 4.17.7 (vi) (A) (10) Consignee Receipt and Acceptance of Stores on GeM for PFMS Buyers.

6. After issue of CRAC, NPAE Nodal Officer shall issue an advice without delay to the bank to release actual amount payable to Seller/ Service Provider as per terms of contract from the GeM Pool Account. On authorization, the bank should transfer the prescribed amount to the Seller/Service Provider supplier mapped in the transaction.

7. In case of a Service level agreement (SLA) breach on the part of the NPAE in terms of payments to the Seller/Service Provider, GeM will intimate the buyer and bank of the same. Post such intimation, and non-action on the part of the NPAE with respect to payment transfer, bank will release payments for the delivery of goods at consignee destination/ milestone achievement (such as completion of installation/ commissioning or training etc. as defined in the contract)/ service delivery as notified in the terms and conditions of procurement on GeM to the Seller/ Service Provider mapped in the transaction. Such a provision is required to be incorporated in GPA and should be considered as a standing instruction from the NPAE to the bank. The residual amount cannot be withdrawn/ transferred by the NPAE, in such cases.

8. In case, even after 10 days of issue of Consignee receipt and acceptance certificate (CRAC)/ auto generated CRAC , the buyer has not initiated the payment process through

the GeM platform, a payment trigger will be automatically generated for payment equivalent to 80% of the corresponding quantity/ milestone achievement/ service delivery deduced by the system as per CRAC. Simultaneously intimation will be sent to the HoD, buyer and NPAE Nodal officer for GeM, regarding the release of payment, at their risk and cost in line with the terms and condition (T&C) and SLA of procurement on GeM. The residual payment of 20% is to be processed by the buyer within 35 days after adjusting for any statutory deduction and damages, failing which after 35 days, the same will be released to the Seller/ Service Provider automatically through an alert to the bank by the GeM Platform, after statutory deductions and any system know deductions.

9. Unutilized funds after closure of the Contract and interest accrued on the credited amount will be at the disposal of nominated NPAE Nodal officer, who may advise banker for further action as deemed fit.

10. The Steering Committee on GeM of each Ministry should monitor the implementation of these instructions regarding operationalization of GeM Pool Account.

11. Ministries/ Departments of Government of India are accordingly requested to issue necessary instructions to all Non-PFMS Agencies/ Entities under their control.

vii) In case any Non PFMS Agency/ Entity decides with the approval of their Competent Authority to have integration of their on-line payment Systems with functionality for Blocking of Funds etc. as per PFMS system of payments, the Payment procedures outlined for PFMS in Para 4.17.7 (vi) (A) shall be mutatis mutandis applicable to them.

viii) Currently, for unlocking of funds, especially during the fag end of the financial year, buyers need to send emails etc. to GeM. Thereafter, GeM manually unlocks the payments. GeM will automate this whole process.

4.17.8 It is mandatory for a buyer to generate a “GeM Availability Report and Past Transaction Summary” (GeMAR&PTS)⁵⁹ with a unique ID on GeM portal using his login credentials on GeM for procurement outside GeM (for example for procurement through Central Public Procurement Portal). The Past Transaction Summary will be provided, where available. “GeMAR&PTS” shall be a pre-requisite for arriving at a decision by the competent authority for procurement of required goods and services by floating a bid outside GeM and its unique ID would be required to be furnished on the publishing portal along with the tender proposed to be published.

4.17.9 Purchase of goods without quotation can be resorted for value upto Rs. 25,000/-only on each occasion may be made without inviting quotations or bids on the basis of a certificate to be recorded by the competent authority, only when the required goods are not available on GeM.

4.17.10 In case a certain item is not available on the GeM portal,]⁶⁰Purchase of goods costing above [Rs.25,000 (Rupees twenty five thousand only) and upto Rs.2,50,000/- (Rupees two lakh and fifty thousand only)] on each occasion may be made on the recommendations of a duly constituted Local Purchase Committee consisting of three

⁵⁹Notified vide OM No. F.6.18.2019-PPD issued by Department of Expenditure dated 11th June, 2021.

⁶⁰ Inserted vide OM No. F.1.26/2018-PPD dated 02.04.2019.

members of an appropriate level as decided by the Head of the Department. The committee will survey the market to ascertain the reasonableness of rate, quality and specifications and identify the appropriate supplier and will jointly record a certificate before placement of the purchase order.

4.17.11 Where an item is available on GeM and Ministry/ Department/ Organization wants to buy outside the GeM in view of any compelling circumstances, the approval of Standing Committee of GeM (SCoGeM) and Secretary concerned shall be required⁶¹

61 Refer OM No F.6/15/2018-PPD issued by Department of Expenditure dated 5th February 2020.

Chapter 5: Preparing bid documents, publication, receipt and opening of bids

5.1 Preparation of Bid Documents

5.1.1 The text of the bid document should be self-contained and comprehensive without any ambiguity. All essential information, which a bidder needs for sending responsive bid, should be clearly spelt out in the bidding document in simple language. This will also enable the prospective bidders to formulate and send their competitive bids with confidence. A carefully prepared tender document avoids delays and complaints. Hence, it is worth spending time and effort on this even in cases of urgency.

Bid documents should be based on SBDs relevant for the value range and the category of procurement. SBD for e-procurement would be slightly different from the traditional SBD. To ensure uniformity, the standard provisions in most sections of the SBD/ SRfPD are to be used unaltered. Any modification to suit a unique requirement of the specific procurement in these documents is to be done through variable sections such as Special Instructions to Bidders or special conditions of contract (these variable sections may have different nomenclatures in some organisations). Department of Expenditure has issued Model Tender Documents for Procurement of Goods⁶² and Procurement of Non-Consultancy Services⁶³ on 29th October 2021.

In case of a limited tender, instead of a full set of SBD, only a machine numbered tender form (refer Annexure 5) is used as the tender document, after filling up the name of the vendor and details of requirements. It has the “terms and conditions of tender” printed on the obverse side. In any case, all registered vendors, who normally are invited to quote in such limited tenders, have already acknowledged acceptance of “general conditions of contract” as part of the registration application, which are applicable to such procurements, in additions to “terms and conditions of tender” on the obverse of tender form. If necessary, specifications and drawings or any other document may be enclosed with the limited tender form.

While SBDs would be complete in themselves and may be slightly different for various categories of procurements, these must necessarily address the following essential aspects:

- i) Description of the subject matter of procurement, its specifications including the nature, quantity, time and place or places of delivery;
- ii) Limitation or preference for participation by bidders in terms of the Government policies;
- iii) The criteria for eligibility and qualification to be met by the bidder (the eligibility criteria should take care of the supplier’s eligibility to receive such a Government

⁶² Accessible from

<https://doe.gov.in/sites/default/files/Model%20Tender%20Document%20for%20Procurement%20of%20Goods%20%28pdf%29.pdf>

⁶³ Accessible from <https://www.doe.gov.in/sites/default/files/Model-Tender-Document-for-Procurement-of-Non-Consultancy-Services.pdf>

- contract. The qualification criteria should take care of the supplier's past performance, experience, technical competence and production capacity of the subject goods, financial strength to handle the contract successfully, compliance with environmental protection regulations/ Environment Management System and so on);
- iv) There are no such qualifications for the bidders that would be advantageous to the foreign manufactured goods at the cost of domestically manufactured goods.
 - v) The procedure as well as date, time and place for obtaining, submitting and opening of the bids;
 - vi) Terms of delivery/completion;
 - vii) Suitable provisions for enabling a bidder to question the bidding conditions, bidding process and/or rejection of its bid. These provisions should include a time frame in which procuring entity will address the bidder's questions; (Rule 173 (iv) of GFR 2017).
 - viii) Criteria for determining the responsiveness of bids, criteria as well as factors to be taken into account for evaluating the bids on a common platform and the criteria for awarding the contract to the responsive, most advantageous (lowest/highest as the case may be) bidder should be clearly indicated in the bidding documents. SBDs should include a clause that "if a firm quotes NIL charges/consideration, the bid shall be treated as unresponsive and will not be considered";
 - ix) Suitable provision for settlement of disputes, if any, emanating from the resultant contract, should be kept in the bidding document; (Rule 173 (v) of GFR 2017) and
 - x) Essential terms of the procurement contract including a suitable clause mentioning that the resultant contract will be interpreted under Indian laws (*Rule 173 (vi) of GFR 2017*)
 - xi) **Tender Documents** :
 - a) The tender document is the fundamental document in the public procurement process as after award of the contract it becomes part of the contract agreement. All necessary provisions governing the contract should be clearly provided in the tender document. Examples are technical specifications, drawings, commercial terms and conditions including time period, inspection, payment terms, obligations of the procuring entity and the suppliers timeframe/ milestones, tax implications, compliance framework for statutory and other norms, dispute resolution. Provisions/ clauses in the tender document should be clear to avoid differences in interpretation and possible time overrun, cost overrun and quality compromises. Model Tender Documents issued by the DoE may be used, with due customisation.
 - b) In tenders containing General Conditions of Contract (GCC), additional/ special conditions to be incorporated in the tender document, shall be need based and specific. The GCCs should not be altered and changes, if any, in conditions of contract should only be made through the Special Conditions of Contract.
 - c) Procuring entities may issue instructions regarding appropriate delegation of authority for variations and changes in the scope of the contract.
 - d) Provision of price variation, wherever considered appropriate, as well as methodology for calculation of the same shall be clearly stipulated in the tender document.

- e) Technical and Financial eligibility Criteria for the bidders are important in the public procurement process. They shall be clear and fair, having regard to the specific circumstances of the procurement. Appropriate parameters should be prescribed in the eligibility criteria for bidders, to enable selection of the right type of bidders in public interest, balancing considerations of quality, time and cost.
- f) Open online tendering should be the default method to ensure efficiency of procurement. Public authorities should also keep the experience criteria broad based so that bidders with experience in similar nature of items/ goods can participate.
- g) Pre-bid conference may be conducted for large value tenders by Procuring Entities. The Place and time of pre-bid conferences should be mentioned in the tender document and/ or publicized through the website of the procuring entity and/ or through newspaper publication.

5.1.2 Contents of Tender Documents (*Rule 168 of GFR 2017*)

The main sections of the SBD are:

- i) Notice Inviting Tender (NIT);
- ii) Instructions to Bidders (ITB);
- iii) Appendix to Instructions to Bidders (AITB) (instead of modifying ITB, it is better to have information specific to a procurement as a separate section);
- iv) Eligibility and qualification criteria;
- v) Schedule of requirements
- vi) Technical specifications (including Drawings) and Quality Assurance (Inspections and Tests);
- vii) General Conditions of Contract (GCC);
- viii) Special Conditions of Contract (SCC) (instead of modifying GCC every time, it is better to have it as a separate section); and
- ix) Standard formats, including Bid Cover letter, price schedules, bank guarantees and contract format.

A reading of the sections of the tender document will make the purpose and instructions clear. However, some broad guidelines for preparing bid documents are provided in the subsequent paragraphs.

5.1.3 Notice Inviting Tender

The model NIT format in SBD should be used for publishing the tender notice. To ensure competition, attention of all likely tenderers, for example, registered suppliers, past suppliers and other known potential suppliers, should be invited to the NIT through email/SMSs/ letters. In e-procurement, the website may be programmed to generate these alerts automatically.

The Notice Inviting Tender (NIT) is crucial for attracting wide competition in the tender. The model NIT format in SBD should be used for publishing the tender notice. The NIT should be brief but must contain sufficient detail for a prospective bidder to decide whether to participate in the tender or not and, if he decides to participate, how to go about it. To ensure competition, attention of all likely tenderers, for example, registered vendors, past suppliers

and other known potential suppliers, should be invited to the NIT through email/ SMSs/ letters. In e-procurement, the website may be programmed to generate these alerts automatically. NIT should be published as per the current policy of Procuring Entity in this regard (Please refer to chapter 4 for details).

In case of procurement through a limited tender, the NIT may be uploaded on CPPP Portal and Procuring Entity's website with a note saying:

"This notice is being published for information only and is not an open invitation to quote in this limited tender. Participation in this tender is by invitation only and is limited to the selected Procuring Entity's registered suppliers. Unsolicited offers are liable to be ignored. However, suppliers who desire to participate in such tenders in future may apply for registration with Procuring Entity as per procedure."

Printouts of the tenders published on the website should be collected and kept on record as a proof of publicity. The complete details of the dates, on which advertisements actually appeared on the website, should be indicated while sending cases to higher authorities.

5.1.4 Information to Bidders (ITB) and AITB

ITB contain all relevant information as well as guidance to the prospective tenderers regarding all aspects of obtaining tender documents, and preparing and submitting a responsive bid. It also mentions the process of establishing the eligibility of the tenderer as well as evaluation and comparison of tenders and award of contract. ITB should not contain information on processes after the announcement of the award which should be covered in GCC, for example, the arbitration clause, resolution of disputes, and so on. Instead of modifying ITB every time, any changes warranted by special circumstances may be indicated with the prior approval of CA on a separate Appendix to ITB (AITB) and ITB may be included unchanged in every tender document. It should also to be indicated therein that the provisions in the AITB will supersede the corresponding provisions in the ITB.

Important clauses of ITB/ AITB which may require attention and action are:

i) **Purchase Preference Policies**

If the purchaser intends to give a purchase preference in line with current Government policies, this fact must be declared in the ITB/AITB and in NIT as well.

ii) **Clarification of Tender Documents**

A prospective bidder requiring clarification on the tender documents may notify to Procuring Entity in writing, well before the due date of submission of bids, and a response will be sent in writing to the clarifications sought prior to the date of opening of the tenders. Copies of the query and clarification shall be sent to all prospective bidders who have received the tender documents.

iii) **Amendment of Tender Documents (*Rule 173 (iii) of GFR 2017*)**

At any time prior to the date of submission of bids, the purchaser may, whether at his own initiative or in response to a clarification sought by a prospective bidder, amend bid documents by issuing a corrigendum. The corrigendum shall be notified in writing by registered post/speed post/courier/email to all known prospective bidders. Copies of such amendments are also to be prominently attached in the unsold sets of the tender documents (which are available for sale), including the tender documents

uploaded on the website. When the amendment/modification changes the requirement significantly and /or when there is not much time left for the tenderers to respond to such amendments, and prepare a revised tender, the time and date of submission of tenders are also to be extended suitably, along with suitable changes in the corresponding timeframes for receipt of the tender, tender validity period, and so on, and validity period of the corresponding EMD/bid security. Depending on the situation, such an amendment may also need fresh publication adopting the same procedure as for publication of the original tender enquiry.

iv) **Bid Validity**

2.3.1 A bid shall remain valid for the period mentioned in the ITB/ AITB [normally 75 (seventy-five) days for OTE and 90 (ninety) days for GTE]. In exceptional circumstances, the consent of the bidder may be requested in writing for an extension to the period of bid validity. Such requests should preferably be made much before the expiry of the bid validity. The bid security provided shall also be suitably extended. A bidder accepting the request and granting extension shall not be permitted to modify his bid. Reasons for seeking extension of bid validity should be recorded by the procuring officers at the time of taking such decisions itself.

v) **Sealing and Marking of Tenders**

The tender document is to indicate the total number of tender sets (for example, in duplicate or in triplicate, and so on) required to be submitted. The tenderer is to seal the original and each copy of the tender in separate envelopes, duly marking the same as "original", "duplicate," and so on, and also printing the address of the purchase office and the tender reference number on the envelopes. Further, the sentence "NOT TO BE OPENED" before (due date and time of tender opening) is also to be printed on these envelopes. The inner envelopes are then to be put inside a bigger outer envelope, which will also be duly sealed marked, and so on, as above. If the outer envelope is not sealed and marked properly as above, the purchaser will not assume any responsibility for its misplacement, premature opening, late opening, and so on. All the above instructions are to be suitably incorporated in the tender documents.

vi) **Withdrawal, Substitution and Modification of Tenders**

The tenderer, after submitting the tender, is permitted to withdraw, substitute or modify the tenders in writing without forfeiture of Bid Security/ EMD, provided these are received duly sealed and marked like the original tender, up to the date and time of receipt of the tender. Any such request received after the prescribed date and time of receipt of tenders will not be considered. No bid may be withdrawn in the interval between the deadline for submission of bids and expiration of the period of bid validity. Withdrawal of a bid during this period will result in forfeiture of the bidder's bid security (EMD) and other sanctions.

vii) **Eligibility/Evaluation/Qualification Criteria**

If it is intended to use eligibility/evaluation/qualification criteria to evaluate a tender and determine whether a tenderer has the required qualifications, this point may be clearly specified in NIT, ITB/AITB or as a separate section of the tender document.

The bidder has to ensure that he provides convincing proof of having fulfilled these criteria. *Any criteria not specified in the tender cannot be used for evaluation or qualification.*

The condition of prior turnover and prior experience may be relaxed for Startups (as defined by Department of Industrial Policy and Promotion) subject to meeting of quality & technical specifications and making suitable provisions in the bidding document (*Rule 173 (i) of GFR 2017*). As per Department of Expenditure's OM No.F.20/2/2014-PPD dated 20.09.2016, relaxation regarding the prior turnover and prior experience is applicable **only to all startups** recognized by Department of Industry & Internal Trade (DPIIT) subject to meeting of quality and technical specifications. Startups may be MSMEs or otherwise.

Prequalification/ Post Qualification (PQ) shall be based entirely upon the capability and resources of prospective bidders to perform the particular contract satisfactorily, taking into account their experience and past performance, capabilities with respect to personnel, equipment and manufacturing facilities, financial standing. The quantity, delivery and value requirement shall be kept in view, while fixing the PQ criteria. No bidder should be denied prequalification/post qualification for reasons unrelated to its capability and resources to successfully perform the contract.

viii) **OEM/Authorised Dealer/Agents of Supplier**

Except in case of Commercially-Off-the-Shelf (COTS) items, when a firm sends quotation for an item manufactured by some different company, the firm is also required to attach, in its quotation, the manufacturer's authorisation certificate and also manufacturer's confirmation of extending the required warranty for that product as per formats given in SBD. This is necessary to ensure quotation from a responsible party offering genuine product, also backed by a warranty obligation from the concerned manufacturer. In the tender, either the manufacturer or its authorised dealer can be considered as valid bidders.

In case of large contracts, especially capital equipment, the manufacturer's authorisation must be insisted upon on a tender specific basis, not general authorisation/dealership, by so declaring in the bid documents clearly.

In cases where the manufacturer has submitted the bid, the bids of its authorised dealer will not be considered and EMD will be returned.

And in case of violations, both infringing bids will be rejected.

ix) **Conflict of Interest among Bidders/ Agents**

A bidder shall not have conflict of interest with other bidders. Such conflict of interest can lead to anti-competitive practices to the detriment of Procuring Entity's interests. The bidder found to have a conflict of interest shall be disqualified. A bidder may be considered to have a conflict of interest with one or more parties in this bidding process, if:

- a) they have controlling partner (s) in common; or
- b) they receive or have received any direct or indirect subsidy/ financial stake from any of them; or
- c) they have the same legal representative/agent for purposes of this bid; or

- d) they have relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on the bid of another Bidder; or
- e) Bidder participates in more than one bid in this bidding process. Participation by a Bidder in more than one Bid will result in the disqualification of all bids in which the parties are involved. However, this does not limit the inclusion of the components/ sub-assembly/ Assemblies from one bidding manufacturer in more than one bid.
- f) In cases of agents quoting⁶⁴ in offshore procurements, on behalf of their principal manufacturers, one agent cannot represent two manufacturers or quote on their behalf in a particular tender enquiry. One manufacturer can also authorise only one agent/dealer. There can be only one bid from the following:
 1. The principal manufacturer directly or through one Indian agent on his behalf; and
 2. Indian/foreign agent on behalf of only one principal.
- g) a Bidder or any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the contract that is the subject of the Bid;
- h) In case of a holding company having more than one independently manufacturing units, or more than one unit having common business ownership/management, only one unit should quote. Similar restrictions would apply to closely related sister companies. Bidders must proactively declare such sister/ common business/ management units in same/ similar line of business.

x) **Schedule of Requirements**

This section comprises the list of goods and delivery schedule. If there is no separate TS, then TS, quality assurance and inspections may also be included here. If the tender contains a number of schedules of requirements, it must be clarified, whether evaluation of eligibility/qualifications/financial bids would be on a schedule by schedule basis or on the basis of a total of all schedules put together.

xi) **Quotation Received from Dealers/Agents for Items not Manufactured by Them**

When a firm sends a quotation for an item manufactured by a different company, the firm is also required to attach in its quotation that manufacturer's authorisation certificate and also manufacturer's confirmation of extending the required warranty for that product (in addition to the tenderers' confirmation to the required warranty). If the firm is an authorised agent/dealer of that manufacturer, certified documentary evidence to this effect is to be attached along with the quotation. This is necessary to ensure a quotation from a responsible party offering the genuine product, also backed by a warranty obligation from the concerned manufacturer.

⁶⁴ CVC (CTE) No.12-02-6-CTE/SPI (1)-2, dated January 13, 2012 refers to this.

xii) **Special Conditions in GTE Procurements**

- a) **Currency of Bidding:** In GTE tenders, the Foreign Bidders are allowed to quote price (and get paid) in RBI's notified basket of foreign currencies - US Dollar or Euro or Pound Sterling or Yen etc., in addition to the Indian Rupees - except for expenditure incurred in India (including agency commission if any) which should be stated in Indian Rupees. Indian Bidders are to quote in INR only.
- b) **Agency Commission:** The amount of Agency Commission, (normally not exceeding five percent) payable to the Indian Agent should not be more than what is specified in the Agency agreement (a certified copy should be submitted along with the bid) between the bidder and the Indian Agent. The Indian Agent will be required to submit a certificate along with their Agency Commission bill, confirming that the amount claimed as Agency Commission in the bill has been spent/will be spent, strictly to render services to the foreign Principal, in terms of the Agency Agreement. The Purchaser or their authorized agencies and/or any other authority of the Government of India shall have rights to examine the books of the Indian Agent and defects or misrepresentations in respect of the afore indicated confirmation coming to light during such examinations will make the foreign Principal (i.e. the Contractor) and their Indian Agent liable to be banned/suspended from having business dealings with the Purchaser, following laid down procedures for such banning/suspension of business dealings.
- c) **Delivery Terms:** The delivery terms are to be expressed in terms of Incoterms. As per the revised policy⁶⁵ of the Government, all Public Procurement import contracts involving (Ocean freight of dry or liquid bulk cargoes) are to be finalized only on FOB (Free on Board)/ FAS (Free Alongside Ship) basis and in case of any departure there-from, prior approval of the concerned administrative Ministry/ Department may be obtained. However imports involving ocean freight of general liner: cargoes, project cargoes, heavy lift, container, break bulk cargoes etc. can now be made on FOB (Free on Board)/ FAS (Free Alongside Ship) or CFR (Cost & Freight)/ CIF(Cost, Insurance & Freight) basis. All importing Government Departments/ PSUs are now allowed to make their own shipping arrangements with out needing to route their requirements through Chartering Wing of Ministry of Shipping. As per the extant directive of the Government, airlifting of imported goods from abroad will be done only through the national carrier, that is, Air India, wherever applicable. However, before processing any contract involving import of goods through air, contemporary instructions in this regard may be ascertained and followed; and
- d) **Insurance:** Wherever necessary, the goods supplied under the contract shall be fully insured in a freely convertible currency against loss or damage

⁶⁵ <http://shipping.nic.in/showfile.php?lid=2098>

incidental to manufacture or acquisition, transportation, storage and delivery in the manner specified in the contract. If considered necessary, the insurance may be done for coverage on an "all risks" basis including war risks and strike clauses. The amount to be covered under insurance should be sufficient to take care of the overall expenditure to be incurred by the purchaser for receiving the goods at the destination. Insurance of imported goods/equipment would need to be arranged on a very selective basis and only for cases where the value of individual shipment is expected to be in excess of Rupees five crore. Procuring Entities who are entering into large number of imports contracts, may enter into annual Insurance arrangements for all imports during the year with Insurance Companies, instead of insurance for each individual imports separately on the basis of "Open Cover (all Risk)". Where delivery of imported goods is required by the purchaser on Cost Insurance and Freight/Carriage and Insurance Paid (CIF/CIP) basis, the supplier shall arrange and pay for marine/air insurance, making the purchaser the beneficiary. Where delivery is on Free On Board/ Free Alongside Ship (FOB/FAS) basis, marine/air insurance shall be the responsibility of the purchaser

5.1.5 General and Special Conditions of the Contract

The GCC to be used for contracting for procurement are provided in Procuring Entity's SBD. GCC covers all information on aspects after the announcement of the tender award till the closure of the contract and dispute resolution. It should not cover any aspect up to announcement of award. Instead of modifying the GCC every time, any changes warranted by special circumstances may be indicated in a separate SCC with the prior approval of the CA and GCC may be included unchanged in every tender document. It is also to be indicated therein that the provisions in the SCC will supersede the corresponding provisions in the GCC.

5.1.6 Submission Formats

This section contains the relevant forms for tender submission: various declarations by tenderer, formats for the bank guarantee, price schedule forms, exception and deviation forms, contract forms and manufacture's authorisation form, and so on.

5.1.7 Mandatory e-Publishing of Tenders (*Rule 159 of GFR 2017*)

It is mandatory for all Ministries/Departments of the Central Government, their attached and subordinate offices and autonomous/statutory bodies to publish their tender enquiries, corrigenda thereon and details of bid awards on the Central Public Procurement Portal (CPPP)⁶⁶. These instructions apply to all Tender Enquiries, Requests for Proposals, Requests for Expressions of Interest, Notice for pre Qualification/ Registration or any other notice inviting bids or proposals in any form whether they are advertised, issued to limited

⁶⁶Need for publishing of contract award for procurements made through DGS&D Rate Contracts or through any other Central Procurement Organizations (CPOs) stated under Rule 159 (iv) of GFR, 2017 has been deleted vide OM No.F.1/26/2018-PPD issued by Department of Expenditure dated 02.04.2019

number of parties or to a single party. These instructions would not apply to Purchase of goods without quotations or Purchase of goods by purchase committee.

Individual cases where confidentiality is required, for reasons of national security, would be exempted from the mandatory e-publishing requirement. The decisions to exempt any case on the said grounds should be approved by the Secretary of the Ministry/ Department with the concurrence of the concerned Financial Advisor. In the case of autonomous bodies and Statutory bodies' approval of the head of the body with the concurrence of the head of the finance should be obtained in each such case. Statistical information on the number of cases in which exemption was granted and the value of the concerned contract should be intimated on a Quarterly basis to the Ministry of Finance, Department of Expenditure.

5.2 Receipt and Custody of Tenders

5.2.1 Cost and Availability of Tender Documents

Tender documents should preferably be sold or available for download up to date of opening of tenders and this should be clearly indicated in the documents. The organisation should also post the complete tender document in the website and permit prospective tenderers to make use of the document downloaded from the website.

The tender document fee should be as low as possible considering the cost/effort of preparing documents. *In order to promote wider participation and ease of bidding, no cost of tender document may be charged for the tender documents downloaded by the bidders.* The procuring Entity may decide not to take any charges for the tender documents, in view of prevalence of e-publishing/ downloading of tender documents. The cost of the tender document is to be submitted to the authority nominated therein by the prospective tenderer in the form of a demand draft /banker's cheque/pay order. Firms that are eligible for exemption from the tender document fee such as MSEs, Procuring Entity registered units (for relevant items and monetary limit) have to submit/upload scanned copy of documents in support of this exemption. Although the Procuring Entity is the best judge to decide or waive the document cost, following table could be used as a starting point:

Suggested Cost of Tender Documents in OTE, GTE Tenders (Normally in STE/ PAC/ LTE, no cost is charged)	
Estimated Value of Tender	Tender Document Cost
Below Rs 25 Lakh	Rs. 500
Rs 25 Lakh to Rs 2 Crore	Rs. 1,500
Rs 2 Crore to Rs. 25 Crore	Rs. 2,500
Rs 25 Crore to Rs. 50 Crore	Rs. 5,000
Above Rs 50 Crore	To be decided on case to case basis

5.2.2 Pre-bid Conference(Rule 173 (x) of GFR 2017)

In case of turnkey contract (s) and facilities of a special nature for procurement of sophisticated and costly equipment, large works and complex consultancy assignments, a suitable provision is to be kept in the bidding documents for one or more pre-bid conference for clarifying issues/clearing doubts, if any, about the specifications and other allied technical/commercial details of the plant, equipment and machinery projected in the bidding document and for ensuring that the technical requirements provide a level playing field. The date, time and place of the pre-bid conference should be indicated in the tender enquiry

document. Bidders should be asked to submit written queries in advance of the conference. After the conference, the techno-commercial requirements may be revised if considered necessary by way of issue of a formal corrigendum (mere minutes of the meeting of pre-bid conference would not suffice) and shared with all the bidders who purchase or have purchased the bid documents.

5.2.3 Extension of Tender Opening Date

Sometimes, situations may arise necessitating modification of the tender documents already issued (LTE case) or already put on sale (OTE case). Also, after receiving the documents, a tenderer may point out some genuine mistakes necessitating amendment in the tender documents. In such situations, it is necessary to amend/modify the tender documents suitably prior to the date of submission of bids. Copies of such amendment / modification should be simultaneously sent to all the selected suppliers by registered/speed post/courier/e-mail in case of LTE. In case of OTE, the copies of such amendment / modification are to be simultaneously despatched, free of cost, by registered/speed post/courier/e-mail, to all the parties who have already purchased the tender documents and copies of such amendments are also to be prominently attached in the unsold sets of the tender documents (which are available for sale), including the tender documents for downloading put on the CPPP and Procuring Entity's own website.

When the amendment/ modification changes the requirement significantly and/or when there is not much time left for the tenderers to respond to such amendments, and prepare revised tender, the time and date of submission of tenders are also to be extended suitably, along with suitable changes in the corresponding time-frames for receipt of tender, tender validity period etc and validity period of the corresponding EMD/bid security. Depending on the situation, such an amendment may also need fresh publication adopting the same procedure as for publication of the original tender enquiry.

5.2.4 Sealing, and Marking of Bids by Bidders

The tender document is to indicate the total number of tender sets (e.g., in duplicate or in triplicate etc.) required to be submitted. In case of two envelop bidding system, the techno-commercial bid and financial bid should be sealed by the tenderer in separate covers duly marking these as 'Techno-commercial Bid' and 'Financial Bid' and marked these with the address of the purchase office and the tender reference number on the envelopes. Further, the sentence "NOT TO BE OPENED" before..... (due date & time of tender opening) are also to be put on these envelopes and these sealed covers are to be put in a bigger cover which should also be sealed and duly super scribed in a similar manner. In case bids are asked in a number of copies, the tenderer is to seal the original and each copy of the tender in separate envelopes, duly marking the same as "original", "duplicate" and so on and also marking these as mentioned above. The inner envelopes are then to be put in a bigger outer envelope, which will also be duly sealed marked etc. as above. If the outer envelope is not sealed and marked properly as above, the purchaser will not assume any responsibility for its misplacement, premature opening, late opening etc. These details regarding the submission of bids should also form a part of the ITB and AITB in the tender documents; all the above instructions are to be suitably incorporated in the tender documents.

5.2.5 Submission, Receipt and Custody of Tenders

In e-procurement, all tenders uploaded by tenderers are received, safeguarded and opened online on the portal. In offline tenders, receipt and custody of bids shall be done in a

transparent manner to maintain the credibility of the process. The following guidelines should be adhered to for receipt and custody of bids:

- 1) The procuring entity shall maintain tender boxes for receiving the bids at suitable locations which would facilitate security and easy access to bidders. If required, Tender boxes should be separate for each day of the week of tender opening and should be sealed by the Bid Opening Committee (BOC) of the day. The tender box shall have two locks. Key of one lock will be with the head of the office and the other key with the official nominated by him;
- 2) Bids received by courier shall be deposited in the tender box by the Dispatch Section till the date and time of bid opening. Bids sent by telex, cable or facsimile are to be ignored and rejected.; and
- 3) For bulky/oversized bids which cannot be dropped into tender boxes, the officials authorised to receive such bids shall maintain proper records and provide a signed receipt with date and time to the bearer of the bid. He will also sign on the cover, duly indicating the date and time of receipt of the tender(s). Names and designations of at least two such authorised officers should be mentioned in the bid documents

5.2.6 Withdraw/ Amendments / Modifications to Bids by Bidders

The tenderer, after submitting its tender, is permitted to withdraw/ alter/modify its tender so long such withdrawal/ alterations/ modifications are received duly sealed and marked like original tender, up to the date & time of receipt of tender. Any withdrawal/ amendment/ modification received after the prescribed date & time of receipt of tenders are not to be considered.

5.3 Procedures to be followed during Bid Opening

Immediately after the deadline for bid submission, procuring entity shall proceed to the bid opening. In e-procurement, bids are opened online as detailed in Appendix 3. In offline tenders, the BOC shall comprise one officer each from the procuring entity and Associated/ integrated Finance.

- i) The authorised representatives of bidders, who intend to attend the tender opening in OTE/ GTE/ SLTE are to bring with them letters of authority from the corresponding bidder. The prescribed format for the letter of authority for attending the bid opening should be given in the bidding document. All bid-opening activities should be carried out demonstrably before such a gathering. The prescribed format for the bid opening attendance sheet and report are given at Annexure 10;
- ii) At a prescheduled date and time, the BOC of the day should get the particular tender box opened, after ensuring and demonstrating that the seal on the box has not been tampered with. All bids should be collected from the tender box. Bids for tenders not opening on that day should be put back into the box and the box resealed. Sometimes, there would be tenders dropped wrongly into this tender box. Such wrongly dropped tenders with appropriate endorsement should be put into the appropriate box or sent to the Tender Committee (TC) concerned, if the date of opening is over. The bids for different tenders opening on the day (including oversized bids, which were submitted to designated officers) should be sorted, and a count for each tender should be announced and recorded, particularly noting any

modifying/altering/withdrawal of bids. BOC should ensure and demonstrate that bid envelopes are duly sealed and untampered. Late bids should be separately counted but kept aside and not opened. In the case of an advertised tender enquiry or limited tender enquiry, late bids (that is, bids received after the specified date and time for receipt of bids) should not be considered (Rule 165 of GFR 2017);

- iii) After opening, every tender shall be numbered serially (say 3/14 – if it is the third bid out of 14 total), initialled, and dated on the first page by the BOC. Each page of the price schedule or letter attached to it shall also be similarly initialled, particularly the prices, delivery period, and so on, which shall also be circled and initialled along with the date. Any other page containing significant information should also be dealt with similarly. Blank tenders, if any, should be marked accordingly by the BOC. The original (and duplicate, if any) copies in a tender set are to be marked accordingly by the BOC;
- iv) Erasure/cutting/overwriting/use of whitener/columns left unfilled in tenders, if any, shall be initialled along with date and time and numbered by the officials opening the tenders and total number of such noticed alterations (or the absence of any alteration) should be explicitly marked on the first page of the bid. Wherever quantity/amount is written only in figures, the BOC should write them in words. All rebates/discounts should be similarly circled, numbered and signed. In the absence of any alteration/overwriting/whitener/ blanks, the remark “no corrections noted” should be written. Similarly, the absence of discounts should be marked with “no discounts noted;”
- v) The BOC is to announce the salient features of the tenders such as description and specification of the goods, quoted price, terms of delivery, delivery period, discount, if any, whether EMD furnished or not, and any other special feature of the tender for the information of the representatives attending the tender opening. No clarifications by tenderers should be entertained or allowed to be recorded during the bid opening. It should be understood that BOC has no authority to reject any tender at the tender opening stage;
- vi) Proper sealing and codification need to be done on samples as well for samples which accompany the bid. These should be kept for reference under lock and key. Details should be recorded in the sample register maintained in the opening section. Documents related to money should be noted in the bid opening report/register and handed over to the Finance Section for safe custody and monitoring; and
- vii) A bid opening report containing the names of the tenderers (serial number wise), salient features of the tenders, as read out during the public opening of tenders, will be prepared by the tender opening officers, and duly signed by them along with the date and time. The tenders that have been opened, list of the representatives attending the tender opening, and bid opening report are to be handed over to the nominated purchase officer and an acknowledgement obtained for him.

5.4 Bidding Process- Risks and Mitigations	
Risk	Mitigation
Exceptions to an open bidding process are abused, leading to single source processes.	Rigorously follow the conditions under which open tendering can be dispensed

5.4 Bidding Process- Risks and Mitigations

Risk	Mitigation
	with.
<p>When short lists are used, the process of preparation of short lists may be non-transparent and all eligible firms may not be included and some ineligible firms may get included.</p>	<p>Registration of bidders/contractors: All major procuring Departments must keep a list of registered bidders for use in restricted bidding. Publicise even restricted bids on your website. Bidders for LTE/ SLTE may be transparently selected with the approval of CA.</p>
<p>Pre-qualification criteria: PQB has the potential of getting misused or being applied without considering the restrictive nature of competition. PQC should be relevant to the quality requirements and neither be very stringent nor very lax to restrict/facilitate the entry of bidders. These criteria should be clear, unambiguous, exhaustive and yet specific. Also, there should be fair competition.</p>	<p>Lay down criteria when two stage bidding is warranted. Also lay down model PQC criteria for different types of procurements.</p>
<p>Invitation to tender (an open bid) is not well publicised or gives insufficient time, thereby restricting the number of bidders that participate.</p>	<p>Publicity and adequate time for bid submission must be ensured. Require a higher level approval for short bid submission period.</p>
<p>Evaluation criteria are not set from the beginning or are not objective or not clearly stated in the bid documents, thereby making them prone to being abused.</p>	<p>Objective, relevant and clearly stated evaluation criteria must be specified in the bid document.</p>

Chapter 6: Forms of Securities, Payment Terms and Price Variations

6.1 Forms of Security

6.1.1 Bid Security (*Rule 170 of GFR 2017*)

To safe guard against a bidder's with drawing or altering its/ his bid during the bid validity period in the case of advertised (OTE and GTE tenders) or limited tender enquiry Bid Security [also known as Earnest Money Deposit (EMD)] is to be obtained from the bidders along with their bids except Micro and Small Enterprises (MSEs) as defined in MSE Procurement Policy issued by Department of Micro, Small and Medium Enterprises (MSME) or are registered with the Central Purchase Organisation or the concerned Ministry of Department or Startups as recognized by Department for Promotion of Industry and Internal Trade (DPIIT). The bidders should be asked to furnish bid security along with their bids⁶⁷. Amount of bid security should ordinarily range between two to five per cent of the estimated value of the goods to be procured. The amount of bid security, rounded off to the nearest thousands of Rupees, as determined by the Procuring Entity, is to be indicated in the bidding documents. The bid security may be obtained in the form of Insurance Surety Bonds⁶⁸, account payee demand draft, fixed deposit receipt, or banker's cheque or Bank Guarantee from any of the Commercial Banks or payment online in an acceptable form, safeguarding the purchaser's interest in all respects. . In case the bid security is more than a threshold (Rupees five lakh) and in case of foreign bidders in GTE tenders it may be in the form of a bank guarantee (in equivalent Foreign Exchange amount, in case of GTE) issued/confirmed from any of the scheduled commercial bank in India in an acceptable form, and so on.. The bid security is normally to remain valid for a period of 45(forty-five) days beyond the final bid validity period.

In exceptional cases, in place of a Bid security, Procuring Entities after seeking approval of the competent authority may consider asking Bidders to sign a Bid securing declaration accepting that if they withdraw or modify their Bids during the period of validity, or if they are awarded the contract and they fail to sign the contract, or to submit a performance security before the deadline defined in the request for bids/request for proposals document, they will be suspended for the period of time specified in the request for bids/request for proposals document from being eligible to submit Bids/Proposals for contracts with the procuring entity.

In appropriate cases, Submission of the bid security may be waived with the Competent Authority's (CA's) approval, especially in the case of indigenisation/development tenders, limited tenders and procurements directly from the manufacturer or authorised agents.

Tenderers that are currently registered will also continue to remain registered during the tender validity period with the Procuring Entity or MSEs (please refer to para 1.10.4 of Chapter 1) are exempt from payment of EMD. In case the tenderer falls in these categories, the bidder should furnish a certified copy of its valid registration details. Except for MSEs, this exemption is valid for the trade group and monetary value of registration only.

⁶⁷Notified vide OM No F.20/2/2014-PPD(Pt.) issued by Department of Expenditure dated 25.07.2017

⁶⁸Notified vide OM No. F.1/1/2022-PPD issued by Department of Expenditure dated 02.02.2022

A bidder's bid security will be forfeited if the bidder withdraws or amends its/his tender or impairs or derogates from the tender in any respect within the period of validity of the tender or if the successful bidder fails to furnish the required performance security within the specified period.

Bid securities of the unsuccessful bidders should be returned to them at the earliest after expiry of the final bid validity period and latest by the 30th day after the award of the contract. Bid security should be refunded to the successful bidder on receipt of a performance security. However, in case of two packet or two stage bidding, Bid securities of unsuccessful bidders during first stage i.e. technical evaluation etc. should be returned within 30 days of declaration of result of first stage i.e. technical evaluation etc.⁶⁹

6.1.2 Performance Security (*Rule 171 of GFR 2017*)

- i) To ensure due performance of the contract, performance security [or Performance Bank Guarantee (PBG) or Security Deposit (SD)] is to be obtained from the successful bidder awarded the contract. Unlike contracts of Works and Plants, in case of contracts for goods, the need for the Performance Security depends on the market conditions and commercial practice for the particular kind of goods. Performance security should be for an amount of five (5) to ten (10) per cent of the value of the contract as specified in the bid documents [The value has been reduced to three (3) percent till 31.03.2023. Refer to para 6.1.2 (iv) below]. Performance security may be furnished in the form of Insurance Surety Bond⁷⁰, account payee demand draft, fixed deposit receipt from a commercial bank, bank guarantee issued/confirmed from any of the commercial bank in India, or online payment in an acceptable form, safeguarding the purchaser's interest in all respects. In case of GTE tenders, the performance security should be in the same currency as the contract and must conform to Uniform Rules for Demand Guarantees (URDG 758) – an international convention regulating international securities⁷¹. Unlike, procurement of Works, in procurement of Goods, the concept of taking part of Performance Guarantee as money retained from first or progressive bills of the supplier is not acceptable. Submission of Performance Security is not necessary for a contract value upto Rupees 1 (one) lakh.
- ii) Performance Security is to be furnished by a specified date (generally 14 (fourteen) days after notification of the award) and it should remain valid for a period of 60 (sixty) days beyond the date of completion of all contractual obligations of the supplier, including warranty obligations.
- iii) The performance security will be forfeited and credited to the procuring entity's account in the event of a breach of contract by the contractor. It should be refunded to the contractor without interest, after he duly performs and completes the contract in all respects but not later than 60 (sixty) days of completion of all such obligations

⁶⁹ Notified vide OM No. F.1/2/2022-PPD issued by Department of Expenditure dated 01.04.2022

⁷⁰ Notified vide OM No. F.1/1/2022-PPD issued by Department of Expenditure dated 02.02.2022

⁷¹ A set of rules developed by the International Chamber of Commerce first adopted in 1992. The latest version URDG 758 provides a framework for harmonising international trading practices and establishes agreed-upon rules for independent guarantees and counter-guarantees among trading partners for securing payment and performance in worldwide commercial contracts.

including the warranty under the contract. Return of Bid/ Performance Securities should be monitored by the senior officers and delays should be avoided. If feasible, the details of these securities may be listed in the e-Procurement Portal, so make the process transparent and visible.

iv) On account of the COVID-19 pandemic, that caused slowdown in economy, it is decided to reduce Performance Security from existing five to ten percent to three (3) percent of the value of the contract for all existing contracts till 31.03.2023. However, the benefit of the reduced Performance Security will not be given in the contracts under dispute wherein arbitration/ court proceedings have been already started or are contemplated. All tenders/ contracts issued/ concluded till 31.03.2023 should also have the provision of reduced Performance Security. In all contracts, where Performance Security has been reduced to three percent, the reduced percentage shall continue for the entire duration of the contract and there should be no subsequent increase of Performance Security even beyond 31.03.2023. Similarly, in all contracts entered into with the reduced percentage of Performance Security of three percent, there will be no subsequent increase in Performance Security even beyond 31.03.2023. Where, there is compelling circumstances to ask for Performance Security in excess of three percent as stipulated above, the same should be done only with the approval of the next higher authority to the authority competent to finalise the particular tender, or the Secretary of the Ministry/ Department, whichever is lower. Specific reasons justifying the exception shall be recorded⁷².

6.1.3 Warranty Bank Guarantee

In case of works and capital equipment, there is usually a defect liability/warranty clause against defects arising from design, material, workmanship or any omission on part of the vendor/ contractor during a specified period of months from the date of commissioning or from the date of dispatch in case of goods – whichever is earlier. In such cases, the performance guarantee is to be valid upto 60 (sixty) days beyond the warranty period. It is normally permissible in such a situation to allow Performance guarantee to be valid upto 60 (sixty) days beyond delivery/ commissioning period and the contractor may be allowed to submit a fresh Warranty Bank Guarantee of 10 (ten) per cent of the value of the goods in the currency of the contract valid upto 60 (sixty) days beyond the Warranty period. In such cases, the performance guarantee is to be returned only after satisfactory delivery/ commissioning and receipt of such a warranty bank guarantee. In procurement of other than Capital Equipment Goods (and in case of low value Capital Goods – say upto Rupees one Lakh), Warranty Clause is not called for.

6.1.4 Verification of Bank Guarantees

Bank guarantees submitted by the tenderers/suppliers as EMD/performance securities need to be immediately verified from the issuing bank before acceptance. There may not be any need to get the Bank Guarantee vetted from legal/ finance authority if it is in the specified format. Guidelines for verification of BGs submitted by the bidders/ contractors against EMD/ performance security/advance payments and for various other purposes are as follows:

⁷²Notified vide OM No.F.9/4/2020-PPD issued by Department of Expenditure dated 30.12.2021

- i) BG shall be as per the prescribed formats
- ii) The BG contains the name, designation and code number of the Bank officer(s) signing the guarantee(s);
- iii) The address and other details (including telephone no.) of the controlling officer of the bank are obtained from the branch of the bank issuing the BG (this should be included in all BGs);
- iv) The confirmation from the issuing branch of the bank is obtained in writing through registered post/speed post/courier. The bank should be advised to confirm the issuance of the BGs specifically quoting the letter of Procurement Entity on the printed official letterhead of the bank indicating address and other details (including telephone nos.) of the bank and the name, designation and code number of the officer(s) confirming the issuance of the BG;
- v) Pending receipt of confirmation as above, confirmation can also be obtained with the help of responsible officer at the field office, which is close to the issuing branch of the bank, who should personally obtain the confirmation from issuing branch of the bank and forward the confirmation report to the concerned procurement entity.

Bank guarantees, either received in physical form or electronic form, should be verified for its genuineness following prescribed method for the same and the Organisations should do due diligence on genuineness of the Bank Guarantees before acceptance of the same.

6.1.5 Safe Custody and Monitoring of EMDs, Performance Securities and Other Instruments

A suitable mechanism for safe custody and monitoring of EMDs and performance securities and other instruments should be evolved and implemented by each ministry/Department. The Ministries/ Departments shall also make institutional arrangements for taking all necessary actions on time for extension or encashment or refund of EMDs and performance securities, as the case may be. Monitoring should also include a monthly review of all bank guarantees and other instruments expiring in next three months, along with a review of the progress of the corresponding contracts. Extension of bank guarantees and other instruments, where warranted, should be sought immediately and implemented within their validity period. Bank Guarantee should never be handed over to the supplier for propose of extension of validity. Such a system of monitoring of securities and other instruments may be considered to be computerised with automatic alerts about lapse of validity etc.

6.2 Payment Clause

The elements of price included in the quotation of a tenderer depend on the nature of the goods to be supplied and the allied services to be performed, location of the supplier, location of the user, terms of delivery, extant rules and regulations about taxes, duties, and so on, of the seller's country and the buyer's country.

In case of indigenous goods, the main elements of price may include raw material, production cost, overhead, packing and forwarding charges, margin of profit, transit insurance, excise duty and other taxes and duties as applicable. In case of imported goods, in addition to similar elements of price as above (other than excise duty and taxes), there may be elements of custom duty, import duty, landing and clearing charges and commission to Indian agents. Further, depending on the nature of the goods (whether domestic or

imported), there may be cost elements towards installation and commissioning, operator's training, and so on.

It is, therefore, necessary that, to enable the tenderers to frame their quotations properly in a meaningful manner, the tender documents should clearly specify the desired terms of delivery and also the duties and responsibilities to be performed by the supplier in addition to supply of goods.

While claiming the payment, the supplier should also certify in the bill that the payment being claimed is strictly in terms of the contract and all obligations on the part of the supplier for claiming this payment have been fulfilled as required under the contract. There should also be a suitable provision for verification of the authenticity of the person signing the invoice, and so on, to claim the payment.

- i) **Elements of Price:** Where the price has several components such as the price of the goods, cost of installation and commissioning, operators' training, and so on, bidders should be asked to furnish a cost break-up indicating the applicable prices and taxes for each of such components along with the overall price. The payment schedule and terms will be linked to this cost break-up; and
- ii) **Currency:** The tender documents are to specify the currency (currencies) in which the tenders are to be priced. As a general rule, domestic tenderers are to quote and accept their payment in Indian currency; Indian agents of foreign suppliers are to receive their agency commission in Indian currency; costs of imported goods, which are directly imported against the contract, may be quoted in foreign currency (currencies) and paid accordingly in that currency; and the portion of the allied work and services, which are to be undertaken in India (like installation and commissioning of equipment) are to be quoted and paid in Indian currency.
- iii) **Payment to Suppliers:** In a supply contract, delivery of goods is the essence of the contract for the purchaser. Similarly, receiving timely payment for the supplies is the essence of the contract for the seller. A healthy buyer-supplier relationship is based on the twin foundation of timely and quality supply, on the one hand, and prompt and full payment to the supplier, on the other. It should be ensured that all payments due to the firm, including release of the performance security, are made on a priority basis without avoidable delay as per the tender/contract conditions. :
 - a) As far as possible, the payment terms and time schedule should be given in the contract and must be adhered to. Any foreseeable payment delays should be communicated to the suppliers in advance;
 - b) Prompt and timely provision of statutory certificates to the seller for taxes deducted at source, are as much a part of payment as the amount actually released. A detailed payment advice showing the calculations and reasons for the amounts disallowed and taxes deducted must be issued to the supplier along with payment. As soon as possible, but not later than the date of submission of Tax returns, the procuring entity must provide the statutory certificates for the taxes deducted to the Supplier, so that he is able to claim set-offs and refunds from the concerned authorities.

- c) Release of payment and settlement of the final bill should be processed through the Associated/ integrated Finance as per the terms and conditions of the contract;
- d) No payments to contractors by way of compensation or otherwise outside the strict terms of the contract or in excess of the contract rates should be allowed;
- iv) Before the payment is made, the invoice should be cross-checked with the actual receipt of material/assets/services to ensure that the payment matches the actual performance;
- v) While claiming the payment, the contractor must certify on the bill that the payment being claimed is strictly within terms of the contract and all the obligations on his part for claiming this payment have been fulfilled as required under the contract. There should also be a suitable provision for verification of the authenticity of the person signing the invoice, and so on, to claim the payment;

6.3 Terms of Payment for Domestic Goods

Where the terms of delivery are FOR Dispatching Station, the payment terms, depending on the value and nature of the goods, mode of transportation, and so on, maybe 60 to 90 (sixty to ninety) per cent on proof of dispatch and other related documents and balance on receipt at site and acceptance by the consignee.

Where the terms of delivery is FOR destination/delivery at site, the usual payment term is 100 (hundred) per cent on receipt and acceptance of goods by the consignee and on production of all required documents by the supplier.

Where goods to be supplied also need installation and commissioning by the supplier, the payment terms are generally:

- i) For a contract with terms of delivery as FOR dispatching station -- 60 (sixty) per cent on proof of dispatch along with other specified documents, 30 (thirty) per cent on receipt of the goods at site by the consignee and balance 10 (ten) per cent on successful installation and commissioning and acceptance by the consignee; and
- ii) For a contract with terms of delivery as FOR destination/delivery at site -- 90 (ninety) per cent on receipt and acceptance of goods by the consignee at destination and on production of all required documents by the supplier and balance 10 (ten) per cent on successful installation and commissioning and acceptance by the consignee.

Note: Generally (especially for goods requiring installation and commissioning at site by the supplier), the desirable terms of delivery are FOR destination/delivery at site, so that the supplier remains responsible for safe arrival of the ordered goods at the site. Therefore, unless otherwise decided ex-works or FOR dispatching station terms should be avoided.

6.3.1 Modes of Payment for Domestic Goods

Payments to domestic suppliers are usually made by cheque/demand draft drawn on a Government treasury or branch of RBI or any Scheduled Commercial Bank authorised by RBI for transacting Government business. Such payment can also be made to the supplier's bank, if the bills are endorsed in favour of the bank with a pre-receipt embossed on the bills with the words, "received payment" and both the endorsement and pre-receipt are authenticated by the supplier. In addition, an irrevocable power of attorney is to be granted

by the supplier in favour of the bank. In such of those cases where there has been global tendering, in order to have uniform payment clauses, if domestic suppliers, especially against high value contracts for sophisticated equipment/machinery, desire payment through LC, depending on the merits of the case, this may be agreed to. However procuring entities should switch over to more transparent electronic payment systems like Electronic Clearance System (ECS), Real-time gross settlement systems (RTGS) National Electronic Funds Transfer (NEFT) or Electronic Payment Gateways.

6.3.2 Documents for Payment for Domestic Goods

- i) Supplier's Invoice indicating, *inter alia* description and specification of the goods, quantity, unit price, total value;
- ii) Packing list;
- iii) Insurance certificate;
- iv) Railway receipt/consignment note;
- v) Manufacturer's guarantee certificate and in-house inspection certificate;
- vi) Inspection certificate issued by purchaser's inspector; and
- vii) Any other document(s) as and if required in terms of the contract.

6.4 Terms of Payment for Imported Goods

6.4.1 Usual payment terms, unless otherwise directed by CA, are indicated below:

- i) Cases where installation, erection and commissioning (if applicable) are not the **responsibility of the supplier** -- 100 (hundred) per cent net FOB/FAS/CFR/CIF/CIP price is to be paid against invoice, shipping documents, inspection certificate (where applicable), manufacturers' test certificate, and so on;
- ii) Cases where installation, erection and commissioning are the responsibility of the supplier -- 80 - 90 (eighty to ninety) per cent net FOB/FAS/CFR/CIF/CIP price will be paid against the invoice, inspection certificate (where applicable), shipping documents, and so on, and balance within 21-30 (twenty-one to thirty) days of successful installation and commissioning at the consignee's premises and acceptance by the consignee; and
- iii) Payment of agency commission, if payable, against FOB/FAS/CFR/CIF/CIP contract – the entire 100 (hundred) per cent agency commission is generally paid (in non-convertible Indian Rupees on the basis of BC selling rate of exchange) after all other payments have been made to the supplier in terms of the contract.

6.4.2 Modes of Payment for Imported Goods

It should be ensured that the imports into India are in conformity with the export-import policy in force: FEMA; FEMA (Current Account Transactions) Rules, 2000 framed by Procuring Entity; and directions issued by RBI under FEMA from time to time.

For imported goods, payment usually happens through the LC opened by the State Bank of India or any other scheduled/authorised bank as decided by the procuring entity. The amount of LC should be equal to the total payable amount, and be released as per the clauses mentioned above. Provisions of Uniform Customs and Practices for Documentary

Credits⁷³ should be adhered to while opening the LC for import into India. If the LC is not opened, payment can also be made to the seller through a direct bank transfer for which the buyer has to ensure that payment is released only after the receipt of prescribed documents.

6.4.3 Documents for Payment for Imported Goods

The documents, which are needed from the supplier for release of payment, are to be clearly specified in the contract. The paying authority is also to verify the documents received from the supplier with corresponding stipulations made in the contract before releasing the payment. Documents, which the supplier is to furnish while claiming payment, are specified in the Letter of Credit, but usually are:

- i) Supplier's original invoice giving full details of the goods including quantity, value, and so on;
- ii) Packing list;
- iii) Certificate of country of origin of the goods to be given by the seller or a recognised chamber of commerce or another agency designated by the local Government for this purpose;
- iv) Certificate of pre-dispatch inspection by the purchaser's representative;
- v) Manufacturer's test certificate and guarantee;
- vi) Certificate of insurance;
- vii) Bill of lading/airway bill/rail receipt or any other dispatch document, issued by a Government agency (like the Department of Posts) or an agency duly authorised by the concerned ministry/Department, indicating:
 - a) Name of the vessel/carrier;
 - b) Bill of lading/airway bill;
 - c) Port of loading;
 - d) Date of shipment;
 - e) Port of discharge and expected date of arrival of goods; and

Any other document(s) as and if required in terms of the contract.

6.4.4 Air Freight Charges

Goods that are required to be airlifted are to be dispatched on a 'charge forward basis'. All air freight charges, which are shown on the relevant consignment note as chargeable to the consignee, are to be paid to the Airline in Rupees. Some organizations need to import sophisticated instruments, tools and kindred goods. These are usually small in size and very delicate/fragile in nature. Such goods, invariably, need to be airlifted. But, quite naturally, form a small part of the Air Cargo carried by an Aircraft. For such imports, procuring entities may engage Air Freight Consolidators who consolidate the small Air Cargos of different customers, to be airlifted from one Airport to another. Hiring of services of Airfreight

⁷³The **Uniform Customs and Practice for Documentary Credits** is a set of rules regarding techniques and methods for handling LCs in international trade finance which has been standardised by the International Chamber of Commerce, the current version being the UCP600.

Consolidators should be done in a transparent manner, following standard principles of Public Procurement.

6.4.5 Letter of Credit

Two banks are involved in payment to the supplier by LC: – the purchaser's bank and supplier's bank. The purchaser is to forward the request to its bank in the prescribed format as formulated by the Bank, along with all relevant details including an authenticated copy of the contract. Based on this, the purchaser's bank opens the LC on behalf of the purchaser for transacting payment to the supplier through the supplier's bank. Care should be taken to ensure that the payment terms and documents to be produced for receiving payments through LC are identical with those shown in the contract. Generally, the irrevocable LC is opened so that the supplier is fully assured of his payment on fulfilling his obligations in terms of the contract. In case the delivery date of the contract is extended to take care of delay in supply, for which the supplier is responsible, the tenure of the LC is also to be extended, but the expense incurred for such an extension (of LC) is to be borne by the supplier. Provisions of Uniform Customs and Practices for Documentary Credits (UCP 600)⁷⁴ should be adhered to the while opening the LC for import into India.

6.5 Advance Payment

6.5.1 Ordinarily, payments for services rendered or supplies made should be released only after the services have been rendered or supplies made. However, it may become necessary to make advance payments in the following types of cases:

- i) Advance payment demanded by firms holding maintenance contracts for servicing of air-conditioners, computers, other costly equipment, etc.;
- ii) Advance payment demanded by firms against fabrication contracts, turn-key contracts; and so on;

Such advance payments should not exceed the following limits except in case of procurement of arms and ammunitions from ordinance factories:

- a) Thirty per cent of the contract value to private firms;
- b) Forty per cent of the contract value to a state or central Government agency or PSU;
or
- c) In case of the maintenance contract, the amount should not exceed the amount payable for six months under the contract.
- d) In exceptional cases, the Administrative Department may relax the ceilings mentioned above with prior concurrence of the Associated/ integrated Finance. While making any advance payment as above, adequate safeguards in the form of a bank guarantee, and so on, should be obtained from the firm. However, the bank guarantee need not be insisted upon in case of procurement of arms and ammunitions from ordinance factories. Further, such advance payments should be generally interest bearing, suitable percentages for which are to be decided on a case to case basis.

⁷⁴The Uniform Customs and Practice for Documentary Credits (UCPDC or simply UCP) is a set of rules regarding techniques and methods for handling LCs in international trade finance which has been standardised by the International Chamber of Commerce – the current version being the UCP600.

6.5.2 Documents for Advance Payments

Documents, needed from the supplier for release of payment, are to be clearly specified in the contract. The paying authority should also verify the documents received from the supplier with corresponding stipulations made in the contract before releasing the payment.

6.5.3 Insurance

In every case where advance payment or payment against dispatch documents is to be made or LC is to be opened, the condition of insurance should invariably be incorporated in the terms and conditions. Wherever necessary, the goods supplied under the contract, shall be fully insured in a freely convertible currency against loss or damage incidental to manufacture or acquisition, transportation, storage and delivery in the manner specified in the contract. If considered necessary, insurance may cover "all risks" including war risks and strike clauses. The amount to be covered under insurance should be sufficient to take care of the overall expenditure to be incurred by the procuring entity for receiving the goods at the destination. Where delivery of imported goods is required by the purchaser on CIF/CIP basis, the supplier shall arrange and pay for marine/air insurance, making the purchaser the beneficiary. Where delivery is on FOB/FAS basis, marine/air insurance shall be the responsibility of the purchaser.

(Rule 172 of GFR 2017)

6.6 Firm Price vis-à-vis Variable Price

Short-term contracts where the delivery period does not extend beyond 18 (eighteen) months should normally be concluded with a firm and price fixed by inviting tenders accordingly. However, even for shorter deliveries, the PVC may be stipulated for items with inputs (raw material, labour, etc.), prone to short-term price volatility - especially for critical or high value items – otherwise there is a possibility of the contract failing or the purchaser having to pay a higher price if prices fall. For high value (more than Rupees three crore) tenders with deliveries longer than 18 (eighteen) months, PVC may be provided to protect the purchaser's interests also.

Where it is decided to conclude the contract with a variable price, an appropriate clause incorporating, inter-alia, a suitable price variation formula should also be provided in the tender documents, to calculate the price variation between the base level and scheduled delivery date. It is best to proactively provide our own PVC in the tender document to discourage different bidders quoting different formulae and different base dates, which may lead to problems on bringing their prices on a common comparable footing.

The variations are to be calculated periodically by using indices published by Governments/ chambers of commerce/London Metal Exchange / any other neutral and fair source of indices. Suitable weights are to be assigned to the applicable elements, that is, fixed overheads and profits, material and labour in the price variation formula. If the production of goods needs more than one raw material, the input cost of material may be further sub-divided for different categories of material, for which cost indices are published.

The following are important elements of PVC:

- i) The price agreed upon should specify the base date, that is, the month and year to which the price is linked to enable variations being calculated with reference to the price indices prevailing in that month and year. The raw materials used in

manufacture are procured some weeks before the goods' submission for inspection. This period is called the time lag for price variation. It applies both for base date and date of supply. This time lag at both ends must be specified;

- ii) The price variation formula must also stipulate a minimum percentage of variation of the contract price, only above which the price variation will be admissible (for example, where the resultant increase is lower than, say, two per cent of the contract price, no price adjustment will be made in favour of the supplier);
- iii) The price variation clause should provide for a ceiling on price variations, particularly where escalations are involved. It could be a percentage per annum or an overall ceiling or both;
- iv) Where advance or stage payments are made there should be a further stipulation that no price variations will be admissible on such portions of the price, after the dates of such payment;
- v) Where deliveries are accepted beyond the scheduled delivery date subject to levy of liquidated damages as provided in the contract. The LD (if a percentage of the price) will be applicable on the price as varied by the operation of the PVC;
- vi) No upward price variation will be admissible beyond the original scheduled delivery date for defaults on the part of the supplier. However, a downward price variation would be availed by the purchaser as per the denial clause in the letter of extension of the delivery period;
- vii) Price variation may be allowed beyond the original scheduled delivery date, by specific alteration of that date through an amendment to the contract in cases of force majeure or defaults by Government;
- viii) Where contracts are for supply of equipment, goods, and so on, imported (subject to customs duty and foreign exchange fluctuations) and/or locally manufactured (subject to excise duty and other duties and taxes), the percentage and element of duties and taxes included in the price should be specifically stated, along with the selling rate of foreign exchange element taken into account in the calculation of the price of the imported item;
- ix) The clause should also contain the mode and terms of payment of the price variation admissible; and
- x) The buyer should ensure a provision in the contract for the benefit of any reduction in the price in terms of the PVC being passed on to him.
- xi) An illustrative PVC clause is available in Annexure 15.
- xii) Care should be exercised in contracts providing for price variation to finalise the price before final payment is made, after obtaining data and documents in support of claims for escalation, if any. Where no such claims are submitted by the suppliers, an examination of whether there has been a downward trend in the cost, which the contractor may not bring out, is required. At any rate, an undertaking should be obtained from the contractor to the following effect in case it becomes necessary to make the final payment before he has submitted the required data/documents related to the PVC:

“It is certified that there has been no decrease in the price of price variation indices and, in the event of any decrease of such indices during the currency of this contract, we shall promptly notify this to the purchaser and offer the requisite reduction in the contract rate.”

- xiii) Notwithstanding the above formalities, it should be appreciated that it is in the interest of the purchaser to be vigilant about downward variation and it is, therefore, the basic responsibility of the purchase officers to make sure that the benefits of downward variation, wherever it occurs, are fully availed of.

6.7 Exchange Rate Variation

6.7.1 In case of a contract involving substantial import content(s) and having a long delivery period (exceeding one year from the date of contract), an appropriate Foreign Exchange Variation clause may be formulated by the procuring entity in consultation with its Associated/ integrated Finance, as needed, and incorporated in the tender enquiry document. In that clause, the tenderers are to be asked to indicate import content(s) and the currency (ies) used for calculating the value of import content(s) in their total quoted price, which (that is, the total quoted price) will be in Indian Rupees. The tenderers may be asked to indicate the Base Exchange rate for each such foreign currency used for converting the foreign exchange content into Indian Rupees and the extent of foreign Exchange Rate Variation (ERV) risk they are willing to bear.

To work out the variation due to changes (if any) in the exchange rate(s), the base date for this purpose will be the due date of opening of tenders/seven days prior to the due date of opening of tenders (the purchase organisation is to decide and adopt a suitable date). The variation may be allowed between the above base date and date of remittance to the foreign principal/mid-point of manufacture of the foreign component (the purchase organization is to choose the appropriate date). The applicable exchange rates as above will be according to the TT selling rates of exchange as quoted by authorised exchange bankers approved by RBI on the dates in question. No variation in price in this regard will be allowed if the variation in the rate of exchange remains within the limit of plus/minus _____per cent (the purchase organisation is to decide the limit, say plus/ minus band of 2.5% (Two point Five percent)).

Any increase or decrease in the customs duty by reason of the variation in the rate of exchange in terms of the contract will be to the buyer's account. In case the delivery period is revised/extended, ERV will not be admissible, if this is due to the supplier's default; however, ERV benefits arising out of downward trends should be passed on to Procuring Entity. The procuring entity may formulate an appropriate ERV clause on similar lines as above in consultation with their Finance Wing.

6.7.2 Documents for Claiming ERV

- i) A bill of ERV claim enclosing the working sheet;
- ii) Banker's certificate/debit advice detailing the foreign exchange paid and exchange rate;
- iii) Copies of the import order placed on the supplier; and
- iv) Supplier's invoice for the relevant import order.

6.8 Taxes, Duties and Levies

6.8.1 Statutory Duties and Taxes on Domestic Goods

The duties and taxes including excise duty and VAT levied by the Government on domestic goods vary from product to product. Unless a different intention appears from the terms of the contract, statutory variation in duties or taxes are to be borne by the buyer (procuring entity) as per the section 64A of the Sales of Goods Act, 1930. As a general policy, the statutory variations in such duties and taxes are to be allowed during the period from the date of the tender to the date of acceptance of the tender (that is, placement of the contract) and during the original/re-fixed delivery period of the contract so that both the supplier and purchaser are equally compensated for rise or fall in the price of the goods on account of such statutory variations.

(Note: Re-fixed delivery period means the fresh delivery period which is arrived at by recasting the original contractual delivery period after taking care of the lost period, for which the supplier was not responsible.)

In the tender enquiry conditions, the tenderers, wherever applicable, should be asked to specifically state in their offer whether they intend to ask for the duties and taxes as extra over and above the prices being quoted. In the absence of any indication to this effect by the tenderers, it is to be assumed that the prices quoted include these elements and no claim for the taxes or duties or statutory variations thereon should be entertained after opening of tenders and during the currency of the resultant contract. If a tenderer chooses to quote price inclusive of excise duty/ Sales Tax/ VAT, it should be presumed that the duties/ taxes so included is firm unless he has clearly indicated the rate of duties/ taxes included in his price and also sought adjustment on account of statutory variation thereon. If a tenderer is exempted from payment of excise duty upto a certain value of turnover, he should clearly state that no excise duty will be charged by him upto the limit of exemption enjoyed by him. If any concession is available in regard to rate/quantum of Central Excise Duty, it should be brought out clearly. It should also be clearly indicated whether increase in rate of excise duty due to increase in turn over will be borne by the tenderer. Stipulation like, "excise duty is presently not applicable but the same will be charged if it becomes leviable later on", should not be accepted unless in such cases it is clearly stated by the tenderer that excise duty will not be charged by him even if the same becomes applicable later on due to increase in turnover. If a tenderer fails to comply with this requirement, his quoted price shall be loaded with the quantum of maximum excise duty which is normally applicable on the item in question for the purpose of comparison with the prices of other tenderers. The tenderers should indicate in their offer whether they are availing VAT/ Tax credits or not. If they are availing VAT/ Tax credits, they should take into account the entire credit on inputs available under such Schemes while quoting the price and furnish a declaration to this effect along with a confirmation that any further benefit available in future on account of such schemes would be passed on to the purchaser.

Note: Sales tax/ VAT are not levied on transactions of sale in the course of import. Categories of cases constituting sale in course of import are:

- i) Where the movement of goods from the foreign country to India is occasioned directly as a result of the sale;
- ii) Where the Indian supplier acts as the agent of the foreign manufacturer in the agreement of the sale.

6.8.2 Octroi and Local Taxes

In case the goods supplied against contracts placed by Procuring Entity are exempted from levy of town duty, Octroi duty, terminal tax and other levies of local bodies, the suppliers should be informed accordingly by incorporating suitable instructions in the tender enquiry document and in the resultant contract. Wherever required, the supplier should obtain the exemption certificate from the Purchasing Department to avoid payment of such levies and taxes.

In case such payments are not exempted (or are demanded in spite of the exemption certificate), the supplier should make the payment to avoid delay in supplies and forward the receipt to the Purchasing Department for reimbursement and for further necessary action.

6.8.3 Customs Duty on Imported Goods

On imported goods, the tenderers shall also specify separately the total amount of custom duty included in the quoted price. The tenderers should also indicate correctly the rate of custom duty applicable for the goods in question and the corresponding Indian customs tariff number. Where customs duty is payable, the contract should clearly stipulate the quantum of duty payable, and so on, in unambiguous terms. The standard clauses to be utilised for this purpose are to be incorporated in the tender enquiry documents. Any import of materials directly from the supplier or manufacturer should be in the name of Procuring Entity. In this regard, all formalities will be completed by Procuring Entity engaging a Custom House Agent (CHA) and payment in this regard will be borne by Procuring Entity.

The Government has allowed exemption from payment of customs duty on certain types of goods for use by the following organisations:

- i) Scientific and technical instruments imported by research institutes;
- ii) Hospital equipment imported by Government hospitals; and
- iii) Consumable goods imported by a public-funded research institution or a university.

However, to avail of such exemptions, the organisations are required to produce a "Custom Duty Exemption" certificate and "Not Manufactured in India" certificate at the appropriate time.

The relevant contemporary instructions covering these aspects should be incorporated in the tender enquiry document and in the resultant contract.

6.8.4 Duties/Taxes on Raw Materials

Procuring Entity is not liable for any claim from the supplier on account of fresh imposition and/or increase (including statutory increase) in excise duty, custom duty, sales tax, and so on, on raw materials and/or components used directly in the manufacture of the contracted goods taking place during the pendency of the contract, unless such liability is specifically agreed to in terms of the contract. A clause to this effect should also form part of the tender documents

6.9 Incoterms Terms of Delivery

Table 1: Incoterms and their applications	
INCOTERMS Options	Applicable to
Ex-Group of Terms	Buyer takes full responsibility from point of departure
EXW – Ex-Works	Any mode of transport
Free Group of Terms	freight is not paid by the seller
FCA – Free Carrier	Any mode of transport
FAS – Free Alongside Ship	Sea and inland waterway

FOB – Free On Board	transport only
C Group of Terms	Freight is paid by the seller
CPT – Carriage Paid To	Any mode of transport
CIP – Carriage and Insurance Paid to	Any mode of transport
CFR – Cost and Freight	Sea and inland waterway transport only
CIF – Cost, Insurance and Freight	
Delivered Group of Terms	Seller takes responsibility from an intermediate point onwards
DAT – Delivered At Terminal	Any mode of transport
DAP – Delivered At Place	Any mode of transport
DDP – Delivered Duty Paid	Any mode of transport

Incoterms rules mainly describe the tasks, costs and risks involved in the delivery of goods from the seller to the buyer. The risk to goods (damage, loss, shortage, and so on) is the responsibility of the person who holds the 'title of goods' at that point of time. This may be different from actual physical possession of such goods. Normally, unless otherwise defined, the title of goods passes from the supplier to the purchaser in accordance with the terms of delivery (FOR, CFR, among others). The terms of delivery, therefore, specify when the ownership and title of goods pass from the seller to buyer, along with the associated risks. Incoterms as described by the International Chamber of Commerce are an internationally accepted interpretation of the terms of delivery. These terms of delivery allocate responsibilities to the buyer and seller, with respect to:

- i) Control and care of the goods while in transit;
- ii) Carrier selection, transfers and related issues;
- iii) Costs of freight, insurance, taxes, duties and forwarding fees; and
- iv) Documentation, problem resolution and other related issues.

In use since 1936, Incoterms have been revised in 2010. Out of the 11 Incoterms options, seven apply to all modes of transportation whereas four apply only to water transportation.

The options range from one extreme – the buyer takes full responsibility from point of departure – to the other extreme: the seller is responsible all the way through delivery to the buyer's location. It is easiest to understand terms as per their nomenclature groupings: 'ex' group of terms where the buyer takes full responsibility from point of departure; 'free' group of terms in which the freight is not paid by the seller; 'C' group of terms in which the freight is paid by the seller; and 'delivered' group of terms where the seller takes full responsibility from an intermediate point to an arrival point (Annexure 16).

Within national transportation, certain terms have assumed acceptance due to usage. FOR has two versions: FOR/dispatching and FOR/destination (the buyer is responsible from the nominated point mentioned till arrival point, as in Delivery at Terminal). Infrequently, it is also used in road transport as FOT.

6.10 e-Payment

e-Banking and e-payments are now used by various banks by adopting Electronic Clearing System (ECS) and Electronic Fund Transfer (NEFT/ RTGS) procedure. Payments to suppliers may be made through such mechanism where such facilities are available. As per RBI guidelines, ECS mandate in RBI's format may be obtained at the time of registration of suppliers and in the bid document. The Format is available with all Banks.

6.11 Deduction of Income Tax, Service Tax, and so on, at Source from Payments to Suppliers

This will be done as per the existing law in force during the currency of the contract.

6.12 Recovery of Public Money from Supplier's Bill

Sometimes, requests are received from a different ministry/Department for withholding some payment of a supplier out of the payment due to it against a contract. Such requests are to be examined by the ministry/Department (which has received the request) on the merits of the case for further action. It will, however, be the responsibility of the ministry/Department asking for withholding of payment to defend the Government against any legal procedure arising out of such withholding as also for payment of any interest thereof.

6.13 Refund from Supplier

Sometimes, the supplier, after claiming and receiving reimbursements for sales tax, excise duty, custom duty, and so on, from the purchaser, applies to the concerned authorities for refunds, on genuine grounds, of certain portions of such duties and taxes paid by it and receives the allowable refunds. Such refunds contain the purchaser's share also (out of the payments already made by the purchaser to that supplier). The tender enquiry document and the contract are to contain suitable provisions for obtaining such refunds from the supplier.

6.14 Payment against Time Barred Claims

Ordinarily, all claims against the Government are time barred after a period of three years calculated from the date when the payment falls due unless the payment claim has been under correspondence. However, the limitation is saved if there is an admission of liability to pay, and fresh period of limitation starts from the time such admission is made. The drill to be followed while dealing with time barred claims will be decided by the ministry/Department concerned in consultation with the paying authority. The paying authority is to ensure that no payment against such time barred claim is made till a decision has been taken in this regard by the CA.

Chapter 7: Evaluation of Bids and Award of Contract

7.1 Tender Evaluation

7.1.1 The evaluation of tenders is one of the most significant areas of purchase management and the process must be transparent. All tenders are to be evaluated strictly on the basis of the terms and conditions incorporated in the tender document and those stipulated by the tenderers in their tenders. The Contracting Authority may include quality, price, technical merit, aesthetic and functional characteristics, environmental characteristics, running costs, cost-effectiveness, after-sales service and technical assistance, delivery date and delivery period or period of completion etc. No criteria shall be used for evaluation of tenders that cannot be verified. No hearsay information or hitherto undeclared condition should be brought in while evaluating the tenders. Care should be taken that preferences provided to any category of bidders on certain specified grounds should not result in single vendor selection. Similarly, no tender enquiry condition (especially the significant/essential ones) should be overlooked/relaxed while evaluating the tenders. The aim should be to ensure that no tenderer gets undue advantage at the cost of other tenderers and/or at the cost of the Procuring Entity. Information relating to evaluation of tenders and the Tender Committee's (TC's) deliberations should be confidential and not be shared with persons not officially connected with the process. TC should normally comprise of three members including Financial Adviser or his representative and a representative of the user as per SoPP in order to carry out evaluation of the tenders. TC should not be very large as it may slow down the evaluation process. However, suitable domain/technical experts may be included in the committee to render assistance in evaluation of the bids. There is no need to constitute any other committee for technical evaluation, preliminary evaluation, etc. The representative of the user Department will work as a convenor of the TC. As per Rule 173 (xxii) of GFR 2017 no member of the tender committee should be reporting directly to any other member of such committee in case the estimated value of the procurement exceeds Rs. 25 lakh. Though the GFR stipulates this provision only when the estimated value of procurement exceeds Rs 25 lakh, it is desirable that the same provision should be followed in the constitution of all purchase committees irrespective of the value of procurement. The process of tender evaluation proceeds is described in the subsequent paras.

7.1.2 Schedule of Procurement Powers (SoPP)

There are delegations upto a threshold value below which the evaluation of the Bids may be entrusted solely and directly by individual competent authority, without involvement of a Tender committee or any evaluation report. He would himself carry out all the steps in evaluation described below, instead of the TC and directly records reasons and decision on the file itself. He may ask for a Technical Suitability report from User Departments, if so needed. In procurements above such a threshold, evaluation is by Tender Committee consisting of three or more officers, however no member of the Committee should be reporting directly to any other member of such Committee. Procuring Entity should lay down a Schedule of Procurement Powers (SoPP) detailing such thresholds. It can also lay down the powers, jurisdiction and composition of different levels of Tender Committee and corresponding Accepting Authority for different categories of procurement and different threshold values of procurements. A suggested format for SoPP is at Annexure 2B/2C,

however exact values of threshold would have to be decided by Procuring Entity themselves. Competent authority, in direct acceptance case; and member secretary of the Tender Committee will receive the bids opened along with other documents from the tender opening officials and are responsible for safe-custody of the documents and for processing involved at all steps in finalising the Procurement.

7.2 Preparation and Vetting of Comparative Statement

Except in cases upto Rs 25 Lakh (Rupees Twenty Five Lakh) the Procuring Entity should prepare a comparative statement of quotations received in the order in which tenders were opened. In case of Techno-Commercial bid comparative statement will have information about deciding responsiveness and eligibility of bids and evaluation of Technical suitability of offers. In case of Financial bid it would have information about rates quoted (including taxes or otherwise), discount, if any, and any other information having implications on ranking of bids etc. The comparative statement so prepared should be signed by the concerned officers. It may also be vetted by the associated/ integrated Finance for veracity of information.

7.3 Preliminary Examination

7.3.1 Unresponsive Tenders

Tenders that do not meet the basic requirements specified in the bid documents are to be treated as unresponsive and ignored. All tenders received will first be scrutinised by the TC to see whether the tenders meet the basic requirements as incorporated in the Bid document and to identify unresponsive tenders, if any. Some important points on the basis of which a tender may be declared as unresponsive and be ignored during the initial scrutiny are:

- i) The tender is not in the prescribed format or is unsigned or not signed as per the stipulations in the bid document;
- ii) The required EMD has not been provided or exemption from EMD is claimed without acceptable proof of exemption;
- iii) The bidder is not eligible to participate in the bid as per laid down eligibility criteria (example: the tender enquiry condition says that the bidder has to be a registered MSE unit but the tenderer is a, say, a large scale unit);
- iv) The tenderer has quoted for goods manufactured by a different firm without the required authority letter from the proposed manufacturer;
- v) The bid departs from the essential requirements specified in the bidding document (for example, the tenderer has not agreed to give the required performance security);
or
- vi) Against a schedule in the list of requirements in the tender enquiry, the tenderer has not quoted for the entire requirement as specified in that schedule (example: in a schedule, it has been stipulated that the tenderer will supply the equipment, install and commission it and also train the purchaser's operators for operating the equipment. The tenderer has, however, quoted only for supply of the equipment).

7.3.2 Non-conformities between Figures and Words

Sometimes, non-conformities/errors are also observed in responsive tenders between the quoted prices in figures and in words. This situation normally does not arise in case of e-Procurement. This should be taken care of in the manner indicated below:

- i) If, in the price structure quoted for the required goods, there is discrepancy between the unit price and total price (which is obtained by multiplying the unit price by the quantity), the unit price shall prevail and the total price corrected accordingly;
- ii) If there is an error in a total corresponding to the addition or subtraction of sub-totals, the sub-totals shall prevail and the total shall be corrected; and
- iii) If there is a discrepancy between words and figures, the amount in words shall prevail.
- iv) Such a discrepancy in an offer should be conveyed to the tenderer asking him to respond by a target date and if the tenderer does not agree to Procuring Entity's observation, the tender is liable to be rejected.

7.3.3 Discrepancies between Original and Additional/ Scanned Copies of a Tender

Discrepancies can also be observed in responsive tenders between the original copy and other copies of the same tender set. In such a case, the text, and so on, of the original copy will prevail. Here also, this issue is to be taken up with the tenderer in the same manner as above and subsequent actions taken accordingly. In e-Procurement there could be discrepancies between the uploaded scanned copies and the Originals submitted by the bidder. However normally no submission of original documents in physical format (other than Cost of Bid Documents (if any, refer Para 5.2.1 Cost and Availability of Tender Documents), Bid Security and statutory certificates if any) should be asked for in e-Procurement

7.3.4 Minor Infirmary/Irregularity/Non-conformity

During the preliminary examination, some minor infirmity and/or irregularity and/or non-conformity may also be found in some tenders. Such minor issues could be a missing pages/ attachment or illegibility in a submitted document; non-submission of requisite number of copies of a document. There have been also cases where the bidder submitted the amendment Bank Guarantee, but omitted to submit the main portion of Bid Document. The court ruled that this is a minor irregularity. Such minor issues may be waived provided they do not constitute any material deviation (please refer to Para 7.4.1 (d)) and financial impact and, also, do not prejudice or affect the ranking order of the tenderers. Wherever necessary, observations on such 'minor' issues (as mentioned above) may be conveyed to the tenderer by registered letter/speed post, and so on, asking him to respond by a specified date also mentioning therein that, if the tenderer does not conform Procuring Entity's view or respond by that specified date, his tender will be liable to be rejected. Depending on the outcome, such tenders are to be ignored or considered further.

7.3.5 Clarification of Bids/Shortfall Documents

During evaluation and comparison of bids, the purchaser may, at his discretion, ask the bidder for clarifications on the bid. The request for clarification shall be given in writing by registered/speed post, asking the tenderer to respond by a specified date, and also mentioning therein that, if the tenderer does not comply or respond by the date, his tender will be liable to be rejected. Depending on the outcome, such tenders are to be ignored or considered further. No change in prices or substance of the bid shall be sought, offered or permitted. No post-bid clarification at the initiative of the bidder shall be entertained. The shortfall information/documents should be sought only in case of historical documents which pre-existed at the time of the tender opening and which have not undergone change since then. These should be called only on basis of the recommendations of the TC. (Example: if the Permanent Account Number, registration with sales tax/ VAT has been asked to be

submitted and the tenderer has not provided them, these documents may be asked for with a target date as above). So far as the submission of documents is concerned with regard to qualification criteria, after submission of the tender, only related shortfall documents should be asked for and considered. For example, if the bidder has submitted a supply order without its completion/performance certificate, the certificate can be asked for and considered. However, no new supply order should be asked for so as to qualify the bidder.

7.4 Evaluation of Responsive Bids and Decision on Award of Contract

All responsive bids are evaluated by the TC with a view to select the lowest (L1) bidder who meets the qualification criteria and techno-commercial aspects. In case of single stage single envelop bidding, the evaluation of qualification of bidders, technical, commercial and financial aspect is done simultaneously. In single stage multiple envelops, initially only the techno-commercial bids would be opened and evaluated for bids which successfully meet the qualification criteria and techno-commercial aspects. Financial bids of such successful bidders only would be opened for selecting the L1 bidder among these and in case of manual tenders, financial bids of unsuccessful bidders would be returned unopened to them. In two stage bids, the PQB/ EoI stage would have already been evaluated as detailed in Chapter 4 and this second stage is for evaluation of responses to the Second Stage multiple envelops from the shortlisted qualified bidders. Evaluation of techno-commercial and financial aspects are, however, discussed separately below. It is of utmost importance that the authenticity, integrity and sanctity of unopened Financial Bids must be ensured, before their opening. All the financial bids may preferably be put in a large envelop, which may be dated, sealed and signed (including by some of the bidders present), to show that none of the bids were accessed during the custody.

7.4.1 Evaluation of Techno-commercial Bid

In evaluation of the techno-commercial bid, conformity of the eligibility/qualification, technical and commercial conditions of the offered goods to those in the bid document is ascertained. Additional factors, if any, incorporated in the tender documents may also be considered in the manner indicated therein. Evaluation has to be based only on the conditions included in the tender document and any other condition should not form the basis of this evaluation.

- i) **Evaluation of eligibility/ qualification Criteria:** Procuring Entity will determine, to its satisfaction, whether the tenderers are eligible, qualified and capable in all respects to perform the contract satisfactorily. Tenders that do not meet the required eligibility/qualification criteria prescribed will be treated as unresponsive and not considered further. This determination will, inter-alia, take into account the tenderer's financial, technical and production capabilities for satisfying all of Procuring Entity's requirements as incorporated in the tender document. Such determination will be based upon scrutiny and examination of all relevant data and details submitted by the tenderer in its/his tender as well as such other allied information as deemed appropriate by Procuring Entity.
- ii) **Evaluation of Technical Suitability:** The description, specifications, drawings and other technical terms and conditions are examined by TC in general and a technical member of the TC in particular. Nobody outside the TC should be allowed to determine this evaluation. The tender document should clearly state whether alternative offers/makes/models would be considered or not and, in the absence of an express statement to the effect, these should not be allowed. An important

document is the exceptions/deviation form submitted by the tenderer. It is important to judge whether an exception/deviation is minor or major. Minor exceptions/deviations may be waived provided they do not constitute any material deviation and do not have significant financial impact and, also, would not prejudice or affect the ranking order of the price bid. Exceptions/deviations should not grant the tenderer any undue advantage vis-à-vis other tenders and Procuring Entity.

- iii) **Evaluation of Commercial Conditions:** The TC will also evaluate the commercial conditions quoted by the tenderer to confirm that all terms and conditions specified in the GCC/SCC have been accepted without reservations by the tenderer. Only minor deviations may be accepted/allowed, provided these do not constitute material deviations without financial impact and do not grant the tenderer any undue advantage vis-à-vis other tenders and Procuring Entity.
- iv) **Considering Minor Deviations:** Court has consistently taken a view that procuring entity is entitled to consider and allow minor deviations, which do not amount to material deviations. A material deviation, reservation, or omission which should not be waived are those that:
 - a) Affects, in any substantial way, the scope, quality or performance of the goods and related services specified in the contract;
 - b) Limits, in any substantial way, inconsistent with the tendering documents, the procuring entity's rights or the tenderer's obligations under the contract; or
 - c) If rectified, would unfairly affect the competitive position of other tenderers quoting substantially responsive tenders.
- v) **Declaration of Successful Bidders:** If it is a multiple envelop tender, then the TC prepares a recommendation of techno-commercial bid (Annexure 11) to declare successful bidders. In such cases, after the approval of CA, the results of the Techno-commercial bid evaluation are to be announced (including informing the failed Bidders). Price bids are opened in the presence of technically suitable bidders, who are willing to attend the bid opening, at a pre-publicised date, time and place or on the portal in case of e-procurement. In single envelop/cover tender, TC proceeds to evaluate the price aspects without a reference to CA at this stage.

7.4.2 **Right of Bidder to question rejection at Techno-commercial Stage**

A tenderer shall have the right to be heard in case he feels that a proper procurement process is not being followed and/or his Techno-commercial bid has been rejected wrongly. The tenderer is to be permitted to send his representation in writing. On receipt of representation it may be decided whether to withhold opening of the financial bids and bidder may be expeditiously replied. Certain decisions of the procuring entity in accordance with the provision of internal guidelines shall not be subject to review as mentioned in para 7.6.3 below.

7.4.3 **Evaluation of Financial Bids and Ranking of Tenders In general:**

- i) If the price bid is ambiguous so that it may very well lead to two equally valid total price amounts, then the bid should be treated as unresponsive;
- ii) Sometime certain bidders offer suo motu discounts and rebates after opening of the tender (techno-commercial or financial). Such rebates/discounts should not be considered for the purpose of ranking the offer but if such a firm does become

L1 at its original offer, such suo motu rebates can be incorporated in the contracts. This also applies to conditional rebates, for example, rebate for faster payments, and so on;

- iii) Unless announced beforehand explicitly in the tender documents, the quoted price should not be loaded on the basis of deviations in the commercial conditions. If it is decided to incorporate such clauses, these should be unambiguous and clear – and thereafter there should be no relaxation during evaluation. Moreover, sometimes, while purchasing sophisticated and costly equipment, machinery, and so on, the procuring entity also gives special importance to factors such as high quality performance, environmental-friendly features, low running cost, low maintenance cost, and so on. To take care of this, relevant details are to be incorporated in the bid document and the criteria adopted to assess the benefit of such features while evaluating the offers are also to be clearly stipulated in the tender enquiry document so that the tenderers are aware of it and quote accordingly. While evaluating such offers, these aspects are also to be taken into account. Such details, whenever considered necessary, should be evolved by the competent technical authority for incorporation in the tender document, so that there is no ambiguity and/or vagueness in them;
- iv) Normally, the comparison of the responsive tenders shall be on total outgo from the Procuring Entity's pocket, for the procurement to be paid to the supplier or any third party, including all elements of costs as per the terms of the proposed contract, including any taxes, duties, levies etc, freight insurance etc. Therefore it should normally be on the basis of CIF/ FOR destination basis, duly delivered, commissioned, as the case may be:
- v) In the case of goods manufactured in India or goods of foreign origin already located in India, VAT/sales tax and excise duty and other similar taxes and duties, which will be contractually payable (to the tenderer) on the goods are to be added;
- vi) In the case of goods of foreign origin offered from abroad, customs duty and other similar import duties/taxes, which will be contractually payable (to the tenderer) on the goods, are to be added;
- vii) As per policies of the Government from time to time, the purchaser reserves his option to give price/ purchase preferences as indicated in the tender document;
- viii) In case the list of requirements contains more than one schedule, the responsive, technically suitable tenders will be evaluated and compared separately for each schedule. The tender for a schedule will not be considered if the complete requirements prescribed in that schedule are not included in the tender. However, tenderers have the option to quote for any one or more schedules and offer discounts for combined schedules. Such discounts, wherever applicable, will be taken into account to for deciding the lowest evaluated cost for Procuring Entity in deciding the successful tenderer for each schedule, subject to that tenderer(s) being responsive; and

- ix) If the tenders have been invited on a variable price basis, the tenders will be evaluated, compared and ranked on the basis of the position prevailing on the day of tender (Technical Bid) opening and not on the basis of any future date.

GTE Tenders

Special aspects of evaluation of the financial offer in GTE tenders are:

i) **Currency of Tender**

In GTE tenders, the price in the quotation could be in US Dollar or Euro or Pound Sterling or Yen or in currencies under the RBI's notified basket of currencies, in addition to the Indian Rupees, except for expenditure incurred in India (including agency commission if any) which should be stated in Indian Rupees. All offers are to be converted to Indian Rupees based on the "Bill currency selling" exchange rate on the date of tender opening (Techno-commercial offer) from a source as specified in the tender document.

ii) **Currency of Payment**

The contract price will be normally paid in the currency/currencies in which the price is stated in the contract.

iii) **Evaluation of Offers**

As per Government policy, Ministries/Departments/Public Sector Undertakings (PSUs) should ensure imports on FOB/FAS basis failing which a No Objection Certificate (NOC) should be obtained from the Ministry of Surface Transport (Chartering Wing).

The foreign bidders are normally asked, in the bid documents, to quote both on FAS/FOB basis and also on Cost and Freight (CFR)/CIF basis duly indicating the break-up of prices for freight, insurance, and so on, with purchasers reserving the right to order on either basis. They should also to indicate the custom tariff number and custom duty applicable in India. In the case of FAS/FOB offers, the freight and insurance shall be (after ascertaining, if not quoted) added to make up the CIF cost. To arrive at the Free On Rail (FOR) cost, one per cent shall be added over and above CIF as port handling charges, custom duty, countervailing duty and surcharges, as applicable on the date of opening of the tender, as well as clearing agency charges, inland freight and Octroi/ entry tax, as assessed, may be added to make it a FOR/Free On Truck (FOT) destination. The FOR/FOT destination price for domestic offers may be calculated as in OTE tenders. For bids with Letter of Credit (LC) payment, the likely LC charges (as ascertained from Procuring Entity's bankers) should also be loaded.

In case both Indian and foreign bidders have quoted in the tender, the comparison of the offers would be done on the basis of FOR/FOT destination including all applicable taxes and duties (on the principle of the total outgo from Procuring Entity's pockets). In case there are no domestic bidders, a comparison of offers can be made on the basis of CIF/landed costs since the rest of costs would be same for all bidders.

7.5 Deliberations by the Tender Committee for Award of Contract.

7.5.1 Timely Processing of Tenders (Rule 174 (i) of GFR 2017)

Delays in finalising procurement deprive the public of the intended benefits and results in lost revenues and cost over-run. To enable timely decision making, complete Time schedule of finalising the Tender process from the date of issuing the tender to date of issuing the contract, should be published in the Bid Documents. Every official in the chain of the

procurement operation is accountable for taking action in a specified time so that the tender is finalised on time. Any deviation from the schedule may be monitored and explained, by way of system of Management Reporting (Appendix 4 and 5). As a check, the proposed schedule of tender process may be printed on the inside cover of the Procurement File, where actual date of completion of various stages may be recorded. The suggestive time schedule in Table 2 is a guideline for finalising contracts against various modes of procurements.

SL. No.	Table 2. Indicative time schedule		
	Mode of Procurement	Indigenous	Imported
1	Open tender/ (e-tendering)	45days	60 days
2	Procurement through registered vendors/ (Special) limited tenders	30 days	45days
3	Proprietary basis/nomination basis	21days	30 days

This time schedule is only indicative and the schedule shall be subject to change based on the nature of requirements, sourcing, sample evaluation, site visit/pre-bid meeting with prospective bidders and Government, guidelines, and so on.

7.5.2 Extension of Tender Validity Period

The entire process of scrutiny and evaluation of tenders, preparation of ranking statement and notification of award must be done expeditiously and within the original tender validity period (*Rule 174 (iii) of GFR 2017*). The validity period should not be unreasonably long as keeping the tender unconditionally valid for acceptance for a longer period entails the risk of getting higher prices from the tenderers.

If, however, due to some exceptional and unforeseen reasons, the purchase organisation is unable to decide on the placement of the contract within the original validity period, it may preferably request, before expiry of the original validity period, all the responsive tenderers to extend their tenders up to a specified period. While asking for such extension, the tenderers are also to be asked to extend their offers as it is, without any changes therein. They may also be told to extend the validity of the EMD for the corresponding additional period (which is to be specified in the request). A tenderer may not agree to such a request and this will not be tantamount to forfeiture of its EMD. But the tenderers, who agree to extend the validity, are to do so without changing any terms, conditions, and so on, of their original tenders.

7.5.3 Variation of Quantities at the Time of Award

At the time of awarding the contract, the quantity to be procured must be re-judged based on the current data, since the ground situation may have very well changed. The tendered quantity can be increased or decreased by 25 (twenty-five) per cent for ordering, if so warranted. This may be mentioned in the tender documents. Any larger variation may throw up issues about transparency.

7.5.4 Option clause

In case of long running, yearly procurements, to take care of any change in the requirement during the currency of the contract, a plus/minus option clause [normally 25 (twenty-five) per cent] is incorporated in the tender document, reserving purchaser's right to increase or decrease the quantity of the required goods up to that limit without any change in the terms and conditions and prices quoted by the tenderers. Higher the option limit more is the uncertainty for the tenderers in formulating their prices and more is the chance of loading on the prices quoted to take care of such uncertainties.

7.5.5 Splitting of Contracts/ Parallel Contracts

After due processing, if it is discovered that the quantity to be ordered is far more than what L1 alone is capable of supplying and there was no prior decision/ declaration in the bidding documents to split the quantities, then the quantity being finally ordered may be distributed among the other bidders by counter offering the L1 rate in a manner that is fair, transparent and equitable based on objective data available in the bids e.g. eligibility data, Quantity/ Delivery etc.

However, in case of critical/ vital/ safety/ security nature of the item, large quantity under procurement, urgent delivery requirements and inadequate vendor capacity it may be advantageous to decide in advance to have more than one source of supply. In such cases a parallel contract clause should be added to the bid documents, clearly stating that Procuring Entity reserves the right to split the contract quantity between suppliers. The manner of deciding the relative share of lowest bidder (L1) contractor and the rest of the contractors/tenderers should be clearly defined, along with the minimum number of suppliers sought for the contract. In case of splitting in two and three, the ratio of 70:30; 50:30:20, respectively, may be used – a different ratio may also be justified.

Before splitting the quantity, it should be ensured that the L1 price is reasonable. If it is not reasonable, negotiation with the L1 party may be carried out, if justifiable, with the approval of the CA. The following guidelines are to be considered while opting for parallel contracts:

- i) L1 should be awarded at least the percentage mentioned above or his spare supply capacity, whichever is lower; and
- ii) For the rest of the contract quantity, the lowest rate accepted will be counter offered to the L2 party. On acceptance of the counter offer, the order will be placed on L2 for the respective percentage or the spare supply capacity of the L2 bidder, whichever is lower, and so on, to other tenderers. In case of non-acceptance of the counter offer by the L2 party, a similar offer shall be made to L3 and L4, and so on.

7.5.6 Reasonableness of Prices

In every recommendation of the TC for award of contract, it must be declared that the rates recommended are reasonable.

[For more details on judging reasonableness of prices, please see para 2.1.1 (iii)(e) in Chapter 2 above].

Where there is no estimated cost, a comparison with Last Purchase Price (LPP - the price paid in the latest successful contract) is the basis for judging reasonableness of rates. The following points may be kept in mind before LPP is relied upon as a basis for justifying rate reasonableness:

- i) The basic price, taxes, duties, transportation charges, Packing and Forwarding charges should be indicated separately;
- ii) Where the firm holding the LPP contract has defaulted, the fact should be highlighted and the price paid against the latest contract placed prior to the defaulting LPP contract, where supplies have been completed, should be used;
- iii) Where the supply against the LPP contract is yet to commence, that is, delivery is not yet due, it should be taken as LPP with caution, especially if the supplier is new, the price paid against the previous contract may also be kept in view;
- iv) Where the price indicated in the LPP is subject to variation or if it is more than a year old, the updated price or as computed in case of the Price Variation Clause (PVC) may also be indicated;
- v) In the case of wholly imported stores, the comparison of the last purchase rate should be made with the net CIF value at the current foreign exchange rate;
- vi) It is natural to have marginal differences in prices obtained at different cities/offices for the same item, due to their different circumstances. The prices obtained are greatly influenced by quantity, delivery period, terms of the contract, these may be kept in view; and
- vii) Prices paid in emergencies or prices offered in a distress sale are not accurate guidelines for future use. Such purchase orders and TC proceedings should indicate that “these prices are not valid LPP for comparison in future procurement”.

7.5.7 Consideration of Abnormally Low Bids

An Abnormally Low Bid is one in which the Bid price, in combination with other elements of the Bid, appears so low that it raises material concerns as to the capability of the Bidder to perform the contract at the offered price. Procuring Entity may in such cases seek written clarifications from the Bidder, including detailed price analyses of its Bid price in relation to scope, schedule, allocation of risks and responsibilities, and any other requirements of the bids document. If, after evaluating the price analyses, procuring entity determines that the Bidder has *substantially failed* to demonstrate its capability to deliver the contract at the offered price, the Procuring Entity may reject the Bid/Proposal. However it would not be advisable to fix a normative percentage below the estimated cost, which would be automatically be considered as an abnormally low bid. Due care should be taken while formulating the specifications at the time of preparation of bid document so as to have a safeguard against the submission of abnormally low bid from the bidder.

In the case of predatory pricing as well, procuring entities may refer to the above consideration of Abnormally Low Bids to assist themselves in finalization of tenders⁷⁵.

No provisions should be kept in the Bid Documents regarding the Additional Security Deposit/ Bank Guarantee (BG) in case of Abnormally Low Bids. Wherever, there are compelling circumstances to ask for Additional Security Deposit/ Bank Guarantee (BG) in case of ALBs, the same should be taken only with the approval of the next higher authority

⁷⁵In reference to OM No.F.12/17/2019-PPD issued by Department of Expenditure dated 06.02.2020

competent to finalise the particular tender, or the Secretary of the Ministry/ Department, whichever is lower⁷⁶.

7.5.8 Cartel Formation/Pool Rates

It is possible that sometimes a group of bidders quote the same rate against a tender. Such pool/cartel formation is against the basic principle of competitive bidding and defeats the very purpose of an open and competitive tendering system. Such and similar tactics to avoid/control true competition in a tender leading to "Appreciable Adverse Effect on Competition" (AAEC) have been declared as an offence under the Competition Act, 2002, as amended by the Competition (Amendment) Act, 2007. Such practices should be severely discouraged with strong measures. In case of evidence of cartel formation, detailed cost analysis may be done by associating experts if necessary. Besides, suitable administrative actions can be resorted to, such as rejecting the offers, reporting the matter to trade associations, the Competition Commission or NSIC, etc., and requesting them, inter-alia, to take suitable strong actions against such firms. New firms may also be encouraged to get themselves registered for the subject goods to break the monopolistic attitude of the firms forming a cartel. Changes in the mode of procurement (GTE instead of OTE) and packaging/slicing of the tendered quantity and items may also be tried. A warning clause may also be included in the bid documents to discourage the bidders from indulging in such practices.

7.5.9 Negotiations (*Rule 173 (xiv) of GFR 2017*)

- i) Normally, there should be no negotiation. Negotiations should be a rare exception rather than the rule and may be resorted to only in exceptional circumstances. If it is decided to hold negotiations for reduction of prices, they should be held only with the lowest acceptable bidder (L1), who is techno-commercially responsive for the supply of a bulk quantity and on whom the contract would have been placed but for the decision to negotiate. In no case, including where a cartel/pool rates are suspected, should negotiations be extended to those who had either not tendered originally or whose tender was rejected because of unresponsiveness of bid, unsatisfactory credentials, inadequacy of capacity or unworkable rates. The circumstances where negotiations may be considered could be:
 - a) Where the procurement is done on nomination basis;
 - b) Procurement is from single or limited sources;
 - c) Procurements where there is suspicion of cartel formation which should be recorded; and
 - d) Where the requirements are urgent and the delay in re-tendering for the entire requirement due to the unreasonableness of the quoted rates would jeopardise essential operations, maintenance and safety, negotiations with L1 bidder(s) may be done for bare minimum quantum of requirements. The balance bulk requirement should, however, be procured through a re-tender, following the normal tendering process.

⁷⁶Notified vide OM No. F.9/4/2020-PPD issued by Department of Expenditure dated 12.11.2020

- ii) The decision whether to invite fresh tenders or to negotiate and with whom, should be made by the tender accepting authority based on the recommendations of the TC. Convincing reasons must be recorded by the authority recommending negotiations. The CA should exercise due diligence while accepting a tender or ordering negotiations or calling for a re-tender and a definite timeframe should be indicated.
- iii) Normally all counter offers are considered negotiations by other means and the principles of negotiations should apply to such counter offers. For example, a counter offer to L1, in order to arrive at an acceptable rate, shall amount to a negotiation. However, any counter offer to L2, L3, and so on (at the rates accepted by L1) in case of splitting of quantities shall not be deemed to be a negotiation.
- iv) After the CA has decided to call a specific bidder for negotiation, the following procedure should be adopted:
 - a) It must be understood that, if the period of validity of the original offer expires before the close of negotiations, the original offer will not be available for acceptance. The period of validity of the original offer must, therefore, be extended, wherever necessary, before negotiations;
 - b) The tenderer to be called in for negotiations should be addressed as per the format of letter laid down in Annexure 12, so that the rates originally quoted by him shall remain open for acceptance in the event of failure of the contemplated negotiation;
 - c) A negotiations meeting should be started only after obtaining a signed declaration from the negotiating supplier as per Annexure 12; and
 - d) Revised bids should be obtained in writing from the selected tenderers at the end of the negotiations in the format of letter laid down in Annexure 13. The revised bids so obtained should be read out to the tenderers or their representatives present, immediately after completing the negotiations. If necessary, the negotiating party may be given some time to submit its revised offer. In case, however, the selected bidder prefers to send a revised bid instead of being present at the negotiation, the offer should be taken into account. In case a bidder does not submit the revised bid, its original bid shall be considered.

7.5.10 Consideration of Lack of Competition in OTE/ GTE and LTE [Rule 173 (xix) and (xxi) of GFR 2017]

Sometimes, against advertised/limited tender cases, the procuring entity may not receive a sufficient number of bids and/or after analysing the bids, ends up with only one responsive bid – a situation referred to as ‘Single Offer’. As per Rule 21 of DFPR (explanation sub-para), such situation of ‘Single Offer’ is to be treated as Single Tender. It has become a practice among some procuring entities to routinely assume that open tenders which result in single bids are not acceptable, and to go for re-tender as a ‘safe’ course of action. This is not correct. Re-bidding has costs: firstly the actual costs of retendering; secondly the delay in execution of the work with consequent delay in the attainment of the purpose for which the procurement is being done; and thirdly the possibility that the re-bid may result in a higher

bid⁷⁷. Even when only one Bid is submitted, the process may be considered valid provided following conditions are satisfied:

- i) The procurement was satisfactorily advertised and sufficient time was given for submission of bids.
- ii) The qualification criteria were not unduly restrictive; and
- iii) Prices are reasonable in comparison to market values

However restricted powers of Single tender mode of procurement would apply. In case of price not being reasonable, negotiations (being L1) or retender may be considered as justifiable.

Unsolicited offers against LTEs should be ignored, however Ministries/Departments should evolve a system by which interested firms can register and bid in next round of tendering. However, under the following exceptional circumstances, these may be considered for acceptance at the next higher level of competency:

- a) Inadequate Competition
- b) Non-availability of suitable quotations from registered vendors
- c) Urgent demand and capacity/capability of the firm offering the unsolicited being known, etc.

7.5.11 Cancellation of Procurement Process/ Rejection of All Bids/Re-tender [Rule 173 (xix) of GFR 2017]

- i) The Procuring Entity may cancel the process of procurement or rejecting all bids at any time before intimating acceptance of successful bid under circumstances mentioned below. In case where responsive bids are available, the aim should be to finalise the tender by taking mitigating measures even in the conditions described below. If it is decided to rebid the tender, the justification should balance the perceived risks in finalisation of tender (marginally higher rates) against the certainty of resultant delays, cost escalations, loss of transparency in re-invited tender. After such decision, all participating bidders would be informed and bids if not opened would not be opened and in case of manual tenders be returned unopened:
 - a) If the quantity and quality of requirements have changed substantially or there is an un-rectifiable infirmity in the bidding process;
 - b) when none of the tenders is substantially responsive to the requirements of the Procurement Documents;
 - c) none of the technical Proposals meets the minimum technical qualifying score;
 - d) If effective competition is lacking. However lack of competition shall not be determined solely on the basis of the number of Bidders. (Please refer to para above also regarding receipt of a single offer).
 - e) the Bids'/Proposals' prices are substantially higher than the updated cost estimate or available budget;

⁷⁷As stated under para 11.8 of OM No.F.1/1/2021-PPD issued by Department of Expenditure dated 20.10.2021

- f) If the bidder, whose bid has been found to be the lowest evaluated bid withdraws or whose bid has been accepted, fails to sign the procurement contract as may be required, or fails to provide the security as may be required for the performance of the contract or otherwise withdraws from the procurement process, the Procuring Entity shall re-tender the case⁷⁸.
- ii) Approval for re-tendering should be accorded by the CA after recording the reasons/proper justification in writing. The decision of the procuring entity to cancel the procurement and reasons for such a decision shall be immediately communicated to all bidders that participated in the procurement process. Before retendering, the procuring entity is first to check whether, while floating/issuing the enquiry, all necessary requirements and formalities such as standard conditions, industry friendly qualification criteria, and technical and commercial terms, wide publicity, sufficient time for bidding, and so on, were fulfilled. If not, a fresh enquiry is to be issued after rectifying the deficiencies.

7.5.12 Handling Dissent among Tender Committee

Tender Committee duties are to be discharged personally by the nominated officers. They may take help of their subordinate officers by way of reports/ evaluations, but they would still be answerable for such decisions. TC members cannot co-opt or nominate others to attend deliberations on their behalf. TC deliberations are best held across the table and not through circulation of notes.

All members of the TC should resolve their differences through personal discussions instead of making to and fro references in writing. In cases where it is not possible to come to a consensus and differences persist amongst TC members, the reasons for dissent of a member should be recorded in a balanced manner along with the majority's views on the dissent note. The final recommendations should be that of the majority view. However, such situations should be rare. The Competent Authority (CA) can overrule such dissent notes after recording reasons for doing so clearly. His decision would be final.

In cases where the CA does not agree with the majority or unanimous recommendations of the TC, he should record his views and, if possible, firstly send it back to TC to reconsider along the lines of the tender accepting authority's views. However, if the TC, after considering the views of the CA, sticks to its own earlier recommendations, the CA can finally decide as deemed fit, duly recording detailed reasons. He will be responsible for such decisions. However, such situations should be rare.

7.5.13 Independence, Impartiality, Confidentiality and 'No Conflict of Interest' at all Stages of Evaluation of Bids

All technical, commercial and finance officials who have contributed to the techno-commercial or financial evaluation of bids, even though they may not be part of the TC should deal with the procurement in an independent, impartial manner and should have no conflict of interest with any of the bidder involved in the procurement. They should also maintain confidentiality of the information processed during the evaluation process and not allow it to reach any unauthorised person. They should sign a declaration at the end of their

⁷⁸ Notified vide OM No. F.1/1/2021-PPD issued by Department of Expenditure dated 21.04.2022

reports/notings stating that, "I declare that I have no conflict of interest with any of the bidder in this tender". TC members may make such a declaration at the end of their reports.

7.5.14 Tender Committee Recommendations/Report

The TC has to make formal recommendations (Annexure 11) for the award of the contract to the bidder whose bid has been determined to be substantially responsive and the lowest evaluated bid, provided further that the bidder is determined to be qualified to perform the contract satisfactorily and his credentials have been verified. It is a good practice that TC should spell out salient terms and conditions of the offer(s) recommended for acceptance. It should also be ensured by the TC that any deviation/variation quoted by the supplier in his bid are not left undiscussed and ruled upon in the TC; otherwise there may be delay in acceptance of the contract by the supplier. These recommendations are submitted for approval to the tender accepting authority. Since a nominee of Financial Adviser of the Department is usually a member of the Tender Committee, there is no need for the CA to consult the FA of the Department before accepting the TC recommendations. In any purchase decision, the responsibility of the CA is not discharged merely by selecting the cheapest offer or accepting TC recommendations but ensuring whether:

- i) Offers have been invited in accordance with this manual and after following fair and reasonable procedures in prevailing circumstances;
- ii) He is satisfied that the selected offer will adequately meet the requirement for which it is being procured;
- iii) The price of the offer is reasonable and consistent with the quality required; and
- iv) The accepted offer is the most appropriate taking all relevant factors into account in keeping with the standards of financial propriety.

After the acceptance of these recommendations by the tender accepting authority, the Letter (Notification) of Award (LoA) can be issued.

7.6 Award of Contract

7.6.1 LoA to Successful Bidder

Prior to the expiry of the period of bid validity, the successful bidder will be notified (briefly indicating therein relevant details such as quantity, specification of the goods ordered, prices, and so on) in writing by a registered letter or any other acknowledgeable and fool proof method that his bid has been accepted. Legally communication of acceptance of offer is considered complete as soon as it is submitted to Postal authorities (please refer to Para 2.9.1 of Appendix 2). A template for the Letter of Acceptance (or Notice of Award, or Acceptance of Tender) is given in Annexure 14. In the same communication, the successful tenderer is to be instructed to furnish the required performance security within a specified period (generally 14(fourteen) days).

In respect of contracts for purchases valued Rupees two and a half lakh and above, where tender documents include the GCC, SCC and schedule of requirements, the letter of acceptance will result in a binding contract. All delivery liabilities would be counted from the date of LoA.

7.6.2 Publication of Tender Results and Return of EMD of Unsuccessful Bidders [Rule 173 (xviii) of GFR 2017]

The details of award of contract and name of the successful tenderer should be mentioned mandatorily on the CPPP and also in the notice board/bulletin/website of the concerned Ministry or Department/e-Procurement Portal. In case publication of such information is sensitive from commercial or security aspects, dispensation may be sought from publishing of such results by obtaining sanction from the Secretary of the Department with the concurrence of associated Finance. Upon the successful bidder furnishing the signed agreement and performance security, each unsuccessful bidder will be promptly notified and their bid security be returned without interest within 30 (thirty) days of notice of award of contract. The successful supplier's bid security shall be adjusted against the SD or returned as per the terms of the tender documents. In cases, where PSUs compete with private firms in public tenders, publication of details of contracts awarded by the PSU concerned to various sub-vendors, suppliers, technology providers and other associates before firming up their offer, may hurt the interest of the PSU as the competitors may get to know the details of sub-vendors, suppliers, technology providers and other associates as well as the price at which the contracts are placed. Therefore, in such cases, publication of details of contracts awarded may be dispensed with.

7.6.3 Bidder's right to question rejection at this stage

A tenderer shall have the right to be heard in case he feels that a proper procurement process is not being followed and/or his tender has been rejected wrongly. The tenderer is to be permitted to send his representation in writing. Bidding documents should explicitly mention the name, designation and contact details of officers nominated to receive representations in this regard. But, such representation has to be sent within 10(ten) days from the date of LoA. The procuring entity should ensure a decision within 15 (fifteen) days of the receipt of the representation. Only a directly affected bidder can represent in this regard:

- i) Only a bidder who has participated in the concerned procurement process i.e. pre-qualification, bidder registration or bidding, as the case may be, can make such representation
- ii) In case pre-qualification bid has been evaluated before the bidding of Technical/ financial bids, an application for review in relation to the technical/ financial bid may be filed only by a bidder who has qualified in pre-qualification bid;
- iii) In case technical bid has been evaluated before the opening of the financial bid, an application for review in relation to the financial bid may be filed only by a bidder whose technical bid is found to be acceptable
- iv) Following decisions of the procuring entity in accordance with the provision of internal guidelines shall not be subject to review:
 - a) Determination of the need for procurement;
 - b) Selection of the mode of procurement or bidding system;
 - c) Choice of selection procedure;
 - d) Provisions limiting participation of bidders in the procurement process;
 - e) The decision to enter into negotiations with the L1 bidder;
 - f) Cancellation of the procurement process except where it is intended to subsequently re-tender the same requirements;

- g) Issues related to ambiguity in contract terms may not be taken up after a contract has been signed, all such issues should be highlighted before consummation of the contract by the vendor/contractor; and
- h) Complaints against specifications except under the premise that they are either vague or too specific so as to limit competition may be permissible.

7.6.4 Performance Security

The supplier receiving the LoA is required to furnish the required performance security, if it is part of tender conditions, in the prescribed form by the specified date; failing this necessary action including forfeiture of EMD will be taken against the supplier.

7.6.5 Acknowledgement of Contract by Successful Bidder and Execution

After the successful bidder is notified that his bid has been accepted, he will be sent an agreement for signature and return, incorporating all agreements between the parties.

The supplier should acknowledge and unconditionally accept, sign, date and return the agreement within 14 (fourteen) days from the date of issue of the contract in case of OTE and 28 (twenty-eight) days in case of GTE. Such acknowledgements may not be required in low value contracts, below Rupees two and a half Lakh or when the bidders offer has been accepted in entirety, without any modifications. While acknowledging the contract, the supplier may raise issues and/or ask for modifications against some entries in the contract; such aspects shall be immediately be looked into for necessary action and, thereafter, the supplier's unconditional acceptance of the contract obtained. If both parties (Procuring Entity and the supplier) simultaneously sign the contract across the table, further acknowledgement from the supplier is not required. It should also be made known to the successful tenderer that in case he does not furnish the required performance security or does not accept the contract within the stipulated target dates, such non-compliance will constitute sufficient ground for forfeiture of its EMD and processing the case for further action against it (the successful tenderer).

All contracts shall be signed and entered into after receipt and verification of the requisite performance security, by an authority empowered to do so by or under the orders of the President of India in terms of Article 299 (1) of the Constitution of India. The words "for and on behalf of the President of India" should follow the designation appended below the signature of the officer authorised on this behalf. The various classes of contracts and assurances of property, which may be executed by different authorities, are specified in the DFPR. No contract on behalf of an organisation of Procuring Entity should be entered into by any authority which has not been empowered to do so under the orders of the state Government.

7.6.6 Framing of Contract

The following general principles should be observed while entering into contracts:

- i) Any agreement shall be issued strictly as per approved TC recommendations, be vetted by the Associated/ integrated Finance and approved by CA. The terms of contract must be precise, definite and without any ambiguities. The terms should not involve an uncertain or indefinite liability, except in the case of a cost plus contract or where there is PVC in the contract. In other words, 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 Associated/ integrated Finance.

- ii) All contracts shall contain a provision for
 - a) Recovery of liquidated damages (LD) for delay in performance of the contract on the part of the contractor;
 - b) A warranty clause/defect liability clause should be incorporated in contracts for plant and machinery, above a threshold value, requiring the contractor to, without charge, replace, repair or rectify defective goods/ works/services;
- iii) All contracts for supply of goods should reserve the right of the Government to reject goods which do not conform to the specifications;
- iv) Payment of all applicable taxes by the contractor or supplier; and
- v) When a contract is likely to endure for a period of more than two years, it should, wherever feasible, include a provision for an unconditional power of revocation or cancellation by the Government at any time on the expiry of six months' notice to that effect.
- vi) Standard forms of contracts should be invariably adopted, except in following cases:
 - a) Authorities competent to make purchases may, at their discretion, make purchases of value up to Rupees two and a half lakh by issuing purchase orders containing basic terms and conditions;
 - b) In cases where standard forms of contracts are not used or where modifications in standard forms are considered necessary in respect of individual contracts, legal and financial advice should be taken in drafting the clauses in the contract and approval of CAs is to be obtained; and
 - c) Copies of all contracts and agreements for purchases of the value of Rs. 25 (Rupees twenty-five) lakh and above, and of all rate and running contracts entered into by civil Departments of the Government should be sent to the Accountant General.

7.6.7 Procurement Records

The Procurement file should start with the Indent and related documents. All subsequent documents relating to procurement planning; Copy of Bid Document and documents relating to its and formulation, publishing and issue/ uploading; Bid Opening; Bids received; Correspondence and documents (including Technical Evaluation and TC report) relating to pre-qualification, evaluation, Award of Contract; and finally the Contract copy, should be kept on the file. In case of bulky Bids received, all bids received may be kept in a separate volume, with a copy of accepted bids later being put on the main volume. To maintain integrity of the records relating to Procurement, these files should be kept secure and for contract management a new volume of file may be opened to obviate frequent exposure of sensitive procurement file. In contract management volume, copies of successful bid, Tender Committee Report, Contract may also be kept for ready reference, besides correspondence and documents relating to Contract Management and its closure.

7.6.8 Evaluation of Bids and Award of Contract - Risks and Mitigations	
<i>Risk</i>	<i>Mitigation</i>

7.6.8 Evaluation of Bids and Award of Contract - Risks and Mitigations

<i>Risk</i>	<i>Mitigation</i>
<p>Evaluation of bids is subjective or leaves room for manipulation and biased assessments. Some TC members may not be independent or neutral or may have conflict of interest.</p>	<p>TC should give an undertaking at the appropriate time that none of the members has any personal interest in the companies/agencies participating in the tender process. Any member having an interest in any company should refrain from participating in the TC. Some members of a TC may be subordinate to or related others in a strictly hierarchical organisation, so that they are not free to express independent views – such a situation must be avoided when constituting the TC.</p>
<p>Discriminating against a Best Value Bid: In case a bidder's bid (not in the good books of the procuring entity) becomes the best value bid as per the evaluation criteria, some of the following actions may have risks of misuse. There is also a reverse risk in these actions if a favourite becomes best value bid:</p>	<p>Mitigation for each type of risk is mentioned below.</p>
<p>Unwarranted rebidding: Rejecting all bids and calling for rebidding on the pretext of prices being high, change of specifications, budget not being available, and so on.</p>	<p>In case a procurement is rebid more than once, approval of one level above the CA may be taken. Please also see the complaint mechanism.</p>
<p>Sudden quantity reduction/increase or splitting of quantity work at the time of award: Many organisations have provisions for change/ splitting in the bid quantity at the time of award. Some organisations vary quantity even without such provisions</p>	<p>Bid conditions must specify a limit beyond which originally announced quantity/scope cannot be reduced/increased. If parallel contracts are envisaged, clear criteria for the splitting may be specified in the bid documents beforehand.</p>
<p>Unwarranted negotiations: negotiations are called without justification. Sometimes a counter-offer is made to discourage lowest acceptable bidder.</p>	<p>Normally, there should be no post-tender negotiations. In certain exceptional situations, for example, procurement of proprietary items, items with limited sources of supply, and items where there is suspicion of a cartel formation, negotiations may be held with L-1. In case of L-1 backing out, there should be re-tendering.</p>
<p>Unwarranted delays in finalizing or varying the terms of preannounce contract agreement: even after the TC recommendations are accepted, signing of the contract is delayed on one pretext or the other. Although there is a standard contract form in the bid documents, the contract may be drafted in a fashion to favour or</p>	<p>A target timeline of finalisation of procurement should be laid down. Delays and reasons thereof should be brought out before the CA on the file at the time of TC's acceptance or contract signing. The contract should be strictly as per the bid conditions and accepted offer.</p>

7.6.8 Evaluation of Bids and Award of Contract - Risks and Mitigations

<i>Risk</i>	<i>Mitigation</i>
discourage the successful bidder.	
<p>Anti-competitive practices: Bidders, that would otherwise be expected to compete, secretly conspire to frustrate the buyer's attempts to get VfM in a bidding process. Anti-competitive conspiracies can take many forms. Sometimes the officers involved in procurement may be part of such collusion.</p> <p>Bid coordination: The bidders collude to the quote same or similar rates that are much higher than the reasonable price to force the buyer to settle the procurement at exorbitant prices.</p> <p>Cover bidding: Cover bidding is designed to give the appearance of genuine competition by way of supporting bids for the leading bid-rigger.</p> <p>Bid suppression: Bid suppression means that a company does not submit a bid for final consideration in support of the leading bid-rigger.</p> <p>Bid rotation: In bid-rotation schemes, conspiring firms continue to bid but they agree to take turns being the winning (i.e., lowest qualifying) bidder in a group of tenders of a similar nature.</p> <p>Market allocation: Competitors carve up the market and agree not to give competitive bids for certain customers or in certain geographic areas.</p>	<p>These strategies, in turn, may result in patterns that procurement officials can detect and steps can be taken to thwart such attempts. Such anti-competitive activities come under the purview of the competition law, where there is provision of stringent penalties. Regular training should be held for officers involved in procurement to detect and mitigate such practices and also use of the competition law against such bidders.</p>

Chapter 8: Rate Contract and other Procurements with special features

8.1 Rate Contracts

8.1.1 **Definition:** A Rate Contract (commonly known as RC) is an agreement between the purchaser and the supplier for supply of specified goods (and allied services, if any) at specified price and terms & conditions (as incorporated in the agreement) during the period covered by the Rate Contract. No quantity is mentioned nor is any minimum drawal guaranteed in the Rate Contract. The Rate Contract is in the nature of a standing offer from the supplier firm. The firm and/or the purchaser are entitled to withdraw/cancel the Rate Contract by serving an appropriate notice on each other giving 15 (fifteen) days time. However, once a supply order is placed on the supplier for supply of a definite quantity in terms of the rate contract during the validity period of the rate contract, that supply order becomes a valid and binding contract.

8.1.2 **Merits of Rate Contract-**The Rate Contract system provides various benefits to both the Purchaser (i.e. user) and the Supplier and the same are indicated below:

i) **Benefit to Users**

- a) Competitive and economical price due to aggregation of demands.
- b) Saves time, efforts, man-hours and related costs involved in time consuming as well as repetitive tendering process. It thus reduces lead time for procurement.
- c) Availability of quality goods with full quality assurance back-up.
- d) Enables procurement as and when required and thus reduces inventory carrying cost.
- e) Advantageous even to small users and those located in remote areas.
- f) Provides one single point of contact to procure such items.

ii) **Benefit to Suppliers:**

- a) Reduces marketing cost and efforts.
- b) Eliminates repetitive tendering and follow-up actions with multiple authorities.
- c) Provides single point contact for Govt. supplies.
- d) Aggregation of Govt. demand leads to economic production.
- e) Lends credibility.
- f) Promotes quality discipline.

8.1.3 Deleted

8.1.4 Deleted

8.1.5 Deleted

8.1.6 Deleted

8.1.7 **Period of Rate Contract:** The period of a Rate Contract should normally be one year for stable technology products. However, in special cases, shorter or longer period not more than two years may be considered. As far as possible, validity period of rate contracts should be fixed in such a way as to ensure that budgetary levies would not affect the price

and thereby frustrate the contracts. Attempts should also be made to suitably stagger the period of rate contracts throughout the year.

8.1.8 Deleted

8.1.9 Special Conditions applicable for Rate Contract- Some conditions of rate contract differ from the usual conditions applicable for ad hoc contracts. Some such important special conditions of rate contract are given below:

- i) ii) In the Schedule of Requirement, no quantity is mentioned; only the anticipated drawl is mentioned without any commitment.
- iii) The purchaser reserves the right to conclude one or more than one rate contract for the same item.
- iv) The purchaser as well as the supplier may withdraw the rate contract by serving suitable notice to each other. The prescribed notice period is generally fifteen days.
- v) The purchaser has the option to renegotiate the price with the rate contract holders.
- vi) In case of emergency, the purchaser may purchase the same item through ad hoc contract with a new supplier.
- vii) The purchaser and the authorized users of the rate contract are entitled to place online supply orders up to the last day of the validity of the rate contract and, though supplies against such supply orders will be effected beyond the validity period of the rate contract, all such supplies will be guided by the terms & conditions of the rate contract.
- viii) The rate contract will be guided by "Fall Clause" (as described later in this chapter).

8.1.10 Parallel Rate Contracts: Since, the rate contracts concluded are to take care of the demands of various Departments and Organizations, PSUs, Autonomous Organizations etc. spread all over the country, generally a single supplier does not have enough capacity to cater to the entire demand of an item. Therefore, the rate contracts are concluded with different suppliers for the same item. Such rate contracts are known as Parallel Rate Contracts.

8.1.11 Conclusion of Rate Contracts including Parallel Rate Contracts- Techniques for conclusion of rate contract is basically identical to that of ad hoc contract (as discussed in Chapter 7 of the Manual). Identical tender documents may be utilized for conclusion of rate contracts subject to inclusion therein the special terms & conditions as applicable for rate contracts. In the first instance, the rate contract is to be awarded to the lowest responsive tenderer (L1). However, depending on the anticipated demand of the item, location of the users, capacity of the responsive bidders, reasonableness of the prices quoted by the responsive bidders, etc. it may become necessary to award parallel rate contracts also. Efforts should be made to conclude parallel rate contracts with suppliers located in different parts of the country. For the sake of transparency and to avoid any criticism, all such parallel rate contracts are to be issued simultaneously.

8.1.12 Deleted

8.1.13 Cartel Formation / Pool Rates/Bid rigging/Collusive bidding etc.: Quoting of pool rates/Cartel formation, bid rigging/collusive bidding is against the basic principle of competitive bidding and defeats the very purpose of open and competitive tendering system. Such practices should be severely discouraged with strong measures. Suitable administrative actions like rejecting the offers, reporting the matter to Competition Commission of India, , on case to case basis, as decided by the competent authority. Ministries/Departments may also bring such unhealthy practice to the notice of the

concerned trade associations like FICCI, ASSOCHAM, NSIC, etc. requesting them, inter alia, to take suitable strong actions against such firms. The Ministries/Departments may also encourage new firms to get themselves registered to break the monopolistic attitude of the firms giving pool rate/ forming cartel. Purchaser may also debar the tenderers indulging in cartel formation/collusive bidding/bid rigging for a period of two years from participation in the tenders of the Purchaser.

8.1.14 Fall Clause: Fall clause is a price safety mechanism in rate contracts. The fall clause provides that if the rate contract holder reduces its price or sells or even offers to sell the rate contracted goods or services following conditions of sale similar to those of the rate contract, at a price lower than the rate contract price, to any person or organization during the currency of the rate contract, the rate contract price will be automatically reduced with effect from that date for all the subsequent supplies under the rate contract and the rate contract amended accordingly. Other parallel rate contract holders, if any, are also to be given opportunity to reduce their price as well, by notifying the reduced price to them and giving them 07 (seven) days time to intimate their revised prices, if they so desire, in sealed cover to be opened in public on the specified date and time and further action taken as per standard practice. On many occasions, the parallel rate contract holders attempt to grab more orders by unethical means by announcing reduction of their price (after getting the rate contract) under the guise of Fall Clause. This situation is also to be dealt with in similar manner as mentioned in the preceding paragraph. It is however, very much necessary that the purchase organizations keep special watch on the performance of such rate contract holders who reduce their prices on one pretext or other. If their performances are not up to the mark, appropriately severe action should be taken against them including deregistering them, suspending business deals with them, debarring them for two years from participating against the tender enquiry floated by concerned purchase organization etc.

The provisions of fall clause will however not apply to the following:

- i) Export/Deemed Export by the supplier;
- ii) Sale of goods or services as original equipment prices lower than the price charged for normal replacement;
- iii) Sale of goods such as drugs, which have expiry date;
- iv) Sale of goods or services at lower price on or after the date of completion of sale/placement of order of goods or services by the authority concerned, under the existing or previous Rate Contracts as also under any previous contracts entered into with the Central or State Government Departments including new undertakings (excluding joint sector companies and or private parties) and bodies.

8.1.15 Performance Security: Depending on the anticipated overall drawal against a rate contract and, also, anticipated number of parallel rate contracts to be issued for an item, Department shall consider obtaining Performance Security @ 5% (five percent) of the value of supply order in the supply orders issued against rate contracts on the rate contract holder.

8.1.16 Renewal of Rate Contracts: It should be ensured that new rate contracts are made operative right after the expiry of the existing rate contracts without any gap for all rate contracted items. In case, however, it is not possible to conclude new rate contracts due to some special reasons, timely steps are to be taken to extend the existing rate contracts with same terms, conditions etc. for a suitable period, with the consent of the rate contract holders. Rate contracts of the firms, who do not agree to such extension, are to be left out.

Also, while extending the existing rate contracts, it shall be ensured that the price trend is not lower.

8.1.17 Deleted

8.2 Handling Procurement in urgencies/ Emergencies and Disaster Management

There are sufficient fast track procurement modalities to tackle procurements in urgent/emergent and Disaster Management situations. Enhanced delegations of procurement powers in SoPP may be considered to handle such situations. Use of following modes of procurements may be utilised in order of speed (under Disaster Management situations, threshold limits of modes of procurement may be increased for higher level of officers, with the sanction of Secretary of the Department):

- i) Direct Procurement Without Quotation
- ii) Direct Procurement by Purchase Committee
- iii) SLTE/ Limited/ Single Tender Enquiry, with reduced time for submission of Bids

To speed up procurement, advance cash may be drawn for direct procurement modes and made available to the Committees/ officer, with accounts and vouchers to be submitted after purchase.

8.3 Buy Back Offer

When it is decided to replace an existing old item(s) with a new/better version, the Department may trade the existing old item while purchasing the new one by issuing suitable bidding documents for this purpose. The condition of the old item, its location and the mode of its handing over to the successful bidder are also to be incorporated in the bidding document. Further, the bidder should be asked to quote the prices for the item (to be offered by them) with rebate for the old item and also, without any rebate (in case they do not want to lift the old item). This will enable the Department either to trade or not to trade the old item while purchasing the new one. (Rule 176 of GFR 2017)

8.4 Capital Goods/ Equipment (Machinery and Plant – M&P)

Capital goods are Machinery and Plant (M&P) which create new Fixed Assets/ utility/ functionality or benefit to the organisation and has a long useful life. Special features of procurement of Capital Goods are:

- i) Since the cost is generally high, there are detailed procedures for approval of technical, administrative and budgetary provisions – before an indent is generated. Unlike consumable items (which are procured if a non-specific budgetary provision is there), Capital Goods are procured after an item specific Budgetary provision is included in the budget. Thus the acquisition of Capital Goods is also an Investment decision and may require some form of Investment Justification. Some of the higher value Capital Goods may be accounted in the Capital Block of the Organization. However these features may not apply to Capital goods procurement of smaller threshold values;
- ii) There are also alternative to outright purchasing/ owning such equipment like hiring/ hire-purchase/ leasing or acquiring the functionality as a service;
- iii) The procurement involves elements of Works and Services like Installation, Commissioning, Training, prolonged trials, Warranty, After Sales Services like post-

warranty Maintenance and assured availability of spares. All such elements have costs may be quoted explicitly or implicitly. A suitable warranty clause should indicate the period of warranty and service levels as well as penalties for delays in restoration of defects. Clauses for including essential initial spares for two years' maintenance to be supplied along with equipment may be provided. If necessary appropriate number of years' (say three to five or more years depending on the lifespan of the equipment) AMC may be included in the procurement detailing its conditions;

- iv) The cost of operations, maintenance and disposal of the equipment over its life cycle may far outweigh the initial procurement cost over the life cycle of the capital equipment. Hence value for money becomes an important consideration – which can be addressed in Public Procurement by way of appropriate Description, specification, Contract conditions like inclusion of cost of supply of initial essential spares and total present value (as per DCF technique) of Annual Maintenance Contracts (AMC) for specified number of years within the estimated cost and also the evaluation criteria of procurement contract;
- v) In case the Plant and Equipment consists of a number of machines which work in tandem or if it includes services/ works to be done by third party, an all encompassing Turnkey contract may be better alternative;
- vi) Because of complexity of specification evaluation of Technical suitability of offers in procurement of Capital Goods involves complex issues about acceptance of alternatives, deviations and compliance with various particulars of specification. Acceptance or otherwise of alternatives should be made explicit. A statement of deviation including detailed justification for the deviations from each clause of specification should be asked for from the bidder in the Bid documents. A schedule of Guaranteed Particulars of specification indicating the values of each parameter may be included in the Specification, where the bidder can quote the offered value of the Parameters. In complex cases Pre-bid conference may help in reducing disputes and complexity at the time of evaluation;
- vii) Past experience, Capacity and Financial strength of a supplier is an important determinant of quality, after sales support of the Capital Goods; such procurements are a fit case for Pre-Qualification bidding.

8.5 Turnkey Contract

In the context of procurement of goods, a turnkey contract may include the manufacture, supply, assembly, installation/ commissioning of equipment (or a group of plant and machines working in tandem – even though some of the machines may not be manufactured by the supplier himself) and some incidental works or services. Generally, in the tender enquiry documents for a turn key contract, the purchase organization specifies the performance and output required from the plant proposed to be set up and broadly outlines the various parameters it visualizes for the desired plant. The inputs and other facilities, which the purchase organization will provide to the contractor, are also indicated in the tender enquiry document. The contractor is to design the plant and quote accordingly. The responsibility of the contractor will include supplying the required goods, machinery, equipment etc. needed for the plant; assembling, installing and erecting the same at site as needed; commissioning the plant to meet the required output etc., as specified in the tender enquiry documents.

8.6 Annual Maintenance Contract (AMC)

- i) Some goods, especially sophisticated equipment and machinery need proper maintenance for trouble-free service. For this purpose, the purchase organisation may enter into a maintenance contract. It must, however, be kept in mind that maintenance contract is to start after the expiry of the warranty period, during which period the goods are to be maintained free of cost by the supplier.
- ii) The maintenance contract may be entered into either with the manufacturer/supplier of the goods or with a competent and eligible firm, not necessarily the manufacturer/supplier of the goods in question. The purchase organisation should decide this aspect on case to case basis on merit.
- iii) If the maintenance contract is to be entered into with the supplier of the goods, then suitable clauses for this purpose are to be incorporated in the tender enquiry document itself and while evaluating the offers, the cost component towards maintenance of the goods for specified number of years is also to be added in the evaluated tender value on overall basis to decide the inter se ranking of the responsive tenderers. Equipment with a lower quoted price may carry a higher maintenance liability. Therefore, the total cost on purchase and maintenance of the equipment over the period of the maintenance contract should be assessed to consider its suitability for purchase. While evaluating the tenderers for maintenance of goods covering a longer period (say, three to five or more years depending on the life-span of the equipment), the quoted prices pertaining to maintenance in future years are to be discounted (as per DCF technique) to the net present value as appropriate for comparing the tenders on an equitable basis and deciding the lowest evaluated responsive tender.
- iv) However, if the maintenance contract is to be entered into with a competent and eligible supplier separately, then a separate tender enquiry is to be floated for this purpose and tenders evaluated and ranked accordingly for placement of the maintenance contract. Here, the supplier of the goods may also quote and his quotation, if received, is to be considered along with other quotations received.
- v) The details of the services required for maintenance of the goods, the required period of maintenance and other relevant terms and conditions, including payment terms, are to be incorporated in the tender enquiry document. The terms of payment for the maintenance service will depend on the nature of the goods to be maintained as well as the nature of the services desired. Generally, payment for maintenance is made on a half-yearly or quarterly basis.
- vi) A Service Level Agreement (SLA) may be incorporated in complex and large maintenance contracts. SLA should indicate guaranteed levels of service parameters like - %age uptime to be ensured; Performance output levels to be ensured from the equipment; channel of registering service request; response time for resolving the request, Channel for escalation of service request in case of delay or unsatisfactory resolution of request, monitoring of Service Levels etc. This would include provision of help lines, complaint registration and escalation procedures, response time, percentage of uptime and availability of equipment, non-degradation in performance levels after maintenance, maintenance of an inventory of common spares, use of genuine spares, and so on. The maintenance contract may also include penalties

(liquidated Damages) for unacceptable delays in responses and degradation in performance output of machines, including provisions for terminations.

- vii) It should be indicated in the bid documents, whether the maintenance charges would be inclusive of visiting charges, price of spares (many times, consumables such as rubber gasket, bulbs, and so on, are not included, even though major parts may be included), price of consumables (fuel, lubricants, cartridges, and so on). If costs of spares are to be borne by the procuring entity, then a guaranteed price list should be asked for along with the bids. It should also be clarified, whether room/space, electricity, water connection, and so on, would be provided free of cost to the contractor. The bidding document should also lay down a service level agreement to ensure proper service during the maintenance period.
- viii) A suitable provision should be incorporated in the tender enquiry document and in the resultant maintenance contract indicating that the prices charged by the maintenance contractor should not exceed the prevailing rates charged by him from others for similar services. While claiming payment, the contractor is also to give a certificate to this effect in his bill.
- ix) If the goods to be maintained are sophisticated and costly, the tender enquiry document should also have a provision for obtaining performance security. The amount of performance security will depend on the nature of the goods, period of maintenance, and so on. It generally varies from two and a half to five per cent of the value of the equipment to be maintained.
- x) Sometimes, the maintenance contractor may have to take the goods or some components of the goods to his factory for repair, and so on. On such occasions, before handing over the goods or components, valuing more than Rupees One Lakh, a suitable bank guarantee is to be obtained from the firm to safeguard the purchaser's interest.
- xi) Sometimes, during the tenure of a maintenance contract, especially with a longer tenure, it may become necessary for the purchase organisation to withdraw the maintenance contract due to some unforeseen reasons. To take care of this, there should be a suitable provision in the tender document and in the resultant contract. Depending on the cost and nature of the goods to be maintained, a suitable notice period (say one to three months) for such cancellation to come into effect is to be provided in the documents. A model clause to this effect is provided below:

"The purchaser reserves its right to terminate the maintenance contract at any time after giving due notice without assigning any reason. The contractor will not be entitled to claim any compensation against such termination. However, while terminating the contract, if any payment is due to the contractor for maintenance services already performed in terms of the contract, these would be paid to it/him as per the contract terms".

(Rule 169 of GFR 2017)

Chapter 9: Contract Management

9.1 Contract Management

9.1.1 The Purpose of Contract Management

The purpose of contract management is to ensure that the contract delivers the desired outcomes as per the terms and conditions of the contract. It also ensures that the payments made to the contractor match the performance. Implementation of the contract should be strictly monitored and notices issued promptly whenever a breach of provisions occurs. Monitoring should ensure that contractor adhere to contract terms, performance expectations are achieved (such as timely deliveries, quality of goods supplied, adherence to proper procedure for submitting invoices, and so on) and any problems are identified and resolved in a timely manner. Without a sound monitoring process, there can be no assurance that *“we get what we pay and contract for and pay for only for what we get”*. Normally, the following issues are handled during this phase:

- i) Amendments to the contract;
- ii) Operation of the option clause;
- iii) Safeguards for handing over Procuring Entity materials/equipment to contractors;
- iv) Payments to the contractor and handling of securities;
- v) Monitoring of supplier performance;
- vi) Delays in performance of the contract;
- vii) Breach of contract, remedies and termination of contract;
- viii) Dispute resolution;
- ix) Contract closure upon completion;
- x) Goods receiving;
- xi) Quality assurance;
- xii) Accountal and payment of bills; and
- xiii) Storage and issue of inspected goods.

9.1.2 Costs of delay in Contract Management Decisions: Delays

Payments and decisions in contract management requested by the suppliers should be made within a reasonable time. An atmosphere of lackadaisical dilatory functioning in such matters is liable to lead to bidders quoting higher prices in future bids, besides delays in supplies and disputes in the contract.

9.2 Amendment to the Contract

Once a contract has been concluded, the terms and conditions thereof should not be varied. No amendment to the contract should be made that can lead to a vitiation of the original tender decision or bestow an undue advantage on the contractor. However, due to various reasons, changes and modifications are needed in the contract. Where it becomes necessary/ inescapable, any modification will be carried out with the prior approval of the CA with the Associated/ integrated Finance's concurrence.

Requests for such changes and modifications mostly emanate from the supplier. Any amendment to the contract may have, inter alia, financial/technical/legal implications. The

indenter may be consulted regarding the technical implications. Financial concurrence should be obtained before issuing any amendment that has financial implications/repercussions. Further, if considered necessary, legal opinion may also be sought.

An amendment can concern any of the clauses of the contract but, in supply contracts, amendments often relate to the following:

- i) Increase or decrease in the quantity required, exercise of quantity option clause;
- ii) Changes in schedule of deliveries and terms of delivery;
- iii) Changes in inspection arrangements;
- iv) Changes in terms of payments and statutory levies; and
- v) Change due to any other situation not anticipated.

Post contract variation carried out in the form of an amendment shall be published by the purchaser on the same e-procurement portals/Websites that were used for publication of the original tender enquiry. No change in the price quoted shall be permitted after the purchase order has been issued, except on account of price variation, ERV and statutory variations.

9.3 Operation of Option Clause

9.3.1 Option Clause

Under this clause, the purchaser retains the right to place orders for an additional quantity up to a specified percentage of the originally contracted quantity at the same rate and terms of the contract, during the currency of the contract. This clause and percentage should be part of the Bid Document and the contract and ideally should not exceed 25-30%. Approval should be taken from the CA (who originally approved the tender decision) to exercise the option clause based on the value of the contract with the increased quantity. In case the recalculated value of the contract goes beyond the delegation of powers of the original CA, approval of the CA for the enhanced value may be taken.

Normally, for raw materials/consumables of regular and year-on-year recurrent requirements, all tenders of value above Rs. 50 (Rupees fifty) lakh should invariably include this clause. However, the CA may approve the inclusion of such a clause in lower denomination tenders if such items have a history of frequent disruptions in continuity of supplies. The clause may be framed along following lines:

“The purchaser reserves the right to increase/decrease the ordered quantity by up to [25]per cent at any time, till final delivery date (or the extended delivery date of the contract), by giving reasonable notice even though the quantity ordered initially has been supplied in full before the last date of the delivery period (or the extended delivery period).”

9.3.2 Conditions Governing Operation of Option Clause

Additional demands should be available for coverage and over-provisioning may be avoided by keeping the officers concerned with provisioning/tender evaluation for the next cycle of procurement informed. The following points must be kept in mind while operating the option clause:

- i) In case of decrease in the ordered quantity, it would be fair to allow the firm to supply work-in-progress or goods already put up for inspection;
- ii) There should be no declining trend in the price of the stores as evidenced from the fact that no order has since been placed at lower rates and no tender has been

opened since the time offers have been received at lower rates – even if not finalised;

- iii) If the option clause exists, during provisioning of the next cycle and during tender evaluation in the next cycle of procurement, application of the option clause must be positively taken into account. The contract management authority must also keep a watch on delivery against contract, if other conditions are satisfied, the option clause must be exercised;
- iv) The option clause is normally exercised after receipt of 50 (fifty) per cent quantity but if the delivery period is going to expire and other conditions are fulfilled, it can be exercised even earlier;
- v) The option clause shall be exercised during the currency of the contract such that the contractor has reasonable time/notice for executing such an increase and can be exercised even if the original ordered quantity is completed before the original last date of delivery. If not already agreed upon, the delivery period shall be fixed for the additional quantity on the lines of the delivery period in the original order. This will satisfy the requirement of giving reasonable notice to the supplier to exercise the option clause;
- vi) The quantum of the option clause will be excluded from the value of tenders for the purpose of determining the level of CA in the original tender;
- vii) There should be no option clause in development orders;
- viii) This provision can also be exercised in case of PAC/single supplier OEM cases; and
- ix) However, where parallel contracts on multiple suppliers are available, care should be taken in exercising the option clause, so that the original tender decision of splitting quantities and differential pricing is not upset or vitiated. Other things being equal, the supplier with the lower rate should first be considered for the option quantity.

9.4 Safeguards for Handing over Procuring Entity Materials/Equipment to Contractors

For performance of certain contracts, Procuring Entity may have to loan stores, drawings, documents, equipment and assets (such as accommodation, identity cards and gate passes, and so on) to the contractor. In certain situations, the contractor may also be supplied electricity, water, cranes, and weighing facilities on payment/hire basis. As a measure of transparency, the possibility of provision of such resources by Procuring Entity should have been announced in the tender document or at least requested by the contractor in the tender and written in the contract. Whenever stores or prototypes or sub-assemblies are required to be issued to the firm/contractor for guidance in fabrication, these should be issued against an appropriate bank guarantee. In addition to the bank guarantee, appropriate insurance may be asked for if it is considered necessary. Before the final payment or release of PBG/SD, a certificate may be taken from the concerned Department that the contractor has returned all documents, drawings, protective gear, material, equipment, facilities and assets loaned, including all ID cards and gate passes, and so on, in good condition. Further, it should be certified that payment from the contractor has been received for usage of electricity, water, crane, accommodation, weighing facility, and so on. For low value items of less than Rs. 1,00,000 (Rupees One Lakh), or for sending spares for repairs to the OEMs, this stipulation of the bank guarantee may be waived and, if feasible, an indemnity bond may be taken.

9.5 Payments to the Contractor and Handling of Securities

9.5.1 It should be ensured that all payments due to the firm, including release of the performance security, are made on a priority basis without avoidable delay as per the tender/contract conditions. Before the payment is made, the invoice should be cross-checked with the actual receipt of material to ensure that the payment matches the actual performance.

9.5.2 Proper procedures for safe custody, monitoring and return of bank guarantees and other instruments may be followed. Chapter 6 has more details in this regard. Before making a final payment or before releasing the performance bank guarantee, a 'No Claim Certificate' (Annexure 21) may be insisted upon from the supplier to prevent future claims. Whenever a bank guarantee is released following due procedure and safeguards, acknowledgement thereof should also be taken from the contractor.

9.5.3 **Delay in payment to the contractors:** Public authorities may put in place a provision for payment of interest in case of delayed payment of bills by more than 30 working days after submission of bill by the contractor. Where interest is to be paid, the rate of interest should be the rate of interest of General Provident Fund.

In case of unwarranted discretionary delays in payments, as prescribed above, responsibility shall be fixed on the concerned officers. There should have a system to monitor delays in payments and to identify such unwarranted delays including an online system for monitoring of the bills submitted by contractors. Such system shall have the facility for contractors to track the status of their bills. It shall be mandatory for all contractors bills to be entered into the system with date of submission and date of payment.

9.6 Monitoring of Supplier Performance

As soon as the order is issued, entry shall be made in the progress of supply order register (Annexure 17) recording therein the name of the supplier, items, rate, quantity, amount, delivery schedule, and so on. Monitoring should ensure that suppliers adhere to contract terms, performance expectations are achieved (such as timely deliveries, quality of goods supplied, and adherence to proper procedure for submitting invoices, and so on) and any problems are identified and resolved in a timely manner. Without a sound monitoring process, there can be no assurance that the buyer has received what was contracted. A sound system for monitoring the performance of the suppliers in a contract would also be useful in selecting a good supplier in future procurement of the same or similar materials. Purchase order-wise data will be maintained in this register regarding execution by and performance of the supplier. The register shall form the basis for the Management Information System report on unexecuted purchase orders beyond scheduled deliveries, reports on performance of suppliers, and so on.

9.7 Delays in Performance of Contract

9.7.1 Delivery Period

The period for delivery of the ordered goods and completion of any allied service(s) thereof (such as installation and commissioning of the equipment, operators' training, and so on) are to be properly specified in the contract with definite dates and these shall be deemed to be the essence of the contract. The delivery period stipulated in contracts should be specific and practical. Vague and ambiguous terms such as 1,000/5,000 (one to five thousand) numbers per month, 2to 16 (two to sixteen) weeks from the date of receipt of order,

'immediate', 'ex-stock', 'as early as possible', 'off the shelf', 'approximately' and the like should be scrupulously avoided as these will not be legally binding.

In case of items such as raw material which is delivered throughout the year, a delivery schedule of the monthly rate of supply should be specified. It is usual in such cases that there is a slight deviation from such monthly rate of supply. It should be clarified in such cases that the variation in the periodic rate of supply beyond +/- 10 (ten) per cent in any calendar month; or +/- seven per cent cumulative in any calendar quarter; or +/- five per cent cumulative in any calendar year would be considered as delay in delivery attracting imposition of LD.

Unless otherwise agreed, the buyer of goods is not bound to accept the delivery thereof in instalments.

9.7.2 Terms of Delivery

Terms of delivery (FOR, FOB, CIF, and CFR, and so on), inter alia, determine the delivery point of the ordered goods from where the purchaser is to receive/collect the goods. It also decides the legally important issue of when the 'titles of the goods' have passed to the purchaser. The delivery period is to be read in conjunction with the terms of delivery, therefore the delivery is taken to have been made at the time when goods reach the delivery point as per the delivery terms. Chapter 6 has more details in this regard.

9.7.3 Severable and Entire Delivery Contracts

Such contracts, where instalments are not specified or not intended, are known as entire contracts. In such cases, even non-delivery of a part quantity can lead to a breach of contract. However, a variation of five per cent of the contract quantity is usually exempted in the contract conditions. In the case of an entire contract, even if providing a delivery schedule, it is not necessary to grant an extension in the delivery period in the case of delay in intermediate instalments. Such extension would be necessary only in case of a delay beyond the final date for the completion of the delivery.

Contracts with clearly laid out instalment deliveries mentioning the exact dates and where each instalment is paid for separately are known as severable contracts. In effect, each of such instalments is a separate independent contract by itself. In severable contracts, delay or breach of one instalment does not affect other instalments, since each instalment is considered as a separate contract. In the case of severable contracts, extension in the delivery period is necessary for each instalment separately.

The legal position, however, is not very straightforward, since the mere mention of monthly/quarterly rate of delivery, called delivery schedule, is not sufficient to make it a severable contract. However, instalments specifying exact dates, that is, 310 (three hundred and ten) numbers by June 20, 2016 would be amounting to a severable contract.

The delivery cannot be re-fixed to make a contract a 'severable' contract without the specific agreement of the supplier, if the delivery originally stipulated in the contract was in the form of an 'entire' contract.

9.7.4 Extension of Delivery

Suppliers shall be required to adhere to the delivery schedule specified in the purchase order and, if there is delay in supplies, LD shall be levied wherever there is failure by the

party. Extension of the delivery date amounts to amendment of the contract. Such an extension can be only done with the consent of both parties (that is, the purchaser and supplier). No extension of the delivery date is to be granted suo motu unless the supplier specifically asks for it. However, in a few cases, it may be necessary to grant an extension of the delivery period suo motu in the interest of the administration. In such cases, it is legally necessary to obtain clear acceptance of the extension letter from the supplier.

No correspondence should be entered into with the supplier after expiry of the contract delivery period or towards the end of it, which has the legal effect of condoning the delay/breach of contract. When it is necessary to obtain certain information regarding past supplies, it should be made clear that calling for such information is not intended to keep the contract alive and that it does not waive the breach and that it is without prejudice to the rights and remedies available to the purchaser under the terms of the contract. The last line of such a communication should therefore be: *“This letter is issued without any prejudice to Procuring Entity’s rights and remedies under the terms and conditions of the subject contract and without any commitment or obligation.”*

If at any time during the currency of the contract, the supplier encounters conditions hindering timely delivery of goods, he shall promptly inform the concerned officer in writing. He should mention its likely duration and make a request for extension of the schedule accordingly. On receiving the supplier’s communication, the procuring entity shall examine the proposal (refer to Annexure 18) and, on approval from the CA, may agree to extend the delivery schedule, with or without LD and with or without the denial clause (as defined in Para 9.7.8 below), for completion of the contractor’s contractual obligations, provided:

- i) That a higher rate in the original tender was not accepted against other lower quotations in consideration of the earlier delivery; and
- ii) That there is no falling trend in prices for this item as evidenced from the fact that, in the intervening period, neither orders have been placed at rates lower than this contract nor any tender been opened where such rates have been received even though the tender is not yet decided. In cases of certain raw material supplies, where prices are linked to the PVC, extension may be granted even in case of a falling trend in price indices, since the purchaser’s interests are protected by the price variation mechanism. However, in such cases it should be ensured that extensions are done with the denial clause.

When it is decided to extend the delivery period subject to recovery of LD for delay in supplies, contractors must be given a warning to this effect in writing at the time of granting extensions. It is not correct to grant extensions without any mention of the LD if it is proposed to recover such charges eventually. It is also not correct to grant an extension of the delivery period by merely stating that the extension is granted “without prejudice to the rights of the purchaser under the terms and conditions of the contract” as this would mean that all the options given in the conditions of the contract would be available to the purchaser on expiry of the extended delivery period and would not amount to exercise of the option to recover LD. To take care of complex legalities brought out above, extension of the delivery period when granted should only be done in writing in the laid down format given in Annexure 19.

Organisations may put in place a graded authority structure whereby extension of time for completion of contract, beyond a specified threshold value of contract, may be granted by the next higher authority.

9.7.5 Delay in Supplies for which Supplier is not Responsible

Normally, in the following circumstances, the contractual delivery period needs to be re-fixed to take care of the lost period, without imposing any penalty to the supplier:

- i) Cases where the manufacture of stores is dependent on the approval of the advance sample and delay occurs in approving the sample though submitted by the supplier in time;
- ii) Where extension in the delivery period is granted on account of some omission on the part of the purchaser which affects the due performance of the contract by the supplier; and
- iii) Cases where the purchaser controls the entire production.

9.7.6 Performance Notice

A situation may arise where the supply/services has not been completed within the stipulated period due to negligence/fault of the supplier; however, the supplier has not made any request for extension of the delivery period but the contracted goods/services are still required by the purchaser and the purchaser does not want to cancel the contract at that stage. In such a case, a performance notice (also known as notice-cum-extension letter) may be issued to the supplier by suitably extending the delivery date and by imposing LD with denial clauses, and so on, along identical lines as in para 9.7.4 above. The supplier's acceptance of the performance notice and further action thereof should also be processed in the same manner as mentioned above. The text of the performance notice will be on similar lines to the Annexure 19.

9.7.7 Force Majeure Clause

A Force Majeure (FM) means extraordinary events or circumstance beyond human control such as an event described as an act of God (like a natural calamity) or events such as a war, strike, riots, crimes (but not including negligence or wrong-doing, predictable/seasonal rain and any other events specifically excluded in the clause). An FM clause in the contract frees both parties from contractual liability or obligation when prevented by such events from fulfilling their obligations under the contract. An FM clause does not excuse a party's non-performance entirely, but only suspends it for the duration of the FM. The firm has to give notice of FM as soon as it occurs and it cannot be claimed ex-post facto. There may be a FM situation affecting the purchase organisation only. In such a situation, the purchase organisation is to communicate with the supplier along similar lines as above for further necessary action. If the performance in whole or in part or any obligation under this contract is prevented or delayed by any reason of FM for a period exceeding 90 (ninety) days, either party may at its option terminate the contract without any financial repercussion on either side.

Notwithstanding the punitive provisions contained in the contract for delay or breach of contract, the supplier would not be liable for imposition of any such sanction so long as the delay and/or failure of the supplier in fulfilling its obligations under the contract is the result of an event covered in the FM clause.

9.7.8 Denial Clause

Since delay in delivery is a default by the seller, the buyer should protect himself against extra expenditure during the extended period by stipulating a denial clause (over and above levy of LD) in the letter informing the supplier of extension of the delivery period. In the

denial clause, any increase in statutory duties and/or upward rise in prices due to the PVC clause and/or any adverse fluctuation in foreign exchange are to be borne by the seller during the extended delivery period, while the purchaser reserves his right to get any benefit of a downward revisions in statutory duties, PVC and foreign exchange rate. Thus, PVC, other variations and foreign exchange clauses operate only during the original delivery period. The format of the denial clause is available in Annexure 19.

9.7.9 Liquidated Damages

Compensation of loss on account of late delivery (actually incurred as well as notional) where loss is pre-estimated and mutually agreed to is termed as LD. Law allows recovery of pre-estimated loss provided such a term is included in the contract and there is no need to establish actual loss due to late supply [MallaBaux Vs. UOI (1970)].

9.7.10 Quantum of LD

While granting extension of the delivery period, where the delivery of stores or any instalment thereof is accepted after expiry of the original delivery period, the CA may recover from the contractor, as agreed, the LD a sum equivalent to 0.5 (half) per cent of the prices of any portion of stores delivered late, for each week or part thereof of delay. The total damages shall not exceed 10 (ten) per cent of the value of delayed goods. The LD cannot exceed the amount stipulated in the contract [NC Sanyal Vs. Calcutta Stock Exchange (1971)].

In contracts governed by any type of variation (PVC, ERV or statutory variations), LDs (if a percentage of the price) will be applicable on the price as varied by the operation of the PVC. LDs accrue only in case of delayed supplies. Where or in so far as no supplies have been made under a contract, upon cancellation, recovery of only the loss occasioned thereby can be made, notwithstanding the fact that prior to the cancellation one or more extensions of the delivery period with reservation of the right to LD are granted.

Government establishments/Departments, as distinct from PSUs, that execute contract work should not be dealt with as ordinary contractors and not generally be penalised for late delivery and claims for loss on risk-purchase should not be enforced against them. Serious cases of defaults should, however, be brought to the notice of the HOD or the Government Department concerned.

Relaxations allowed to Government establishments/Departments, as above, will not apply to PSUs as a matter of course. Each case should be decided on merits and the decision to waive the recovery of LDs or risk purchase expenditure should be taken on merit.

In the case of development/indigenisation contracts, LDs are not levied. However, the nature of such contracts should be declared at the time of placing them.

In case of entire (non-severable) contracts, even where staggered deliveries have been indicated, it may happen that supplies are not received according to the delivery schedule. In such cases, keeping in mind the fact that the deliveries indicated under the contract are non-severable, no question of LDs or enforcement of risk purchase would arise so long as there has been no delay in the completion of supplies with reference to the total delivery period.

9.7.11 Waiver of LD

There should normally be no system of waiver of LDs for delayed supplies in supply contracts and it may be strictly be an exception rather than a rule. For an extension of the

delivery date with waiver of LD, approval of the CA with consultation of associated Finance may be taken and justifications recorded.

9.7.12 Handling Deliveries after the Expiry of Delivery Period

As per law, if stores are accepted after expiry of the delivery date of a particular instalment without extension in delivery period having been given, duly reserving our rights to levy LD, it amounts to voluntary abrogation of our legal rights under the contract to claim LDs or other remedies.

If the contractor makes supplies locally after the expiry of delivery period, the supplies may be provisionally retained under a franking clause reserving rights and the contractor may be asked to obtain an extension of the delivery period from an authorised officer with or without any LD/denial clause.

“Please note that materials have been supplied after the expiry of contracted delivery date and its provisional retention does not acquiesce or condone the late delivery and does not intend or amount to an extension of the delivery period or keeping the contract alive. You may apply for an extension of delivery date from the procuring entity. The goods are being retained without prejudice to the rights of the Government of India under the terms and conditions of the contract.”

As regards supplies coming from outside contractors, if the contractor dispatches the stores after expiry of the delivery period, the consignee should, after the receipt of the railway receipt or lorry receipt or goods consignment note or airway bill, send an intimation to the contractor stating that the action taken by him in dispatching the goods after expiry of delivery date is at his own risk and responsibility, and that the consignee is not liable for any demurrage, wharfage and deterioration of goods at the destination station and, in his own interest, the contractor should get an extension of the delivery period from the purchasers. A copy of the communication sent to the contractor should also be sent to the purchaser.

In case of imports, the contractor must not dispatch the consignment after expiry of the delivery period without taking prior extension of the delivery period. In any case, the terms of LC should be such that if there are dispatches beyond the delivery period, payment should be denied without levy of full LD and without formal extension of the delivery period by the purchaser.

9.8 Breach of Contract, Remedies and Termination

In case the contractor is unable to honour important stipulations of the contract, or gives notice of his intention of not honouring or his inability to honour such a stipulation, a breach of contract is said to have occurred. Mostly, such breaches occur in relation to the performance of the contract in terms of inability to supply the required quantity or quality. It could also be due to breach of ethical standards or any other stipulation that affects Procuring Entity seriously.

The purchaser or its authorised representative is not to enter into correspondence after expiry of the delivery date stipulated in the contract because such a correspondence will keep the contract alive and would amount to abrogation of the purchaser's right and remedies for delays by the contractor. This situation will not allow the purchaser to cancel the contract straight away without first serving a performance notice to the supplier. However, even after expiry of the delivery period of the contract, the purchaser may obtain

information regarding past supplies, and so on, from the supplier, simultaneously making it clear to the supplier that calling of such information is not intended to keep the contract valid and it does not amount to waiving the breach and that it is without prejudice to the rights and remedies available to the purchaser under the terms of the contract. A model communication which may be issued by the purchaser to ascertain the supply position after expiry of the delivery period is given at Annexure 20. As soon as a breach of contract is noticed, a show cause notice should be issued to the contractor reserving the right to implement contractual remedies. If there is an unsatisfactory resolution, remedial action may be taken immediately. The CA may terminate a contract in the following cases.

9.8.1 Cancellation of Contract for Default

Without prejudice to any other remedy for breach of contract, such as removal from the list of registered supplier, by written notice of default sent to the supplier, the contract may be terminated in whole or in part:

- i) If the supplier fails to deliver any or all of the stores within the time period(s) specified in the contract, or any extension thereof granted; and
- ii) If the supplier fails to perform any other obligation under the contract within the period specified in the contract or any extension thereof granted;
- iii) If the contract is terminated in whole or in part, recourse may be taken to any one or more of the following actions:
 - a) Forfeiture of the performance security;
 - b) Upon such terms and in such manner as it deems appropriate, goods similar to those undelivered may be procured and the supplier shall be liable for all available actions against him in terms of the contract (popularly called risk purchase); and
 - c) However, the supplier shall continue to fulfil the contract to the extent not terminated.

Before cancelling the contract and taking further action, it may be desirable to obtain legal advice.

9.8.2 Termination of Contract for Insolvency

If the supplier becomes bankrupt or becomes otherwise insolvent or undergoes liquidation or loses substantially the technical or financial capability (based on which he was selected for award of contract), at any time, the contract may be terminated, by giving a written notice to the supplier, without compensation to the supplier, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to Procuring Entity.

9.8.3 Termination of Contract for Convenience

After placement of the contract, there may be an unforeseen situation compelling Procuring Entity to cancel the contract. In such a case, a suitable notice has to be sent to the supplier for cancellation of the contract, in whole or in part, for its (Procuring Entity's) convenience, inter alia, indicating the date with effect from which the termination will become effective. This is not Procuring Entity's legal right— the contractor has to be persuaded to acquiesce. Depending on the merits of the case, the supplier may have to be suitably compensated on mutually agreed terms for terminating the contract. Suitable provisions to this effect should be incorporated in the tender document as well as in the resultant contract.

9.9 Dispute Resolution

Normally, there should not be any scope for dispute between the purchaser and supplier after entering into a mutually agreed valid contract. However, due to various unforeseen reasons, problems may arise during the progress of the contract leading to a disagreement between the purchaser and supplier. Therefore, the conditions governing the contract should contain suitable provisions for settlement of such disputes or differences binding on both parties. The mode of settlement of such disputes/differences should be through arbitration. However, when a dispute/difference arises, both the purchaser and supplier should first try to resolve it amicably by mutual discussion, mediation, and conciliation⁷⁹. If the parties fail to resolve the dispute within 21 (twenty-one) days, then, depending on the position of the case, either the purchaser or supplier should give notice to the other party of its intention to commence arbitration. When the contract is with a domestic supplier, the applicable arbitration procedure shall be as per the Indian Arbitration and Conciliation Act, 1996 [Amended 2015⁸⁰ and 2021⁸¹]. While processing a case for dispute resolution/litigation/arbitration, the procuring entity is to take legal advice, at appropriate stages.

9.9.1 Arbitration Clause

If an amicable settlement is not forthcoming, recourse may be taken to the settlement of disputes through arbitration as per the Arbitration and Conciliation Act 1996. For this purpose, when the contract is with a domestic supplier, a standard arbitration clause may be included in the SBD indicating the arbitration procedure to be followed. The venue of arbitration should be the place from where the contract has been issued.

Arbitration and dispute resolution

- i) During operation of the contracts, issues and disputes arising due to lack of clarity in the contract become the root cause of litigation. Litigation has adverse implications on the timelines and overall cost of the project. Before resorting to arbitration/litigation, the parties may opt for mutual discussion, mediation, and Conciliation for the resolution of disputes.
- ii) Arbitration /court awards should be critically reviewed. In cases where there is a decision against government / public sector enterprise (PSE), the decision to appeal should not be taken in a routine manner, but only when the case genuinely merits going for the appeal and there are high chances of winning in the court/ higher court. There is a perception that such appeals etc. are sometimes resorted to postpone the problem and defer personal accountability. Casual appealing in arbitration / court cases has resulted in payment of heavy damages / compensation / additional interest cost, thereby causing more harm to the exchequer, in addition to tarnishing the image of the Government.
- iii) The Organisation should monitor the success rate of appealing against arbitration awards. There should be a clear delegation to empower officials to accept arbitration / court orders. A special board / committee may be set up to review the case before an appeal is filed against an order. Arbitration /court awards should not be routinely

⁷⁹As notified under para 16 of OM No.F.1/1/2021-PPD issued by Department of Expenditure dated 29.10.2021

⁸⁰ <https://lawmin.gov.in/sites/default/files/ArbitrationandConciliation.pdf>

⁸¹ <https://egazette.nic.in/WriteReadData/2021/225832.pdf>

appealed without due application of mind on all facts and circumstances including realistic probability of success. The board / committee or other authority deciding on the matter shall clarify that it has considered both legal merits and the practical chances of success and after considering the cost of, and rising through, litigation / appeal / further litigation as the case may be, it is satisfied that such litigation / appeal / further litigation cost is likely to be financially beneficial compared to accepting the arbitration / court award.

- iv) Statistics have shown that in cases where the arbitration award is challenged, a large majority of cases are decided in favour of the contractor. In such cases, the amount becomes payable with the interest, at a rate which is often far higher than the government's cost of funds. This results in huge financial losses to the government. Hence, in aggregate, it is in public interest to take the risk of paying a substantial part of the award amount subject to the result of the litigation, even if in some rare cases of insolvency etc. recovery of the amount in case of success may become difficult. Instructions have been issued in this matter in the past, but have not been fully complied with.
- v) The only circumstances in which such payment need not be made is where the contractor declines, or is unable, to provide the requisite bank guarantee and/or fails to open an escrow account as required. Persons responsible for not adhering to are liable to be held personally accountable for the additional interest arising, in the event of the final court order going against the procuring entity⁸².

9.9.2 Foreign Arbitration

The Arbitration and Conciliation Act 1996 has provisions for international commercial arbitration, which shall be applicable if one of the parties has its central management and control in any foreign country.

When the contract is with a foreign supplier, the supplier has the option to choose either the Indian Arbitration and Conciliation Act, 1996 or arbitration in accordance with the provisions of the United Nations Commission on International Trade Law (UNCITRAL) arbitration rules.

The arbitration clause with foreign firms should be in the form of self-contained agreements. This is true especially for large value contracts or those for costly plant and machinery. The venue of arbitration should be in accordance with UNCITRAL or arbitration rules of India, whereby it may be in India or in any neutral country.

9.9.3 Arbitration Awards

- i) In cases where the Ministry/ Department has challenged an arbitral award and, as a result, the amount of the arbitral award has not been paid, 75% of the arbitral award (which may include interest up to date of the award) shall be paid by the Ministry/ Department to the contractor/ concessionaire against a Bank Guarantee (BG). The BG shall only be for the said 75% of the arbitral award as above and not for the interest which may become payable to the Ministry/ Department should the subsequent court order require refund of the said amount.
- ii) The payment may be made into a designated Escrow Account with the stipulation that

⁸² As notified under para 16.1 to 16.5 of OM No.F.1/1/2021-PPD issued by Department of Expenditure dated 29.10.2021

the proceeds will be used first, for payment of lenders' dues, second, for completion of the project and then for completion of other projects of the same Ministry/ Department as mutually agreed/ decided. Any balance remaining in the escrow account subsequent to settlement of lenders' dues and completion of projects of the Ministry/ Department may be allowed to be used by the contractor/ concessionaire with the prior approval of the lead banker and the Ministry/ Department. If otherwise eligible and subject to contractual provisions, retention money and other amounts withheld may also be released against BG.]⁸³

9.10 Closure of Contract

While making the final payment to the contractor and before releasing the PBG, it should be ensured that there is nothing outstanding from the contractor, because it would be difficult to retrieve such amounts after releasing the bank guarantee/final payment. Before the bank guarantee is released a "no claim certificate" may be taken from the contractor as per the format given in Annexure 21. At least in large contracts [above Rs. 25(Rupees twenty-five)lakh], it should be ensured that before the release of the bank guarantee (final payment, if there is no bank guarantee), the following reconciliations should be done across Departments involved in the execution of the contract:

9.10.1 Materials Reconciliation

The stores and/or the indenter should confirm that all materials ordered in the contract and paid for have been received in good condition and there is no shortfall. Full reconciliation of all raw material, part, assembly provided to the contractor should be done including wastages and return of scrap/off-cuts.

9.10.2 Reconciliation with the User Department

Besides material reconciliation, the user Department should certify in writing that the following activities (wherever applicable) have been completed by the contractor, to the Department's satisfaction, as per the contract:

- i) Achievement of performance standards of material/equipment supplied;
- ii) Installation and commissioning;
- iii) Support service during the warranty period which has ended on _____;
- iv) Training of operators/maintenance staff;
- v) Return of all ID cards, gate passes, documents, drawings, protective gear, material, equipment, facilities and assets loaned to contractor; and
- vi) Support during annual maintenance contract (if it was part of the contract) which has ended on _____.

9.10.3 Payment Reconciliation

The indenting/materials management Departments may reconcile payments made to the contractor to ensure that there is no liability outstanding against the contractor on account of:

- i) LD;
 - ii) Price reduction enforced on account of shortfall in performance of material/equipment;
-

⁸³New rule 227A of GFR, 2017 notified vide OM No. F./1/9/2021-PPD issued by Department of Expenditure dated 29.10.2021.

- iii) Variations/deviations from the scope of the contract;
- iv) Overpayments/duplicate payments, if any;
- v) Services availed from Procuring Entity and vacation thereof such as accommodation, electricity, water, security, transport, cranes and other machinery, and so on,
- vi) Demurrage, insurance premiums or claims, customs duties, and so on;
- vii) Material reconciliation;
- viii) Price and exchange rate variations;
- ix) Statutory duties paid on behalf of the contractor by Procuring Entity; and
- x) Inspection charges or loss of material in testing.

On satisfactory reconciliation and against a “no claim certificate” from the contractor, the bank guarantee may be released and its acknowledgement taken from the contractor.

On completion of all activities against a contract, the purchase file should be preserved for a period of five years in the record room and then destroyed after expiry of the applicable mandatory retention period with the approval of the CA. However, Procuring Entity, at its discretion, may retain important records for future reference.

9.11 Goods Receiving

9.11.1 Transportation of Goods

Where critical equipment of high value is involved, suitable special instructions shall be conveyed to the supplier about the mode of transport, loading, avoidance of transshipment and, if necessary, provision of escorts. In case of chemicals, powdery materials, liquid materials, and so on, parties may be advised on proper packaging to avoid spillage en route, so as to avoid pollution problems and also to conform to the ISO 14001 standard. In case transport is arranged by Procuring Entity, suitable instructions may be incorporated in the transportation contract accordingly.

Wherever the items make a full truck load, the suppliers should be advised to dispatch such items in a full truck direct to the consignee on a door delivery basis to the site. In such cases, Procuring Entity shall advise the supplier to send a consignee copy of the lorry receipt to the consignee along with the consignment and the consignment shall be booked to Procuring Entity and not “self”. The supplier shall be specifically asked to dispatch the consignments to the designated consignee. All dispatch documents, that is, railway/lorry receipt, goods consignment note, airway bill, invoices, packing list, freight memos, test certificate, and so on, shall be sent to the Associated/ integrated Finance which will arrange to make the payment. If the payment is to be made through the bank, all original documents are to be sent through the designated bank.

9.11.2 Distribution of Dispatch Documents for Clearance/Receipt of Goods

The supplier shall send all the relevant dispatch documents well in time to the purchaser to enable the purchaser to clear or receive (as the case may be) the goods in terms of the contract. Necessary instructions for this purpose are to be incorporated in the contract. Within 24 (twenty-four) hours of dispatch, the supplier shall notify the purchaser or consignee (others concerned), the complete details of dispatch and also supply the following documents by registered post/ speed post/air mail/courier (or as instructed in the contract).

The supplier should submit five copies of his invoice. The invoices must be pre-stamped and shall indicate the details of the lorry receipt or railway receipt number, as the case may be, and also the details of the packing list and items dispatched. The invoice must also indicate the purchase order number and date, unit rate and net total price; the packing list shall

include the total weight of the consignment and items dispatched. All documents are to be duly signed by the supplier's representative. Bank charges towards processing of the bills for payment shall be as per terms and conditions of the purchase order.

9.11.3 Receipt of Consignment

At the time of the delivery at the stores, the storekeeper should receive the goods on a "subject to inspection" basis and should issue the preliminary receipt after a preliminary inspection as an acknowledgement of having received the claimed quantity (not the quality) of consignment.

i) Preliminary Inspection on Receipt

On opening the packages (if applicable), the storekeeper should initiate preliminary inspection of the goods received. This should include checks for any obvious damage in transit and other physical or visual checks specific to the functional characteristics of the product. The quantity of the goods received should also be verified at this stage against the purchase order and the supplier's invoice. When goods are supplied in boxes, bundles or coils as in the case of tools, rope, canvas, barbed wire, and so on, each of which is required to contain a specified quantity, a reasonable number of such packages should be opened up and checked for quantity per package. The quantity received should also be mentioned in the preliminary receipt to be given to the supplier. Any discrepancies in packages or quantity should be mentioned therein.

ii) Detailed Inspection on Receipt

Before accepting the ordered goods, the storekeeper must ensure that the goods have been manufactured as per the required specifications and are capable of performing the functions as specified in the contract. To achieve this, the tender document and the subsequent contract should include references to standards or specifications that specify the details of inspection and tests to be carried out and stages and manner of carrying out these tests.

The required inspections and tests should be carried out by technically qualified and competent personnel. If the procurement agency does not have such qualified personnel, it may engage competent professionals from other Departments or even outside agencies.

9.12 Quality Assurance and Inspection

In the context of procurement of goods, the Quality Assurance (QA) process is needed to provide adequate confidence that a procured product will satisfy the laid down standards of quality and serve the purpose for which it is being procured. QA consists of three components:

- i) Defining quality standards;
- ii) Planning assurance of quality; and
- iii) Measurement of quality.

The description and TS define the quality standards expected from the product.

Planning for QA is done by way of specifying the qualifications criteria for the suppliers to ensure that they do have the technical, infrastructure and financial capabilities to meet the required quality standards. Specifications also lay down quality control requirements to indicate parameters, target values, tolerances and method of measurement of various

parameters that constitute the standards of quality. This also involves laying down the type of inspection, agency for inspection.

Measurement of quality is done through a scheme of inspections at the contract management stage and laying down the actual process of inspection.

9.12.1 Inspections – Measuring Quality Standards

The stages and modes of inspection may vary depending on the nature of the goods, total value of the contract, location of the supplier, location of the user, and so on. Depending on the nature of goods being procured, usually, the following types of inspection may be adopted:

9.12.2 Types of Inspection

i) Pre-dispatch Inspection

A pre-dispatch inspection may be conducted either during various stages of the production process (which is known as stage inspection) or on production of the finished products, but before dispatch of the goods from the supplier's premises. Stage inspection may be used for highly technical goods whose quality of the manufacturing process is likely to have considerable effect on the final quality and durability of the goods. Even after pre-dispatch inspections, these materials should be inspected again on receipt, as a matter of abundant precaution.

Inspection of the materials before dispatch shall be carried out by the inspection agency nominated in the contract or by its representative at the premises of the supplier in accordance with the inspection procedure laid down and incorporated in the purchase order.

The testing charges for samples should be borne by the supplier and this should be made clear at the enquiry stage itself to avoid claims at a later date/or effect on his position in comparative statement of offers. Any special testing involving financial implications shall be settled prior to placement of the order and such cost should form part of the evaluation.

In case of offshore supplies, the inspection clause shall be incorporated in the purchase order wherever required:

- a) Procuring Entity may depute its representative or a third party inspection agency to the supplier's manufacturing premises to carry out/witness inspection and testing, performance testing at its discretion;
- b) Alternatively, Procuring Entity shall retain an option to waive the above and accept the material based on the supplier's internal test report, guarantee and fitment certificate. In this regard, the written approval of the HOD of the Indenting Department should be obtained recording the reasons for it; and
- c) Whenever the inspection is carried out at the supplier's manufacturing premises, an inspection on receipt of goods at Procuring Entity shall also be carried out by an officer of the Indenting Department or a third party inspection agency, as the case may be, on receipt of the goods.
- d) It has been brought to the notice of Department of Expenditure that in the contracts signed with suppliers by some of the Ministries/ Departments have clauses of pre-inspection at the firm's premises, where there is a provision

that the suppliers or the vendors will pay for the travel, stay, hospitality and other expenses of the Inspecting officials. This is not in keeping with need to safeguard the independence of the inspecting teams. Such provisions in contracts need to be discouraged, so that Inspections are not compromised. Necessary steps may be taken to strictly avoid such provisions in the contracts with suppliers/ vendors⁸⁴.

ii) **Inspection of Goods on Receipt at Consignee/User's Site**

Post-delivery inspection is carried out on receipt of goods before accepting them. This should be typically done for goods that are available off-the-shelf and are BIS marked. All final goods that may be directly consumed or utilised on delivery (excluding machinery installations, and so on) and for which detailed inspection of the manufacturing process is not required and only a physical inspection regarding their physical characteristics is required, may be inspected using this method. On receipt of goods at stores, the storekeeper should immediately notify the officer nominated for inspection, requesting to schedule an inspection. The inspecting officer should then fix a date for inspection.

The consignee has the right to reject the goods on receipt during the final inspection on delivery even though the goods have already been inspected and cleared at the pre-dispatch stage by Procuring Entity's inspector. However, such rejection should be strictly within the contractual terms and conditions and no new condition should be adopted while rejecting the goods during final inspection.

Goods accepted by the purchaser at the initial and final inspections, in terms of the contract, shall in no way dilute the purchaser's right to reject them later, if found deficient in terms of the warranty clause of the contract.

In case of rejection of goods at this stage, the material rejection advice/rejection memo should be issued. In case of pre-inspected goods, a joint inspection of the rejected lot of goods should be held with the pre-inspecting agency and firm. In case of failure of the firm to associate with a joint inspection, it should be held with the pre-inspecting agency.

In case of rejection of the pre-inspected supply of goods at the consignee end, the material rejection advice/rejection memo should be sent to all concerned, which is, the firm, purchaser, pre-inspecting agency, paying authority, associate bill paying authority, and so on, without fail. The concerned paying authority as per the contract and associate bill paying authority should note the rejection advice details in its recovery register for effecting recovery of payments made, as the case may be. In case of replacement supply against the rejected lot of goods, the process should remain exactly the same in terms of sequence of pre-inspection/inspection as laid down in the contract, prior to acceptance by the consignee. In case of acceptance of the replacement supply/rejected supply after rectification, the earlier issued material rejection advice/ rejection memo should be withdrawn under advice to all concerned.

iii) **Manufacturer's Quality Self-certification**

⁸⁴ Notified vide OM No.F.11/13/2017-PPD issued by Department of Expenditure dated 24.10.2017

Reputed manufacturers could be relied upon with respect to certain goods for quality products. These may not be subjected to physical inspection and the materials may be accepted under the firm's quality self-certification. The physical inspection clause stipulating the inspection authority and inspecting officer in such cases should not be included in the contracts entered into. Waiver of pre-dispatch inspection and acceptance of materials under the firm's quality self-certification may be considered where:

- a) The user Departments indicate, in their indent, that physical inspection is not necessary and that the materials can be accepted on the firm's quality self-certification;
 - b) The user Department requests for a waiver of inspection to meet urgent requirement and where the firm is agreeable to 100 (hundred) per cent payment against the consignee's receipt and acceptance. In such cases, the user Departments themselves should be responsible for ensuring the quality of goods supplied;
 - c) In case of goods to be imported from abroad, pre-dispatch inspection of goods at the supplier's premises involves considerable expenditure to the purchaser. In such a situation, the purchaser may substitute pre-dispatch inspection by its own inspector with manufacturer's in-house inspection report and warranty. However, before adopting this procedure, the nature and cost of the goods ordered, the reputation of the supplier, and so on, should also be kept in view and appropriate decision taken. For checking the reputation and background of the supplier, the purchase organisation may also request the Indian embassy located in that country for a report on the technical and financial competence of the firm. Further, trustworthy publications such as Thomas Register, Dun and Brad Street Register, and so on, are also available in the USA and Europe which provide authentic technical and financial data and details of the manufacturing companies located in those countries. Such publications may also be relied upon for this purpose; and
 - d) However, the right of waiver of inspection may be reserved only for specific requirements. Justification for the waiver should be recorded. Also, a suitable clause may be incorporated in the conditions of contract.
- iv) **Inspection on Installation and Commissioning**
- This method is adopted to check the performance and output of equipment or machinery after it is commissioned and operational at site.

9.12.3 Types of Inspection Agencies

Normally, inspection modalities or agencies for inspections specified in the contract should not be changed. In rare cases, when this becomes inescapable, it should be done with the approval of the CA, justifying the rare circumstances, ensuring that no undue benefit accrues to the contractor.

i) **Internal Inspection Authorities**

Wherever there is technical expertise available in-house, an internal officer of the Indenting Department is nominated for inspection. The consignee should be the final authority for acceptance of goods.

ii) **External Inspecting Authorities**

In case Procuring Entity does not have technical expertise or for other relevant reasons, inspection may also be entrusted to a third-party inspection authority. The procuring entity, however, retains the right to reject the consignment, even if it is cleared by third party inspection authorities.

Sometimes, it becomes necessary to conduct a type test, acceptance test or special test at external laboratories, when facilities for these tests are not available in-house with the supplier or carrying out of confirmatory tests is considered desirable before accepting the goods. The Procuring Entity should draw up a list of approved laboratories for this purpose, to which the samples drawn from the lots offered by the supplier can be sent for tests. The list should also contain approved laboratories, which can be used as referral/appellate laboratories for retest, when samples tested at one laboratory are decided to be re-tested. The following guidelines should apply to such cases:

- a) External testing may invariably be done by national accredited or reliable laboratories, preference being given to National Test House (NTH). For testing the samples drawn from the lots offered by the supplier, an inspection agent qualified to conduct random sampling in accordance with Quality Assurance requirements should do the selection of samples;
- b) Test reports must contain the values obtained in the tests besides fail/pass results. The laboratory must preserve the sample and test records for a period of three years;
- c) The Department should lay down a liability statement for costs expended on tests, dispatch of samples, transportation costs, test charges, and so on., in respect of samples tested at outside laboratories as may be applicable; and
- d) In cases where the samples are to be tested at the supplier's cost because of non-availability of his own testing arrangements, the responsibility of depositing the testing fees would rest with the supplier.
- e) Normally unless otherwise intended in the contract, charges of routine testing prior to dispatch of materials are to be borne by the supplier and charges of testing of materials after receipt by consignee are to be borne by the procuring agency. Contract should be clear about responsibility of cost of materials expended in tests and charges of special tests e.g. type test or tests at external labs. Even where procuring entity is responsible for testing charges, if the material fails in the test, the charges would become the responsibility of the seller.

iii) Joint Inspection on Complaint

In case a written complaint is received from the supplier disputing the rejection of goods by the Procuring Entity's inspecting officer, it should be jointly investigated by a team consisting of an authorised representative of the Procuring Entity, a senior representative of the inspecting agency who is conversant with the goods and an authorised representative of the supplier.

9.12.4 Issue of Inspection Report

After satisfactory inspection and tests, the acceptable goods shall be stamped, labelled, marked or sealed, in such a way as to make subsequent identification and tally with the inspection report of accepted lots easy for the consignee/user. The following guidelines should be used for inspection reports to be issued:

- i) Each inspecting officer shall be supplied with acceptance stamps, lead seals, pliers, rubber stamps, stencils, labels, stickers, holograms, and so on, according to requirements, for sealing and marking the inspected goods in terms of the contract. He will be responsible for safekeeping of these articles and shall ensure that they are not misused by unauthorised persons. Unserviceable seals, pliers, stamps, stickers, holograms, and so on, shall be returned to the concerned issuing official. The procuring entity shall lay down detailed guidelines covering all these aspects. For reasons of security and to avoid irregular or incorrect issue, inspection notebooks should be machine numbered and, wherever possible, different coloured copies marked for each user. An account of the inspection notes issued with serial number-wise details shall be maintained in an appropriate register. Procuring Entity should also develop a fool proof system to avoid any fraudulent and unauthorised use of the inspection notes;
- ii) There should not be any initial provisional acceptance at a lower level. A time limit shall be fixed for the issue of inspection documents. The inspection note shall also indicate the validity period, by which period the supplier must dispatch the accepted goods to the consignee in terms of the contract. The number of copies of the inspection notes and their distribution for different types of inspections will be as prescribed by the procuring entity/indenter Department;
- iii) Inspection reports should be prepared detailing the inspection done, samples examined, requirements as per the relevant specification/contract and the observations jointly with the representative of the firm. Each inspection note copy issued should invariably bear the individual's name, stamp along with his designation and code number of the officer authorised to sign and issue inspection documents. Facsimiles of the inspection stamps and their position should be put on the inspected material to help identify the inspected goods at the consignee's end. Inspection note copies meant for payments should be attested with full signature in ink by the inspecting officer. The Accounts Department will make payments only against copies so attested, not against any other copy. Corrections, if any, on the inspection note should be duly authenticated by the officer issuing it. Similarly, each continuation sheet, if attached to the inspection note, should be signed by the inspecting officer at the relevant places and any correction duly authenticated;
- iv) Departmental instructions should invariably prescribe that paying authorities will keep a record of specimen signatures of authorised inspecting authorities for verification with the signature in the inspection note while authorising payment;
- v) A separate inspection report must be prepared for each consignment. In the case of large consignments, the issue of the inspection report may not be held up until the inspection of the full consignment is completed. These must be issued for lots inspected every day or every two days. If the contract is in terms of 'sets' or 'number' and materials are such that they comprise a number of components or accessories, the inspection report should be issued only when all parts, components and

accessories forming a set are inspected and accepted. When plant and equipment are ordered with spares, the inspection report for spares should not be issued before acceptance of the main equipment. In the case of contracts for imported materials that involve initial inspection in the country of origin and final inspection in India, the final inspection note should be issued giving reference of the certificate issued abroad;

- vi) In respect of materials which have been rejected by the inspecting officer, the rejection inspection report should be issued immediately following the completion of inspection. In case of total rejections, no copies meant for payments or the accounts office should be issued. All the reasons for rejection and deviations against the governing specifications, drawings or other particulars should invariably be noted in detail in the "remarks" column of the rejection inspection note. The rejected material should be given a yellow paint mark to avoid it being submitted again for inspection or supplied to other customers. Such copies should be cancelled across by the inspecting officer with his signature and retained in the inspection file along with the office copy of the rejection inspection note; and
- vii) No 'certified true copy' of the lost original payment copies should be issued until a 'non-payment certificate' has been received from the accounts officer concerned or stating that payment has not been made and should not be made against the original inspection report even if received subsequently. This copy must be endorsed as "certified copy". This endorsement should be attested in full in indelible ink by the officer proving a cross reference to the accounts officer's non-payment certificate with the name stamp with the designation and code number of the officer issuing the duplicate copy.

9.12.6 Material put up for Inspection towards the End of Delivery

As far as possible, the inspection should be commenced and finished and the inspection report issued during the validity period of the contract. In cases where the supplier offers materials for inspection during the last few days of the contract delivery period or even on the last day of the contract delivery period, efforts should be made by the inspecting officer to commence the inspection before the expiry of the delivery period.

In cases where it is not possible to commence or conclude the inspection before the expiry of the delivery period, the inspecting officer should, immediately, on receipt of the intimation or request for inspection of the materials, bring this to the notice of the supplier orally as well as in writing. He must mention that the materials have been submitted for inspection at a very late stage and that it is not possible to commence/conclude the inspection before the expiry of the delivery period.

The supplier should also be informed that the goods offered for inspection should, however, be inspected until the completion of the inspection which can be after the expiry of the delivery period and that such an inspection continuing after the expiry of the delivery period is neither intended nor to be construed as condoning the delay or keeping the contract alive.

In such cases, the inspection note, whether accepting or rejecting the goods, should be duly franked as per the franking clause given below:

9.12.7 Franking Clause on Acceptance and Rejection

“The issue of this inspection/rejection report does not acquiesce or condone the late delivery and does not intend or amount to an extension of the delivery period or keeping the contract alive. The goods are being passed/ rejected without prejudice to the rights of the Government of India under the terms and conditions of the contract.”

This clause may also be incorporated in conditions of the contract.

9.12.8 Approval of Acceptable Deviations

Under no circumstances will the inspecting officer have the authority to modify the governing specifications, approved drawings or samples during inspection without reference to the CA that approved the tender. For all cases of acceptance with deviation, the nature of deviation along with a justification for acceptance against such deviation should be duly documented. The CA that approved the tender should have the final decision on deviations.

Deviations from the contract specifications or requirements not affecting price, quality, performance and other terms of the contract may be allowed at the level of the CA in consultation with the user Department on merits or nature of deviations.

In all other cases, the goods should be rejected giving all reasons by issuing a rejection inspection report. Rejections should not be made in a piecemeal manner.

9.13 Storage and Issue of Inspected Goods

After satisfactory inspection and tests, the accepted materials should be stamped, labelled, marked, or sealed and stored in a systematic manner. This is to facilitate easy retrieval at a later stage. As all goods needed or procured cannot be consumed at one point of time, storage is an inevitable process. The storage system forms the key component of any materials management system. It should be ensured that the goods are stored in such conditions that they are protected against unauthorised removal and deterioration.

9.14 Accounting and Payment of Received Materials

9.14.1 Goods Receipt and Inspection Report

If the received material successfully passes the quantity and quality checks, accounting of material received shall be on the basis of the Goods Receipt and Inspection Report (GRIR) (Annexure 22) prepared after inspection and acceptance of the material which will be signed by the concerned officers. This includes cases where payment is made to the supplier on proof of dispatch, for which inspection at the suppliers' premises is conducted by an authorised officer of Procuring Entity prior to dispatch by suppliers. This excludes cases of imported materials where accounting will be done on completion of certain further formalities as per regulations and practices. While preliminary receipt is only an acknowledgement of quantity received, GRIR is an acknowledgement of receipt of the correct quantity as well as quality of goods. GRIR is a voucher which forms the basis for the supplier to claim payment as per the contract. It also is a voucher for accountal of the received material in the inventory accounts. Along with the GRIR, material is handed over to the warehouse where it is to be stored.

In case the received material fails to pass quantity and quality checks, a rejection GRIR is issued, noting the reasons for rejection. If feasible, a yellow paint mark should be put on the rejected material to prevent its resubmission by the supplier. The associated Finance/ FA should be asked to recover any advance payment or freight charges paid for the rejected quantity. The rejection GRIR contains instructions for the supplier to take back the rejected goods within a stipulated number of days (usually 21). Such removal should be permitted

only after the advance payment/freight paid is recovered. Lots that are under inspection, accepted, or rejected should be properly tagged, segregated and identified.

9.14.2 Passing of Supplier's Bills

After the GRIR is issued, the invoice is received from the supplier, supported by relevant documents evidencing award of purchase orders/contracts and receipt of materials/services. Based on contractual terms where payments are made based on proof of dispatch against a purchase order, bills shall be passed and accounted based on the GRIR of approved materials. The invoice submitted by the supplier will be verified and signed by the indenting officer, and pay order form (Annexure 23) or any other relevant forms will be prepared by the procuring entity and signed by an officer authorised to sign pay-orders. All correspondence with the supplier will be handled by procuring entity Department.

The documents, which are needed from the supplier for release of payment, are to be clearly specified in the contract. The paying authority is also to verify the documents received from the supplier with corresponding stipulations made in the contract before releasing the payment.

While claiming the payment, the supplier must also certify on the bill that the payment being claimed is strictly in terms of the contract and all the obligations on his part for claiming this payment have been fulfilled as required under the contract. There should also be a suitable provision for verification of the authenticity of the person signing the invoice, and so on, to claim the payment.

In case of part supply, the payment will be released by deducting 10 (ten) per cent of the bill value which will be released once the entire supply is made. Deduction of applicable taxes at source from payments to suppliers will be done as per the existing law in force during the currency of the contract.

9.15 Contract Management - Risks and Mitigations

<i>Risk</i>	<i>Mitigation</i>
Advance payments: This is an area of risk in public procurement with undue and unintended benefits to the contractor, which vitiates the original selection criteria.	Any mobilisation or other advance payments should be interest bearing and should be only for justifiable cases. Terms of such advances should be expressly stated in the NIT/bid documents. The advance payment may be released in not less than two stages depending upon the progress of the contract. Advance should be progressively adjusted against bills cleared for payment. Interest should be charged on delayed recoveries irrespective of the reason stated.
Contract changes and renegotiations: This is also a risk area, where the procuring entity may not get what it contracted and paid for or may pay for what it has not received. On the other hand, the contractor may not get timely or proper amendments due to changes asked by the procuring entities.	Contract modifications and renegotiations should not substantially alter the nature of the contract. It should not vitiate the basis of the selection of the contractor. It should not give undue or unintended benefits to the contractor. However, for any changes caused by the procuring entity, the

9.15 Contract Management - Risks and Mitigations

<i>Risk</i>	<i>Mitigation</i>
	contractor should be adequately and timely compensated within the contractual terms.
Supervising agencies/individuals are unduly influenced to alter the contents of their reports so changes in quality, performance, equipment and characteristics go unnoticed.	A contract management manual or operating procedure should be prepared for large value contracts. There should be inbuilt systems of checks and balances.
Contractor's claims are false or inaccurate and are protected by that in-charge of revising them.	All large contracts should be formally reconciled for closure to ensure that the scope of the work and warranty/defect liability period is completed. This should include the dispute resolution forum for resolving disputes in a fixed timeframe with provision of escalation level. All payments/recoveries should also be reconciled. It should also be ensured that material/assets loaned to him including security passes are accounted for.
Payment to the contractor is delayed intentionally or otherwise.	
Contractor gets final payment , but contract closure has not been formally done. As a result material/assets loaned to him are not accounted for.	
Every dispute lands up in arbitration or court cases, since the procuring entity is reluctant to grant compensation for its own lapses to the contractor.	
Agents/ Sub-contractors and partners, chosen in a non-transparent way, are unaccountable or are used to channel bribes.	Agents should only be as per the terms of the contract. Sub- contracting of the contract should normally not be allowed in procurement of goods.

Chapter 10: Disposal of Scrap Goods

10.1 Scrap for Disposal

There accumulates, in every organisation, a large quantity of material which is neither usable for the purpose for which it was originally procured nor of any other operational value. Such material is generally called "scrap" and should be distinguished from other stores and component parts which can be utilised after repair or renovation. Occasionally, scrap may consist of second-hand or in excellent repair even new material which is surplus to the need of the organisation or its sister organisations and may command a fair price in the market not normally associated with scrap.

10.2 Classification and Categorisation

It is very important to categorise the scrapped items under different trade groups based on the use to which the scrap purchaser can put it for commercial use, for example, melting, re-rolling, burning, recycling, and so on. Properly grouped and sorted scrap is likely to attract better value and help in keeping historical data of prices and facilitates fixing of reserve prices.

10.3 Survey of Materials for Classifying as Scrap for Disposal

10.3.1 Competent Authority to declare and dispose off Scrap Material may be laid down in the SoPP, based on the 'Book Value' or 5% (five percent) of the Original/ Market Value of new goods, if Book value is either not available or has become negligible. Before any item of stores can be sold as 'scrap', it should be declared as such by the Survey Committee (SC) appointed by the Head of Office and the sanction of the CA obtained for such a sale. The CA may relax this need for survey by SC, as a standing order, in the case of a list of known items of scrap like Newspapers, containers etc. of small value (Rs. 5,000 – Rupees Five Thousand). Lots of small value may also not require to be condemned by SC, on which the Head of Office may be given powers to declare such materials as scrap without survey committee. However, this dispensation is subject to furnishing of a certificate by the concerned Departmental officer as laid down in the SoPP that the items being offered have been inspected by him personally and found unserviceable and unfit for any further use.

10.3.2 **Survey of Scrap:** Generally, items may be identified as scrap in any of the following cases:

- i) Whether the item has completed its expected useful life or not, factors such as norms for maintenance cost; norms for utilisation of such equipment; usability in the organisation or any other office must also to be considered before deciding on scrapping the equipment; and
- ii) The item has a limited shelf life, exists in surplus quantities and there is likely to be no future use of the item during the remaining period of its useful life.
- iii) The reasons for declaring the item surplus or obsolete or unserviceable should be recorded by the SC. A standard format for SC's recommendations for disposal of goods is provided in Annexure 24.
- iv) SC may seek the approval of the CA with the concurrence of the Associated/ integrated Finance.

10.4 Modes of Disposal

The mode of disposal may be determined by the CA, keeping in view the necessity to avoid accumulation of such goods, consequent blockage of space and also deterioration in value of goods to be disposed of. The usual modes of disposal of scrap are:

- i) Small value scrap such as waste paper or industrial sweepings, and so on, up to a value of Rs. 5,000 (Rupees Five thousand) in each case may be sold directly to the local scrap dealers on a summary quotation basis; and
- ii) Scrap upto Rupees two Lakh may be sold on a Limited Tender basis to locally known Scrap Dealers of relevant category.
- iii) Sale through the e-auction portal, or a tender for disposal or traditional public auction may be resorted to for scrap value above Rupees two lakh. E-Auction should be the preferred mode for such disposals, using the e-Auction platforms of NIC, MSTC, Indian Railways or any other appropriate portal;
- iv) Certain useable machinery/ spare may still be useable by other Ministries/ Departments/ PSUs; these should be disposed at book value plus 20 (twenty) per cent (7.5 (seven and a half) per cent freight +12.5 (twelve and a half) per cent handling charges) directly to the concerned organisation.
- v) **Sales by Submission of Tenders:** Disposal may also be done by submitting bids in response to public invitations for tenders for supplying materials, whether such invitations are issued by Government Departments, PSUs or by private bodies. This method of sale is particularly suitable where it is proposed to dispose of its 'overstocks' and surplus stores' which are in fit to use condition.
- vi) Scrap which is a security or safety risk (stamps, negotiable instruments, money value documents, security press items) may be destroyed suitably in an eco-friendly manner in accordance with guidelines of Central Pollution Control Board (CPCB) or State Pollution Control Board (SPCB) in the presence of a committee after obtaining CA's approval. The committee should issue a certificate of having destroyed these. Video recording may also be done of such disposal.
- vii) **Sale of hazardous waste items** would be governed by the following procedures in addition to guidelines/notifications issued by the Central Pollution Control Board (CPCB)/Ministry of Environment and Forests (MoEF) from time to time:
 - a) Sale of old batteries/lead acid batteries will be governed by the Batteries (Management & Handling) Rules, 2001 or as amended from time to time;
 - b) Sale of other categories of hazardous waste items will be governed by the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016 or as amended from time to time;
 - c) Sale of e-waste shall be governed by E-Waste (Management) Rules, 2016 or as amended from time to time;
 - d) Bidders must submit a notarized copy of the valid registration certificates issued by the State (or Union Territory) Pollution Control Board (SPCB) and produce it at the time of taking delivery of the materials, failing which their bid will be liable for rejection. In case of lead acid batteries, used/waste oils and nonferrous metal wastes, in addition to submitting necessary valid registration

from the SPCB, the bidder must also submit a notarized copy of the valid registration certificate from CPCB (or MoEF); and

- e) In case of a sale involving inter-state movement of goods, the buyer shall also submit an NOC from the concerned SPCB, with whom the buyer is registered, to the seller before taking delivery, failing which the buyer will be responsible for the consequences and the seller shall take further decision as may be deemed fit.

10.5 Preparation for Disposal

10.5.1 Scrap recommended for disposal should be segregated from other materials into an identifiable lot. It should be marked as such with a board, indicating the lot number and brief description. Valuable scrap such as non-ferrous metals should be secured in lockable rooms.

10.5.2 Determining Reserve Price

In any mode of disposal, material should not be sold at rates per lot but bids should be registered by rate per unit (number, length or weight) so that a complete check on the quantity delivered can be exercised, at any time. The Head of Office holding the stock may determine the reserve price with the concurrence of the Associated/ integrated Finance and approval of CA. In case of large value disposals a Reserve Price Committee may be appointed to recommend the reserve price. The use of external costing experts, price databases, price indices and data sharing may be done in the same manner as detailed in Chapter 2, para 2.1.1 (f) relating to the reasonableness for procurement prices. Large newspapers and economic dailies have dedicated sections dealing with rates in the scrap market. The reserve price should be recorded on a page numbered register in advance of the date of disposal. This register should be sealed immediately after the reserve prices of all lots are recorded in the register, and kept in safe custody. The sealed register should be opened just before the e-auction creation/tender opening. Some methods for determining reserve prices are:

- i) Book value with depreciation. In case the Book value is not available or has become insignificant, the reserve price may be based on 5% of the Original or Market cost of the new item;
- ii) Last sale price moderated by quantity, quality, location, market condition, price trend of various metals, and so on;
- iii) Prevailing market price ascertained through a market survey; and
- iv) Costing analysis based on costs of various elements of the item (discounted for melting losses) labour charges and transportation cost, etc.
- v) In cases where the reserve price cannot be fixed as per the laid down procedure an Insurance Regulatory and Development Authority (IRDA)-approved valuer may be engaged for valuation of such material and the Reserve Price Committee will take into account the valuation given by the valuer while recommending the reserve price.

10.6 Conditions of Disposal Applicable to all Modes of Disposal

10.6.1 'As-Is-Where-Is' basis

Notwithstanding anything contained in the e-auction or advertisement issued on the description and particulars of material for sale, the sale is on 'as-is-where-is' basis only and

the principle of caveat emptor (let the buyer be aware) will apply. As is where is means that the description/quality/quantity indicated are approximate and the seller does not give any assurance or guarantee that the material will strictly adhere to the advertisement or e-auction. All items shall be taken delivery of from the site by the successful bidders, with its faults and errors in description, if any. Neither can the sale be invalidated nor the bidder make any claim/compensation, whatsoever, on account of any defect in description or deficiency in the quantity and quality. No plea of misunderstanding or ignorance of conditions put forth subsequent to a confirmation of sale shall be accepted.

10.6.2 Inspection by Bidders

In view of the 'as-is-where-is' condition, bidders are advised to quote rates only after inspection of items at the site. The bidder or his authorised representative may inspect the materials as per the inspection schedule mentioned in the auction details, between 11 am to 4 pm (excluding lunch hours) on any working day at the location specified against each lot with the prior permission from the contact person, as given in the auction details. The detailed description of all lots, including the list of spare parts, if any, is available at the site.

10.6.3 Right to Reject all Bids

The seller reserves the right to accept/reject and cancel any bid, amend the quantity under any lot or withdraw any lot at any stage before or after acceptance of bid/issue of acceptance letter/sale order/delivery order/deposit of the full sale value by the bidder, without assigning any reason thereof and the value of such material, if paid for, shall be refundable. The seller shall not be responsible for damage/loss to bidders on account of such withdrawal at any stage from the sale.

10.6.4 Excise Duty and Taxes

Any statutory variations in the rate of taxes/duties are to be borne by the purchaser. VAT/excise duty rates indicated in the e-auction catalogue or Tender advertisement are only indicative and the actual VAT rates as applicable on the date shall be payable by the successful bidders directly to the seller at the time of taking delivery of materials. Form 'C' will be accepted. In order to avoid the imposition of penalty, the amount deposited by the successful bidder towards taxes and duties will be immediately deposited with the concerned tax authorities without waiting for the actual delivery.

10.7 Disposal through Tender

Disposal through tender could take place through the e-procurement portal or normal tendering. In the bidding documents, General Conditions of Sale (GCS, in place of GCC in procurement tenders) may be laid out.

The broad steps to be adopted for this purpose are:

- i) Preparation of bidding documents;
- ii) Invitation of tender for the surplus goods to be sold;
- iii) Opening of bids;
- iv) Analysis and evaluation of bids received;
- v) Selection of the highest responsive bidder;
- vi) Collection of sale value from the selected bidder;
- vii) Issue of sale release order to the selected bidder;

- viii) Release of the sold surplus goods to the selected bidder; and
- ix) Return of bid security to the unsuccessful bidders.
- x) Any special conditions of contract for each lot may also be given. Important aspects to be kept in view while disposing the goods through an advertised tender are:
 - a) The basic principle for sale of such goods through an advertised tender is ensuring transparency, competition, fairness and elimination of discretion. Wide publicity should be ensured of the sale plan and the goods to be sold;
 - b) All required terms and conditions of sale are to be incorporated in the bidding document comprehensively in plain and simple language. The applicability of taxes, as relevant, should be clearly stated in the document. The bidding document should also indicate the location and present condition of the goods to be sold so that the bidders can inspect the goods before bidding;
 - c) Bidders should be asked to furnish bid security (EMD) along with their bids. The amount of bid security should ordinarily be five per cent of the assessed or reserved price of the goods. The exact bid security amount should be indicated in the bidding document. The EMD shall be forfeited if the tenderer unilaterally withdraws, amends, impairs or derogates from his offer in any respect within the period of validity of his offer;
 - d) Late bids, that is, bids received after the specified date and time of receipt should not be considered;
 - e) The bid of the highest acceptable responsive bidder should normally be accepted and an acceptance/sale order be issued. However, if the price offered by that bidder is not acceptable, a negotiation may be held only with that bidder;
 - f) In case the selected bidder does not show interest in depositing the balance sale value or in lifting the goods, the bid security should be forfeited and other actions initiated including resale of the goods in question at the risk and cost of the defaulter;
 - g) In case the total quantity to be disposed cannot be taken up by the highest acceptable bidder, the remaining quantity may be offered to the next higher bidder(s) at the price offered by the highest acceptable bidder. The minimum quantity to be accepted shall be indicated in the tender;
 - h) If the tenderer's offer is not accepted, the tenderer's EMD shall be refunded to him. No interest shall be payable on such refunds. The EMD deposited by the successful tenderer shall remain with the disposing Department till payment of the SD money has been made. It may be adjusted as part of the total SD money at the discretion of disposing Department;
 - i) The offer should be examined by the competent level of Tender Committee as per SoPP and TC recommendations should be accepted by the Competent Authority as per the laid down SoPP;
 - j) The acceptance letter/sale order would be issued to the successful bidder(s) notifying the amounts and schedule of submission of SD and Balance Sale Value (BSV);
 - k) Successful tenderers, herein after referred to as purchasers, shall have to submit a SD @ 25 (twenty-five) per cent of the total sale value of the contract within seven calendar days of the issue of the acceptance letter/sale order (excluding the date of issue). The SD shall be deposited in the form of bank

draft/pay order, drawn on any of the commercial bank in favour of officer concerned as mentioned in the NIT;

- l) BSV: The successful bidder in an e-auction or tender sale may be allowed 15 (fifteen) calendar days (including the date of acceptance letter/sale order) for payment of BSV. The Head of Office (or the Officer delegated by an order as per SoPP) after taking into consideration the prevailing market rates and trends, may grant an extension of time for the payment of BSV with late payment charges @ one per cent per week or part thereof up to two weeks only and, thereafter, the SD will stand forfeited without notice. Extensions should not be granted as a matter of routine. The date of submission of the demand draft in the cash office is the date of payment for all purposes. No interest will be paid to the purchaser for the amounts paid or deposited and subsequently found refundable to the purchaser under any of the conditions of the contract; and;
- m) Delivery Order: Delivery Order is an essential document required to be produced to take delivery of the material from the custodian and therefore after depositing BSV, the Delivery Order should be issued and the delivery should be made to purchaser or his agent on the strength of the Delivery Order and after verifying cashier's receipt.

10.8 Disposal through Auction

- i) A ministry or Department may undertake auction of goods to be disposed of either directly or through approved auctioneers;
- ii) The basic principles to be followed here are similar to those applicable for disposal through the advertised tender so as to ensure transparency, competition, fairness and elimination of discretion. The auction plan including details of the goods to be auctioned and their location, applicable terms and conditions of the sale, and so on, should be given wide publicity in the same manner as is done in case of the advertised tender;
- iii) While starting the auction process, the condition and location of the goods to be auctioned, applicable terms and conditions of sale, and so on, (as already indicated earlier while giving wide publicity to it), should be announced again for the benefit of the assembled bidders;
- iv) During the auction process, acceptance or rejection of a bid should be announced immediately on the stroke of the hammer. If a bid is accepted, SD (not less than 25 (twenty-five) per cent of the bid value) should immediately be taken on the spot from the successful bidder either in cash or in the form of deposit-at-call-receipt, drawn in favour of the FA of the disposing organisation. The goods should be handed over to the successful bidder only after receiving the balance payment as in case of sale through tenders;
- v) The composition of the auction team will be decided by the CA. The team should preferably include an officer of the internal finance wing of the Department and a representative of security staff.

10.9 Disposal at scrap value or by other modes

If a ministry or Department is unable to sell any surplus or obsolete or unserviceable item at the reserve price, in spite of its attempts through an advertised tender or auction, it may

dispose it off at its scrap value with the approval of the CA in consultation with the Associated/ integrated Finance. In case the ministry or Department is unable to sell the item even at its scrap value, it may adopt any other mode of disposal including destruction of the item in an eco-friendly manner.

10.10 Delivery of Sold Material

10.10.1 Free Delivery Time and Ground Rent

Delivery has to be taken within 30 (thirty) calendar days (called free delivery period) from the date of the acceptance letter/sale order (excluding the date of issue of acceptance letter/sale order). The delivery of material will be given only after realisation of the demand draft/pay order. If the purchaser is not able to lift the material within the free delivery period, he may request for an extension. Such extensions are generally granted after levying a ground rent @ 1/2 (half) per cent of the sale value per day. But, in some genuine cases, the levy of ground rent may be waived. An accounts representative will be responsible for seeing that when the ground rent has become due, it is recovered by the stock-holder before delivery of the stores. The amount realised as ground rent should be noted in the issue note by the stock holder and certified by the stock verifier. The stock-holder will be responsible for remitting the cash to the cashier and obtaining a receipt.

10.10.2 All Risks to the Buyer

The items shall remain, in every aspect, at the risk of the buyer from the time of acceptance of his offer. The seller will not undertake any liability whatsoever for the safe custody, protection or preservation after the sale has been confirmed. Lots are put up for sale, subject to change by nature's wear and tear. No complaint regarding the quality or description of the materials sold will be entertained once the bid has been accepted.

10.10.3 Terms of Delivery

No picking, choosing, sorting, welding, cutting or breaking of goods or materials sold will be permitted unless otherwise specified. In used/waste oil, separation of oil and water, and so on, shall not be allowed at the site. If these actions are allowed, there is possibility of leakages. In mixed lots, the buyer may take undue advantage by leaving cheaper components behind. If whole machinery is sold and cutting and breaking is allowed, it would be difficult to ensure that the purchaser is taking out only his own cut material and not other unsold material or from other scrap lots. If any foreign materials are found to be mixed in the lot, other than the items included in the auction catalogue and acceptance letter/sale order, the seller reserves the right to remove them at the time of delivery. The buyer shall not be entitled to re-sell an item, lot or part of a lot while the goods are still lying within the premises of the seller and any such sale or assignment of the buyer's right to the material sold in an auction will not be recognised. All documents for releasing materials will be made out in the name of the buyer only.

The material will be delivered only to the successful bidder or his authorised representatives against the presentation of the buyer's identity proof. If the successful bidder desires to authorise a representative or an agent to accept delivery, the bidder shall produce a suitable power of attorney or authorisation letter for each lot separately, duly attested, by a notary public authorising his representative or agent to lift the material from the seller.

10.10.4 Default by Seller

The seller will not be, in any way, responsible for failure to deliver the material due to causes beyond his control such as a strike, lockout, cessation of work by labourers, shortened hours, act of God or other causes or other contingencies whatsoever. The buyer shall not be entitled to cancel the contract and the period of delivery shall automatically be extended proportionately.

10.10.5 **Default by Buyer**

Materials sold but not removed within the specified date will become the property of the seller and it will have the right to dispose of such goods in any manner as he deems fit without any notice.

10.10.6 **Witnessing Delivery**

All materials sold shall be weighed or counted before delivery, this being supervised by the:

- i) Stock-holder's representative;
- ii) Accounts representative – stock-verifier;
- iii) Representative of the security force of a rank not less than constable; and
- iv) Representative of the purchaser (if he wants to be present).

10.10.7 **Deliveries of Scrap**

At the time of delivery of scrap material to the purchaser, the weighment is to be done in the presence of the stockholder's representative, so nominated by the Head of Office. The stockholder's representative and accounts representative will sign a joint statement indicating the type of scrap, name of the party to whom scrap is delivered and quantity as per the weighment slip. The stock-holder should arrange for the deliveries to be affected according to the agreement and terms and conditions of sale. He should take every possible step to expedite delivery of the auctioned materials. The stock verifier should count, measure or weigh each lot or part of a lot after comparison of the description and quantity shown in the sold lot to ensure that only such kinds and quantities of materials as have been shown in the sold lot are being issued; he should sign the gate passes and issue notes in token of such a check. In giving delivery of scrap of non-ferrous items, the material should be weighed on electronic weighing scales and the weight of each consignment should be recorded in detail by the stock verifier in his field book. All deliveries should be done through Electronic Weigh Bridges. All the Weigh Bridges should have valid certificate from Weight & Measurement Department of the State Government.

He should sign the issue note after fully satisfying himself that entries made therein agree with those in the field book. The field book should be attested by the other representatives making delivery of the goods in token of their having accepted the correctness thereof.

The empty and loaded trucks or carts should be weighed and particulars of the gate pass issued recorded. The issue note and gate pass should be countersigned by the stock verifier.

The loading of the sold materials should be done under the supervision of the stock-holder and be witnessed by other representatives. The stock-holder will be responsible for realising the loading charges, if any, from the purchaser.

10.10.8 **Variation in Available Quantity**

At the time of delivery, the actual quantity may vary from the quantity mentioned in the delivery order. In case of excess available material, the seller reserves the right to retain

material in excess of quantity in the lot at its discretion. The purchaser may be allowed to lift the additional quantity after making the requisite additional payment to the seller.

If the quantity in a lot on actual weighment or count is less than the announced quantity, the seller will not make good the deficiency under any circumstances. The purchaser thereof will be entitled to obtain a refund for the undelivered quantity at the quoted rate. No interest will be paid on the amount of short delivered quantity. The reasons for shortfall should be recorded by the stock-holder and the Head of Office (or any other officer as per SoPP) should also record his opinion. Any refund in this regard will be made with the Head of Office's (or any other officer as per SoPP) recommendation, the Associated/ integrated Finance's concurrence and CA' approval. Copies of the weighment slip will be the base for determining the refund amount. It may be necessary to look into the ledgers for the total quantity held by the stock-holder and particularly so in the case of non-ferrous scrap; the item concerned may have to be processed for special stock verification. In case of a short delivery of the material, the refund of taxes will be the responsibility of the successful bidder only.

10.10.9 Conclusion of Delivery

The seller's responsibility ends after the consignment has been loaded and handed over to the representative of the purchasers. The seller will be no party to any dispute that may arise after the loading has been completed. At the conclusion of the delivery of the lot or lots, pertaining to the item of scrap, any stock, left over should be verified by the Accounts Department with the book balance and any discrepancies adjusted. Such "left over" stock may be transferred to fresh scrap of similar description. At the conclusion, a report of sale account of goods disposed has to be submitted to the CA and FA, to show that only the material paid for (and nothing else) has been disposed of and that all payments due (and nothing less) have been credited to the relevant accounts. A format of the report is shown in Annexure 25

10.11 Procedure for Adjustment of Sale Proceeds in the Books of Accounts

The following procedure may be followed for adjustment of sale proceeds in the books of accounts:

- a) If the realised price is more than the book value, the sale proceeds should first be applied towards the 'head of account' in which the book value is lying, and the remaining portion should be treated as "profit on sale of capital asset"; and
- b) If the realised price is less than the book value, it should be apportioned in the ratio of the reserve price of the equipment and that of the spares. In this case, the CA's sanction to write off the difference between the book value and the realised price would be necessary.

Annexures

Hierarchy Level	Annexure 1: Procurement Guidelines (Refer Para 1.1)
I – Statutory Framework	The Constitution of India
	Indian Contract Act, 1872; Sale of Goods Act, 1930 and Mercantile Laws
	Laws relevant to Public Procurement (Right To Information Act, 2005; The Micro, Small and Medium Enterprises Development Act, 2006; Prevention of Corruption Act, 1988)
II – Rules and Regulations	General Financial Rules, 2017
	Delegation of Financial Power Rules
	Any other financial, vigilance, security, safety, counter- trade and other regulatory aspects; orders and guidelines of the Government on the subject of Public Procurement
III –Ministry of Finance’s Manuals	Ministry of Finance’s Manual of Policies and Procedures for the Procurement of Good/ Works and Consultancy Services (including non-consultancy services)
IV – Procuring Entities’ Codes/ Manuals and Standard Bidding Documents	More Comprehensive and detailed Codes and Manuals for Public Procurement for various categories issued by ‘Procuring Entities’ for their own use
	Standard Bidding Documents for Procurement of Goods/ Works/ Consultancy Services etc.

Remarks: The documents at Hierarchy Levels I and II above are of fundamental and generic nature. Documents at lower levels of hierarchy must conform to the Documents higher up in hierarchy. Relationships of Bidders /Suppliers / contractors /service providers with procuring entities are solely governed by the law of the land and the relevant bid/ contract/registration document(s). Other documents at hierarchy levels II and III mentioned above shall have no locus standi in such relationships.

Annexure 2A: Delegation of Financial Powers – Indents, Contracts and Purchases for public service

(Excerpts from DFPR, 1978, Refer Para 1.4.1)

DFPR Rule 21 of the Delegation of Financial Power Rules, 1978**	DFPR Rule 21(a) Minister in Charge of the Department	DFPR Rule 21 (b) Secretary of the Department
For open or limited tender contracts	Full Powers	Rs. 20 crore@@
For single tender including resultant single offer or proprietary contracts		Rs. Five crore
For agreements or contracts for technical collaboration and consultancy services		Rs. Two crore

** DoE, Ministry of Finance No.F.1(17)-E.II(A)86-No.F.1(15)-E.II(A)88 Dated: 16th September, 2003

@@ Secretary, D/o Commerce would have powers to approve rate contracts of DGS&D of value upto Rs.100 (Rupees hundred) crore in each case (DoE, Ministry of Finance No.1 (5)/E.II(A)/2009 Dated: the 24th December, 2009)

Notwithstanding anything as above, in cases where the award of contract or purchase or consultancy is inseparably linked with the project or scheme and forms a part of the proposals for Standing Finance Committee (SFC) or Committee on Non-Plan Expenditure (CNE) or Expenditure Finance Committee (EFC) or Cabinet, the same will be processed as per the financial limits laid down for sanction of such schemes or projects by the Competent Authority.

Explanation-In this rule, the word "contract" includes miscellaneous contracts, such as handling contracts and leases. Leases for hiring accommodation for office, residential and other purposes shall, however, be regulated under item 16 of the Annexure to Schedule V. If a contract extends over a period of time, the total value over the entire period of currency shall be taken for the purpose of applying the limit. Further a limited or open tender which results in only one effective offer shall also be treated as a single tender contract."

Annexure 2B: Powers for Incurring Contingent Expenditure

(Excerpts from DFPR Rule 13 (3), Schedule V, Refer Para 1.4.1)

Authority (1)	Extent of power ^{&&} (2)	
	Recurring	Non-recurring
Departments of the Central Government:		
(i) Vice-President's Secretariat.	Full powers	Full powers
(ii) Other Departments	Full powers	Full powers
Administrators	Full powers	Full powers
Heads of Department	%%The Departments of the Central Government shall, in consultation with the Financial Adviser of the Department concerned, have full powers for deciding the financial limit up to which they can delegate powers to Heads of Departments and also to what extent these powers may be exercised by such HODs without consultation with FA of the Department.	
Heads of Offices other than Under Secretaries	Rs. 1000 per month in each case	Rs. 5000 in each case.
Under Secretaries in the Departments of the Central Government declared as Heads of Offices.	Rs.2000 per month in each case	Rs.5000 in each case.

&& Expenditure on indents, Contracts and Purchases is included under contingent expenditure (except where it is treated otherwise, e.g., stores relating to works).

%% DoE, Ministry of Finance No.1 (11)/E.II(A)/2003 Dated: 1st February, 2005 and No. 1/7/E.II(A)/2008 Dated: 30th May, 2008

Explanation The powers delegated to the Departments of the Central Government are to be exercised by the issue of formal sanctions in the name of the President, such sanctions being authenticated by the officers authorised to do so under Article 77 of the Constitution.

The Under Secretaries in the Departments of the Central Government who are declared as Heads of Offices under Rule 14 of DFPR may sanction contingent expenditure up to the extent indicated in the Table above without issuing formal sanctions in the name of the President.

Annexure 2C: Suggested Structure of Schedule of Procurement Powers (SoPP)

(Refer Para 1.4.1, 2.3 and 7.2)

A suggested structure of SoPP⁸⁵ is given below. However individual threshold values (wherever not given in GFR/ DFPR) would depend on the respective circumstances of various Organisations.

Levels of Powers -> Level 1 is entry level and Level 5 is highest e.g. Secretary	Threshold Value in Rupees (Lakh)				
	Level -1	Level-2	Level 3	Level-4	Level-5
Indents initiation, approvals and Signing: Including formulation of Technical Specifications					
Technical Approval					
Administrative, Budgetary Approval					
Initiation, Signing & Submission					
Approval and Signing of PAC					
Approval and Signing of Urgency Certificate for SLTE or for acceptance of Single offer received against LTE					
Approval & Justification for STE without PAC					
Approval for Floating of Tenders of Various Types including Selection of Mode of Procurement and Bidding System, Short List of Bidders for LTE/ SLTE, Bid Documents Preparations, including parameters of SBD and variation there-from in AITB, SCC, Eligibility/ Pre-Qualification Criteria, Decisions of Bid Cost, EMD/ PBG; Quantity, Slicing/ Packaging of requirements; non-standard payment terms, Advance Payment, Stage Payments, Proforma invoice payment, Exchange Rate Variations, Price Variations Clauses, LC payments etc					
OTE/ LTE/ PAC tenders as per Norms					
STE without PAC Tender					
GTE Tenders					
Single Stage Two Envelop System					
Prequalification Tender Two Stage or Single Stage three Envelops					
Eol Tenders					

⁸⁵indicate value threshold above which consultations with/ concurrence/ vetting from IFD would be required

Approval of Retendering of a discharged tender after second attempt					
Competent Authority (CA) for Evaluation and Acceptance of Tenders					
Procurement without calling Quotation					
Procurement Through a Purchase Committee					
Direct Approval of Tenders Without Tender committee					
To accept Single Tender Purchase of Steel Items from Steel PSUs or Petroleum Products from Petroleum PSUs					
Tender Committee Composition (including Member Secretary thereof) as well as designated level of CA for Acceptance of TC Recommendations for Various Slabs of Estimated Tender Value. Normally there should be standing Tender Committees					
Slab 1 (Rs 10 Lakh to 30 Lakh) – Level 2 officers' TC, Acceptance by Level 3 Officer					
Slab 2 (Rs30 Lakh to 2 Crore) – Level 3 Officers' TC acceptance by Level 4 Officer					
Slab 3 (Rs2 Crore 25 Crore) – Level 4 officers' TC acceptance by Level 5 Officer					
Higher levels and other type of TC to suit local requirements, Acceptance at Sec level					
Approval of acceptance of Single Offer against GTE/ OTE/ LTE and acceptance of unsolicited Offers in LTE against urgency certificate by the indenter					
Formulation and Placement of Contracts					
Contracts after following Tendering Process					
Acceptance of Special Conditions with concurrence of Finance before Award of Contract as per recommendation of TC/ CA					
Acceptance of 100% Payment against Proforma Invoice					
Other Variations demanded by Suppliers in special circumstances.					

Post Contract Powers, including

Bill Passing and Payments, Handing over assets/ equipments/ material/ utilities to Contractor; Extensions with or without LD, or approvals of Variations, Contract Closure, Terminations, Arbitrator appointment, Accepting and sanctioning Court and Arbitration award

Waiver of Liquidated Damages					
Write off of Losses due to impossibility of recovery of Risk Purchase, General Damages, Liquidated Damages, Rejected Goods					
Acceptance of Goods by Consignee after expiry of delivery period for small value/ marginal delays					
Acceptance of Excess or Short deliveries upto 5% of total quantity and to treat contract as closed.					
Allowing release of Time-barred claims					

Disposal of Scrap

Approval of Declaration of Materials as Scrap, with and without formality of Survey Committee. (Includes nomination of Survey Committee)					
Decision of Mode of Procurement, Preparation of Catalogues for Auction and Bid Documents for Tenders					
Approval of Reserve Price Fixation. (Includes nomination of officers/ committee to decide the Reserve Price)					
Acceptance of Tender Committee Recommendation/ Conduct of Auctions (including acceptance of bids)					
Extension of period to deposit Balance Sale Value or Date of Delivery of Materials					

Annexure 2D: Format for seeking the approval of the Competent Authority for inviting Global Tender Enquiry for procurements less than Rs. 200 crores

[Refer para 4.3.3]

- (i) Every page should be attested by Administrative Ministry
- (ii) Proposals are to be simultaneously sent to the following:
 - a) Cabinet Secretariat, email: ca4-cabsec@gov.in
 - b) Department of Promotion of Industry & Internal Trade (DPIIT) email: manmeet.nanda@ias.nic.in & rajesh.gupta66@gov.in
 - c) Department of Expenditure, email: kanwal.irss@gov.in and sudesh.kumar85@gov.in

Table-1

S.No	Particulars	Remarks
1	Name of the Ministry:	
2	Name of the Department:	
3	Name of the sub-ordinate office (if applicable):	
4	Detailed Description of the Item	
5	Use of the Item	
6	Life time of the item proposed (in years)	
7	Whether item is procured regularly? [If so, details of procurement of the said item over the past three years (three completed financial years or last three tenders and the current financial year] inclusive of supply details as per format given under table-2.	
8	Quantity required to be procured with justification for the quantity (States/UT/Region wise	

S.No	Particulars	Remarks
	projection)	
9	Estimated procurement price along with basic of such estimation (International Price comparison chart)	
10	Justification to be submitted as under	
	a. Detailed justification for Global Tender and essentially of import (item wise)	
	b. Who are the (possible) vendors of the item under procurement, in the global (including India) market?	
	c. Whether the Department has tried and floated the tender to identify the domestic suppliers in the past financial year (If not, the reason thereof)	
	d. Capacity of all domestic local suppliers as per the domestic tender floated, if any	
11	What are technical alternatives available within country and whether they can be used (<i>substituted</i>) for the proposed item under GTE?	
12	Whether the Department had in the past attempted at development of local suppliers/ phased indigenization/ promotion of alternative technology having sufficient local suppliers. (If so, details thereof)	
13	Consequences of non-procurement of the item through GTE.	
14	Whether BIS standards are available for the items proposed under procurement. If not, the efforts made to operationalize such standards.	
15	Whether the department had published procurement plan for next 5 years, for the item under discussion?	

The above proposal is submitted, with the approval of the Secretary of the Administrative Department/ Ministry, for the consideration of the Competent Authority, as mandated by D/o Expenditure order dated 15th May, 2020 regarding Amendment in GFRs-2017, regarding Global Tender Enquiry.

Also, it is informed that the above proposal had been sent to Cabinet Secretariat (via Email ID: ca4-cabsec@gov.in), D/o Expenditure (via Email ID: GTEnquiry-200@gov.in) and to DPIIT, for their consideration.

Stamp and Signature of the
Authorized officer of the proposing Department

Name
Designation
Contact Number
Email ID

Table-2

Details of procurement of the said item over the past three years (Three completed financial years and the current financial year) inclusive of supply details.

Year of contract	Item	Contract No. & date	Supplier	Quantity of supply with unit	Rate per unit	Completion date of contract	Country of Origin of goods	Local content in %

Annexure 2E: List of Medical Devices and IVDs, where local manufacturers are not available, as on 17.12.2021 (as verified with the Medical Devices Manufacturing Associations)

[Refer para 4.3.5 (e)]

S.No	Name of Medical Device/ Equipment
1	Intra-aortic balloon Pump (IABP)
2	Video Assisted Thoracic Surgery (VATS) and Minimally Invasive Cardiac Surgery instrument set
3	Flow Track Cardiac Output Monitoring (EV1000)
4	Sander's Jet Ventilator for Emergency Airway
5	ENT Coblator system with standard set of wands
6	Automated Identification and antibiotic susceptibility system
7	Automated Semen Analyzer
8	Histopathology fully automated H& E slide Stainer
9	Fully Automated IHC Stainer
10	Auto PAP cervical cancer screening system with HPV
11	Automatic components preparation machine
12	Visual Field Analyzer
13	Cystoscope paediatric cystoscope
14	Flow Cytometer
15	Flexible cysto-nephoscopy
16	T Piece Resuscitator
17	CO2 Fraction Laser
18	Diode Laser
19	Q-Switched ND YAD Laser
20	Video Bronchoscope set Adult, Paediatric, and Neonatal
21	Surgical Opera
22	Cavitation /Cavitron - Ultrasonic Surgical Aspirator (CUSA)
23	Endobronchial Ultrasound System
24	Rotary Microtome
25	Magnifying surgical loupes
26	Endoscopic Saphenous Vein Harvesting (EVH) System
27	Intra operative Imaging and TTFM for CT Surgery
28	DEXA Scan
29	Radio surgery equipment
30	Near Infrared Spectroscopy
31	Fluid therapy
32	Near Infrared Spectrometer (NIRS)
33	Electro Physiology (EP) System
34	TOF Monitor/Watch for Neuro Muscular block
35	Transcranial Doppler
36	Low Temperature Hydrogen Peroxide Gas Steriliser
37	Mannequins (Laerdal) for training of CPR for COVID Preparedness
	a) Intubation
	b) Cardio Pulmonary Resuscitation (CPR)
	c) Peripheral, Central and Arterial Cannulation
	d) Front of neck Access (Cricothyroidotomy and tracheostomy)
38	Image Analysis Tools/Trinocular Compound Phase Contrast Microscope for Andrology Lab

S.No	Name of Medical Device/ Equipment
39	Gas Analysis Apparatus Halden's Student Type
40	Gas Analyzer Automatic for CO ₂ , O ₂ and N ₂
41	High end Operating Microscope
42	Plasma Coblation System
43	Stroboscope
44	ENT Skull Base Navigation System
45	Automated Microbial Identification and Sensitivity System
46	NAT Analyzer
47	Cryostat
48	Vitek2-Automated Microbiology Susceptibility Testing Analyser
49	FFR Machine (Fractional Flow Reserve)
50	VIDAS
51	Kingfisher Flex
52	ACL Elite
53	Cytoprep Centrifuge with Vortex Mixer
54	Antigen Retrieval System
55	Trans Oesophageal Echo Cardiograph
56	IVUS -Volcano
57	STERRAD-100 NX All Clear
58	Minimally Invasive Cardiac Instruments
59	Impella
60	Endourology set
61	Cystoscope Karl Storz
62	Video Endoscopy Systems
63	Floppy wire with extra support 0 Coronary Angioplasty
64	Fully Automated Non-Contact Tonometer
65	Optical Biometer
66	Phaco Machine with Posterior and Anterior Vitrectomy
67	Portable Ultrasound Machine for Anaesthesia and Vascular Access
68	Activated Clotting Time Machine
69	Thromboelastogram (TEG)/ Thromboelastometer/ ROTEM
70	Bone Anchored Hearing Aid (BAHA) Sound Processor with Soft Band.
71	CI Speech Processor for Cochlear Implant
72	Bi-Ventricular Pacemaker with Quadripolar LV Lead
73	DDDR with Matching Electrodes Pacemaker
74	MRI Conditional Automatic Implantable Cardioverter Defibrillator (AICD)
75	MR1 Conditional Cardiac Resynchronisation Therapy - Pacing (CRT- P)
76	Single Chamber (SSI) MRI Compatible Pacemaker
77	Single Chamber Temporary Pacemaker
78	Non-complain /semi complain /CTO coronary balloon.
79	Vacuum Heart Stabilizer System for off Pump CABG
80	Expandable Corpectomy device
81	Biomimetic Synthetic Absorbable Dural substitute of sizes
82	AO TRS Modular Drive for Drill/Reamer
83	AO TRS Modular Sagittal saw system
84	Battery Oscillator
85	Arthroscopy Systems
86	Navigation System for Neurosurgery & Orthopaedic Surgery
87	Time Lapse Embryo Imaging System
88	Portable Mobile Endoscopy Unit
89	Cryoprobe
90	Isothermal Calorimeter (ITC)

S.No	Name of Medical Device/ Equipment
91	Electrical Impedance Tomography
92	FNIRS (Functional Near Infra-Red Spectroscopy) System
93	Automated Hand-Held Analyzer
94	Automated High Throughput Liquid Based Cytology (LBC) System
95	Automated IHC (Immuno Histochemistry Stainer)
96	Automated Slide Stainer for Histopathology
97	3T Digital PET/MR
98	Dual Particle Cyclotron on buyback basis
99	Sweat Collection and Chloride Estimation
100	Automated Bronchoscope Cleaning Equipment
101	Electronics and console for the existing 700 MHz NMR Spectrometer
102	Video bronchoscope with mobility of tip in four directions
103	Freeze Fracture System
104	Cryo Plunge Freezing Unit
105	Biological High- Resolution Atomic Force Microscopy
106	Carbon Coater (Evaporator) for grids
107	Hemostasis Analyzer System
108	Auricular Reconstruction Set
109	Thin Layer Chromatography Liner Analyser for lipid analysis
110	Digital Slide Scanner System
111	Full Endoscopic lumbar IT & ED set
112	Rapid Blood/Fluid Flow warmer
113	Fully Automated Computerized Archival System for Histopathology & Cytology Slides
114	Vacuum Assist Drainage Controller Device
115	VAP Care System
116	Cryoablation Unit
117	3D Printer Hardware with SLA (LFSJ TM Technology and Machine interface software)
118	Transcutaneous Oxygen Monitor
119	Non-Invasive Jugular Oximetry Monitor
120	Dedicated Solid-state cardiac SPECT Camera
121	Hemodynamic Recorded for Cardio Vascular Lab
122	Gel Documentation System
123	Automatic Colony Counter
124	Droplet Digital Polymerase Chain Reaction System (PCR)
125	Multi-block PCR Machine
126	Integrated Automated Charting System upgradable for ICU Monitoring System
127	Viscoelastic Global coagulation Testing Device
128	Robotic Surgery System with accessories

Annexure 2F: Model Clause/ Certificate to be inserted in tenders etc. w.r.t Order (Public Procurement No.1)

[Refer para 1.7 (iii) (e)]

(While adhering to the substance of the Order, procuring entities and GeM are free to appropriately modify the wording of the clause/ certificate based on their past experience, local needs etc.)

Model Clauses for Tenders

I. Any bidder from a country which shares a land border with India will be eligible to bid in this tender only if the bidder is registered with the Competent Authority.

II. "Bidder" (including the term 'tenderer', 'consultant' or 'service provider' in certain contexts) means any person or firm or company, including any member of a consortium or joint venture (that is an association of several persons, or firms or

companies), every artificial juridical person not falling in any of the descriptions of bidders stated hereinbefore, including any agency branch or office controlled by such person, participating in a procurement process.

III. "Bidder from a country which shares a land border with India" for the purpose of this Order means: -

- a. An entity incorporated, established or registered in such a country; or
- b. A subsidiary of an entity incorporated, established or registered in such a country; or
- c. An entity substantially controlled through entities incorporated, established or registered in such a country; or
- d. An entity whose beneficial owner is situated in such a country; or
- e. An Indian (or other) agent of such an entity; or
- f. A natural person who is a citizen of such a country; or
- g. A consortium or joint venture where any member of the consortium or joint venture falls under any of the above

IV. The beneficial owner for the purpose of (iii) above will be as under:

1. In case of a company or Limited Liability Partnership, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has a controlling ownership interest or who

exercises control through other means.

Explanation—

a. "Controlling ownership interest" means ownership of or entitlement to more than twenty-five per cent, of shares or capital or profits of the company;

b. "Control" shall include the right to appoint majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholders agreements or voting agreements;

2. In case of a partnership firm, the beneficial owner is the natural person(s) who, whether acting alone or together, or through one or more juridical person, has ownership of entitlement to more than fifteen percent of

capital or profits of the partnership;

3. In case of an unincorporated association or body of individuals, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has ownership of or entitlement to more than fifteen percent of the property or capital or profits of such association or body of individuals;

4. Where no natural person is identified under (1) or (2) or (3) above, the beneficial owner is the relevant natural person who holds the position of senior managing official;

5. In case of a trust, the identification of beneficial owner(s) shall include identification of the author of the trust, the trustee, the beneficiaries with fifteen percent or more interest in the trust and any other natural person exercising ultimate effective control over the trust through a chain of control or ownership.

V. An Agent is a person employed to do any act for another, or to represent another in dealings with third person.

VI. [To be inserted in tenders for Works contracts, including Turnkey contracts] The successful bidder shall not be allowed to sub-contract works to any contractor from a country which shares a land border with India unless such contractor is registered with the Competent Authority. Model Certificate for Tenders (for transitional cases as stated in para 3 of this Order)

"I have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India; I hereby certify that this bidder is not from such a country and is eligible to be considered."

Model Certificate for Tenders

"I have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India; I certify that this bidder is not from such a country or, if from such a country, has been registered with the Competent Authority. I hereby certify that this bidder fulfills all requirements in this regard and is eligible to be considered. [Where applicable, evidence of valid registration by the Competent Authority shall be attached.]"

Model Certificate for Tenders for Works involving possibility of sub-contracting

"I have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India and on sub-contracting to contractors from such countries; I certify that this bidder is not from such a country or, if from such a country, has been registered with the Competent Authority and will not sub-contract any work to a contractor from such countries unless such contractor is registered with the Competent Authority. I hereby certify that this bidder fulfills all requirements in this regard and is eligible to be considered. [Where applicable, evidence of valid registration by the Competent Authority shall be attached.]"

Model Certificate for GeM:

"I have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India; I certify that this vendor/ bidder is not from such a country or, is not from such a country, has been registered with the Competent Authority. I hereby certify that this vendor/ bidder fulfills all requirements in this regard and is eligible to be considered for procurement on GeM. [Where applicable, evidence of valid registration by the Competent Authority shall be attached.]"

Annexure 3: Purchase Requisition (Indent) for Goods (Non-stock)

Name of Indenting Office _____

Purchase Requisition for Goods (Non-stock)
 (Send in duplicate and separate requisition to be furnished for each Trade Group)
 (Refer Para 4.4.2 and 5.1.1)

NO.		Date :									
Dept:		Office :									
Category of stores/ trade group		In case of equipment spares - details of equipment/ assembly where fitted:									
Goods are required by Date		Consignee and place of delivery									
Details of items											
Sr No	Description/Specification/ Drawing/ Sample	Unit	Past Consumption			Available Stock if any	Total Qty. Indented	Estimated/Past Purchase Rate	Last Purchase Reference	Total Estimated Cost	
			Yr-3	Yr-2	Yr-1						
a	b	c	d	e	l	m					
Estimate name/ number											
Allocation : No				Code No							
Is proprietary certificate attached: <input type="checkbox"/> Yes, reference/ <input type="checkbox"/> No											
It is certified that all i) Description and technical specification and quantity are in conformity with the guidelines in this regard in the Procurement Manual for Goods. 1. Technical and financial approvals at appropriate levels as per DPFRR have been obtained. 2. Funds are provisioned for, in the budget. 3. The quantity indented does not exceed any sales, consumption or usage limits of requirements, if any laid down by competent authority.											
Signatures Office Superintendent						Signature Indenting officer					

Annexure 4A: Purchase Requisition Register for Indenters

_____ (Name of Indenting Office)

Purchase Requisition (PR) Register for Indenters

(Refer Chapter 2 Para 2.1.2)

(To be prepared and maintained by the intending divisions)

Name of Procuring Entity to whom PRs

sent _____

Sr. No.	Description	Qty.	PR No. And date	Date of submission	Ascertained from Procuring Entity					Date of Receipt of Material	Remarks
					Tender No: and opening date	Contract Ref & Date	Qty.	Name of the Supplier	Delivery Date		
1	2	3	4	5		6		7	8	9	10

Office Superintendent

Indenting Officer

Annexure 4B: Purchase Requisition Register for Procuring Entity

Name of the Procuring Entity _____

Purchase Requisition (PR) Register for Procuring Entity

(Refer Chapter 2 Para 2.1.2)

(To be prepared and maintained by the Procuring Entity)

Date/ Sr No	Tender File No.	PR No. and Date	Description	Qty.	Date of Receipt of PR	Indenter	Tender Type/ Date of Floating	Date of Tender Opening	Contract Number and Date	Supplier	Qty.	Delivery Date	Sr. No. of Contract Progress Register	Remarks
	1	2	3	4	5	6	7	8	9	10	11	12	13	14

Office Superintendent

Procuring Officer

Note:

- 1) The register will be reviewed and signed by Head of Office every month.
- 2) A summary will be prepared and submitted to HOD every quarterly.

Annexure 5: Limited Tender Form

(Refer Para 4.4.3 and 5.5.1)

Name of the Procuring Entity _____

Firm's Reference				Date					
Firm Registration No. (if any)				PAN (attach photocopy)					
TIN/VAT/CST No.		LIMITED TENDER FORM		Address:					
Phone									
Fax									
Email									
M/s:		Enquiry No. and Date							
		Date of Tender Opening							
		<i>The tender would be opened at three pm on the date of tender opening above, at the address mentioned above.</i>							
Please submit on or before 3:00 pm on the date of tender opening, your quotation for the following goods, in accordance with the terms and conditions printed overleaf, in a sealed cover, marked on top with – Enquiry No; Date of Tender Opening. Yours Sincerely Procuring Officer									
Tender Schedule: All Rates in Figures and in Words in Rupees									
Sr No:	Description and Specification	Qty	Unit	Delivery Terms	Rate per Unit	Taxes & Duties	Packing/ forwarding	Total Rate per Unit	Total Value
Delivery Schedule:									
Enclosed Specifications/Drawings/Special Conditions of Contract:									
Item/Tender Specific Conditions of this Tender:									
I/ we engage to supply the material(s) to your office and comply the following: 1. Tender schedule and technical specification indicated. 2. Item/tender specific conditions for this tender. 3. Terms and conditions printed overleaf. 4. General conditions of contract signed by me at the time of supplier registration (for registered suppliers). 5. I/we confirm that set off for the ED, VAT, etc. Paid on the inputs have been taken into consideration in the above quoted price and further agree to pass on such additional duties as sets offs as may become available in future under VAT, etc. 6. This offer is valid for 90 (ninety) days from the date of opening of the tender. 7. That we have not been debarred by any Government/Undertaking. 8. That the rates quoted are not higher than the rates quoted for same item to any Government/Undertaking. 9. That the bid submitted by us is properly sealed and prepared so as to prevent any subsequent alteration and replacement.									
Signature & Seal Place & Date:				Name of Authorised Signatory:					
Address:				Tel. No./ Fax. No./ Mobile No. Email Id:					

TERMS AND CONDITIONS OF LIMITED TENDER

- i) The quotation must be in the form furnished by procuring entity and should be free from corrections/erasures. In case there is any unavoidable correction it should be properly attested. If not the quotation will not be considered. Quotation written in pencil will not be considered.

- ii) Quotation will be opened on due date at 3.00 pm at the indicated venue in presence of the tenderers or their representatives who may wish to be present.
- iii) The Government of India reserves the right to accept the offer by individual items and reject any or all tenders without assigning any reason thereof and does not bind itself to accept lowest quotations.
- iv) Participation in this tender is by invitation only and is limited to the selected procuring entity's registered suppliers. Unsolicited offers are liable to be ignored. However, suppliers who desire to participate in such tenders in future may bring it to the notice of procuring entity and apply for registration as per procedure. Note: to get registered as an approved supplier with the procuring entity, please download supplier approval form from _____ and submit.
- v) Manufacturer's name and country of origin of materials offered must be clearly specified. Please quote whether your organisation is large scale industry or small scale industry. If you have NSIC/ MSE/ MSI Certificate, please attach it to the quotation. Mention your registration details.
- vi) Complete details and ISI specification if any must accompany the quotation. Make/ brand of the item shall be stated wherever applicable. If you have got any counter offer as suitable to the material required by us, the same may be shown separately.
- vii) Samples must be submitted where specified along with the quotations. Samples must be carefully packed, sealed and labelled clearly with enquiry number, subject and sender's name for easy identification. Rejected samples will be returned at your cost if insisted.
- viii) All drawings sketches and samples, if any, sent along with this enquiry must be returned along with quotations duly signed.
- ix) All supplies are subject to inspection and approval before acceptance. Manufacturer/supplier warranty certificates and manufacturer/ Government approved lab test certificate shall be furnished along with the supply, wherever applicable.
- x) The Government of India reserves the right to modify the quantity specified in this enquiry.
- xi) The prices quoted should be firm till the supplies are completed. Please quote the rates in words and figures. Rates quoted should be free delivery at destination including all charges otherwise the quotation is likely to be rejected. Prices quoted for free delivery at destination will be given preference. If there is no indication regarding the FOR, in the quotation, then it will be considered as FOR destinations. Price quoted should be net and valid for a minimum period of three months from the date of opening of the quotation.
- xii)
- xiii) Payment of sales tax is primarily the responsibility of the seller and will not be paid unless the percentage value is clearly mentioned in the quotations. If no indication regarding CST/ST is recorded in the quotation, the CST/ST will be considered as included.
- xiv) Delivery period required for supplying the material should be invariably specified in the quotation.
- xv) In case your quotation is accepted and order is placed on you, the supply against the order should be made within the period stipulated in the order. The Government of India reserves the right to recover any loss sustained due to delayed delivery by way of penalty. Failure to supply the material within the stipulated period shall entitle Procuring Entity for the imposition of penalty without assigning any reasons @ 1/2% (half percent) of the total value of the item covered in order as penalty per day subject to a maximum of 5% (five percent) unless extension is obtained in writing from the office on valid ground before expiry of delivery period.
- xvi) If the deliveries are not maintained and due to that account Procuring Entity is forced to buy the material at your risk and cost from elsewhere, the loss or damage that may be sustained there by will be recovered from the defaulting supplier.
- xvii) Dispute clause: Any dispute relating to the enquiry shall be subject to the jurisdiction of the court at [indicate Place] only.
- xviii) Our normal payment terms are 100% (hundred percent) within 30 (thirty) days on receipt and acceptance of material at our site in good condition.

Annexure 6: Proprietary Article Certificate

Valid for the Current Financial Year

(Refer Para 4.6.1)

File Number and Date Reference		
1	Description of article	
2	Forecast of quantity/annual requirement	
3	Approximate estimated value for above quantity	
4	Maker's name and address	
5	Name(s) of authorised dealers/ stockists	
6	I approve the above purchase on PAC basis and certify that: -- Note- Tick to retain only one out of (b), (c-1) or (c-2) whichever is applicable and cross out others. Please do confirm (a) by ticking it – without which PAC certificate will be invalid.	
6(a)	This is the only firm who is manufacturing/stocking this item. AND	<input type="checkbox"/>
6(b)	A similar article is not manufactured/sold by any other firm, which could be used in lieu OR	<input type="checkbox"/>
6(c-1)	No other make/brand will be suitable for following tangible reasons (like OEM/ warranty spares): OR	<input type="checkbox"/>
6(c)	No other make/brand will be suitable for following intangible reasons (if PAC was also given in the last procurement cycle, please also bring out efforts made since then to locate more sources): OR	<input type="checkbox"/>
7	Reference of concurrence of finance wing to the proposal:	<input type="text"/>

History of PAC purchases of this item for past three years may be given below			
Name of the Supplier			
Order/ Tender Reference & Date	Quantity Ordered	Basic Rate on Order (Rs.)	Adverse Performance Reported if Any

Signature of Approving Authority-----

Date ----- Designation of Officer -----

Annexure 7: Purchase without Quotation Format

(Refer Para 4.9.2)

Ref No: _____

Place: _____ Date: _____

“I, _____, am personally satisfied that the goods (described below) purchased are of the requisite quality and specification and have been purchased from a reliable supplier/ contractor at a reasonable price.”

Item:	
Quantity:	
Indenter:	
Unit Rate:	
Taxes/Duties:	
Other Charges:	
Total Unit Price:	
Total Price:	
Purchased from: M/S	
Vide Bill No.:	
Justification:	
Cheque may be drawn in favour of	
Name:	
Designation:	
Signature:	

Annexure 8: Purchase Committee Certificate Format

(Refer Para 4.10.2 and 4.11.2)

Ref: _____

No: _____

Place: _____ Date: _____

“Certified that we the undersigned, members of the purchase committee are jointly and individually satisfied that the goods recommended for purchase are of the requisite specification and quality, priced at the prevailing market rate and the supplier/contractor recommended is reliable and competent to supply the goods in question, and it is not debarred by Department of Commerce or Ministry/Department concerned.” The details of recommended purchase are:

Item:						
Quantity:						
Indenter:						
Details of Prices Ascertained						
Bidder	Unit Rate:	Taxes/Duties:	Other Charges:	Total Unit Price:	Total Price:	Recommendations & Comments
Selected Quotation						
Bidder						
Unit Rate, Taxes/ Duties/ Other Charges						
Total Unit Rate						
Total Value of Purchase						
Cheque may be drawn in favour of						
Signature:		Signature:		Signature:		
Name 1:		Name 2:		Name 3:		
Designation:		Designation:		Designation:		

Annexure 9: Sample Prequalification Criteria

(Refer Para 4.15.2)

Criteria 1 - Experience and Past Performance:

- i) The bidder (*manufacturer or principal of authorised representative – hereinafter referred simply as ‘The Bidder’*) should have regularly for at least the last **[three⁸⁶]** years, ending 31st March (or any other year ending followed in relevant country) of the previous financial year (*hereinafter called ‘The relevant Date’*), manufactured and supplied (***/ erected/ commissioned***)⁸⁷ **[Name of Requirement]**, with the same or higher specifications **[having/with – parameters⁸⁸]** (*hereinafter called ‘The Product’*), and
- ii) The bidder should have manufactured and supplied (***/ erected/ commissioned***)⁸⁷ at least **[____⁸⁹]** numbers (*herein after referred as ‘The Qualifying Quantity’*) of ‘The Product’ in at least one of the last five years ending on ‘The relevant Date’, and out of which
- iii) (*At least [one⁹⁰] numbers of offered version/ model of ‘The product’ should be in successful operation for at least [two⁹⁰] years on the date of bid opening.*)⁸⁷

Criteria 2 - Capability- Equipment & manufacturing Facilities:

‘The bidder’ must have an annual capacity to manufacture and supply (***/ erected/ commissioned***)⁸⁷ at least ‘The Qualifying Quantity’.

Note: In case of multiple products in a tender, this criterion shall be applicable product wise. For example, in case of Printing Paper of different specifications/ sizes, it shall be applicable to quantity of paper manufactured and supplied specification/ size wise.

Criteria 3 - Financial Standing – under all conditions

- a) The average annual financial turnover of ‘The bidder’ during the last three years, ending on ‘The relevant Date’, should be at **Rs. [-----] millions⁹¹** (or equivalent in foreign currency at exchange rate prevalent on ‘The Relevant Date’) as per the annual report (audited balance sheet and profit & loss account) of the relevant period, duly authenticated by a Chartered Accountant/ Cost Accountant in India or equivalent in relevant countries.
- b) (Deleted)⁹²

The net worth of the Bidder firm (manufacturer or principal of authorised representative) should not be negative on ‘The Relevant Date’ and also ii) should have not eroded by more than **30%**(thirty percent) in the last three years, ending on ‘The Relevant Date’.

⁸⁶ Change number of years if needed

⁸⁷ Add text within bracket in case of Plant and Machinery only and delete for others

⁸⁸ Insert the defining parameters like Speed or defining technology here

⁸⁹ Fix the quantity as 40 – 80 % or any other % of the quantity in the Bid Documents rounded upto next whole number. In case of uncommonly large quantity procurements, a lower percentage would ensure that otherwise capable suppliers do not get ruled out. In case of smaller procurements, a higher percentage would ensure that low capability vendors do not vitiate competition.

⁹⁰ Fill up a reasonable number. In a new technology product, the Manufacturer is not likely to meet the requirements number of products or of number of years’ operating successfully; hence these can be reduced in such cases.

⁹¹ Fix the value as 40 – 80 % or any other % of the estimated cost of the quantity in the Bid Document. Please note that Rs 1 Cr = Rs 10 million.

⁹² Notified vide OM No.F.1/16/2020-PPD issued by Department of Expenditure dated 11.02.2021

Note: In case of Indian Bidders/ companies (manufacturer or principal of authorised representative) who have been restructured by Banks in India, under the statutory guidelines, they would be deemed to have qualified the Financial standing criteria considering the institutional financial backing available to them.

Applicability in Special Cases:

- a) Applicability to 'Make in India' :Bidders (manufacturer or principal of authorised representative) who have a valid/ approved ongoing 'Make in India' agreement/ program and who while meeting all other criteria above, except for any or more of sub-criteria in Experience and Past Performance above, would also be considered to be qualified provided:
- 1) their foreign 'Make-in-India' associates meets all the criteria above without exemption, and
 - 2) the Bidder submits appropriate documentary proof for a valid/ approved ongoing 'Make in India' agreement/ program.
 - 3) the bidder (manufacturer or principal of authorised representative) furnishes along with the bid a legally enforceable undertaking jointly executed by himself and such foreign Manufacturer for satisfactory manufacture, Supply (and erection, commissioning if applicable) and performance of 'The Product' offered including all warranty obligations as per the general and special conditions of contract.
- b) Authorized Representatives: Bids of bidders quoting as authorised representative of a principal manufacturer would also be considered to be qualified, provided:
- 1) their principal manufacturer meets all the criteria above without exemption, and
 - 2) the principal manufacturer furnishes a legally enforceable tender-specific authorisation in the prescribed form assuring full guarantee and warranty obligations as per the general and special conditions of contract; and
 - 3) the bidder himself should have been associated, as authorised representative of the same or other Principal Manufacturer for same set of services as in present bid (supply, installation, satisfactorily commissioning, after sales service as the case may be) for same or similar 'Product' for past three years ending on 'The Relevant Date'.
- c) For Existing successful Past Suppliers: In case the bidder (manufacturer or principal of authorised representative) who is a successful past supplier of 'The Product' in at least one of the recent past *[three]⁸⁶* procurements, who do not meet any or more of requirements above, would also be considered to be qualified in view of their proven credentials, for the maximum quantity supplied by him in such recent past.
- d) Joint Ventures and Holding Companies: Credentials of the partners of Joint ventures cannot (repeat cannot) be clubbed for the purpose of compliance of PQC in supply of Goods/ Equipment, and each partner must comply with all the PQC criteria independently. However for the purpose of qualifying the Financial Standing Criteria, the Financial Standing credentials of a Holding Company can be clubbed with only one of the fully owned subsidiary bidding company, with appropriate legal documents proving such ownership.

NOTE FOR BIDDERS:

- a) ***Doctrine of Substantial Compliance'***: *The Pre-Qualification Bidding (PQB) and Pre-Qualification Criteria (PQC) are for shortlisting of sources who are competent to perform this contract to ensure best value for money from expenditure of Public Money. This process is neither intended to bestow any entitlement upon nor to create any rights or privileges for the Bidders, by way of overly hair-splitting or viciously legalistic interpretations of these criteria, disregarding the very rationale of the PQB and PQC. Keeping this caveat in view, interpretation by Procuring Entity would be based on*

common usage of terminologies and phrases in public procurement in accordance with the 'Doctrine of Substantial Compliance' and would be final.

- b) *Along with all the necessary documents/ certificates required as per the tender conditions, the bidder should furnish a brief write-up, backed with adequate data, explaining his available capacity (both technical and financial), for manufacture and supply of the required goods/equipment, within the specified time of completion, after meeting all their current commitments.*
- c) *Supporting documents submitted by the bidder must be certified as follows:*
 - i) *All copy of supply/work order; respective completion certificate and contact details of clients; documents issued by the relevant Industries Department/ National Small Industries Corporation (NSIC)/ manufacturing licence; annual report, etc., in support of experience, past performance and capacity/capability should be authenticated by the by the person authorised to sign the tender on behalf of the bidder. Original Documents must be submitted for inspection, if so demanded.*
 - ii) *All financial standing data should be certified by certified accountants, for example, Chartered Accountants/ Cost Accountants or equivalent in relevant countries; and Indian bidder or Indian counterparts of foreign bidders should furnish their Permanent Account Number.*

Note for Purchaser

Portions in italics are for your decision/ guidance; these are not to be printed in the bid documents. Portion within [] brackets are to be filled without brackets. Footnotes are for internal guidance and should not be part of the bid documents.

Annexure 10: Bid Opening Attendance Sheet cum Report

(Refer Para 5.3)

[Name of Procuring Entity] Bid Opening Attendance Sheet cum Report

Attendance Record						
Sr No	Bidder's Name	Bidder's Address	Bidder's Authorisation and Date	Represented by	Contact No.	Signature of Representative

Bid Opening Report						
Tender No			Title			Date of Opening
Offer No.	Bidder's Name	Bidder's Ref and Date	Submission of Requisite EMD (Y/N)	Submission of other Mandatory Documents (Y/N)	Rate Quoted and Taxes/Duties	Signature of Representative
--/---						
--/--						
--/--						

Total no. of regular tenders taken out from the tender box to be opened as mentioned above..... (in figures and in words)

Signature, Date and Time Name and Designation of Tender Opening Officer	Signature, Signature, Date and Time Name and Designation of Tender Opening Officer
--	---

Received total regular tenders..... (In figures/words) as above

Signature, Date and Time Name and Designation of Procuring Entity Officer	Signature, Signature, Date and Time Name and Designation of Procuring Entity Officer
--	---

Annexure 11: Tender Committee Minutes Format

(For Techno-Commercial/Financial Bids)

(Refer Para 7.4.3 and 7.5.12)

Organisation: _____ _____ Minutes of Tender Committee Meeting (Techno-commercial/Financial Bids)					
Section I: Top Sheet					
File No:		Date:			
Description		Estimated Cost:-			
Tender Published In		Date of Publication			
Bid Validity		Bid Opening Date			
Past Procurements					
Sr. No.	Supplier	Order Reference & Date	Quantity	Basic Rate (Rs.)	Remarks
Members of the Tender Committee					
Sr. No.	Name	Designation	Sr. No.	Name	Designation
1			2		
3			4		
Section II: Salient Feature of the Tender					
Review background of indent; technical and financial approvals; estimated cost; budgetary provisions; urgency of requirement; special technical requirements and other connected procurements which are part of same package/project					
Review mode of bidding; bidding document contents; bid publication; level of competition obtained; issues if any noticed during bid-opening (bids not opened due to lack/unsatisfactory EMD, etc.) and any other procurement of this requirement in process (at various stages)					
Review special conditions, restriction if any, on participation of bidders; purchase preferences, requirements prescribed in bid documents (EMD, document submission, etc.)					
Section III: Preliminary Evaluation					
Review handling of any complaints received					
Review/confirmation of quantity and period of delivery required					
Discuss preliminary evaluation for determining substantially responsive bids and for minor corrections and clarifications					

Section IV: Evaluation of Responsive Bids			
Bid-wise deliberation should be recorded			
In case of evaluation of Financial Bids			
i) Start with review of techno-commercial evaluation			
ii) Insert a summary table of evaluated price in the order of L1, L2, etc.			
iii) Deliberations should be in the sequence of L1, L2, etc.			
Section V: Summary of Recommendations			
Bid-wise recommendation should be recorded			
In case of evaluation of financial bids,			
a) Give a summary of recommended bids, award value, bid expiry date and special conditions, if any.			
b) Also mention that the rates recommended are considered reasonable (and basis for such determination).			
c) Total value of the recommendations for determining level of acceptance authority.			
d) Mention that none of the TC members have any conflict of interest with the parties recommended for award.			
e) Request acceptance of recommendations by competent authority and that it's within his powers of acceptance as per SoPP/ DFPR.			
Signature Name and Designation of the Members			
1		2	
	Date:		Date:
	(Name & Designation)		(Name & Designation)
3		4	
	Date:		Date:
	(Name & Designation)		(Name & Designation)
Remarks by the Accepting Authority:			

Signature:_____ Date:_____			
Name & Designation of Accepting Authority _____			

Annexure 12: Invitation and Declaration for Negotiations

(Refer Para 7.5.7)

Invitation for Negotiations

(On letterhead of the procuring entity)

No: _____ Dt: _____

To M/s _____ Registered A/D

Sub: **Tender No** ----- **opened on** ----- **for the supply of** -----

Dear Sir,

The rates quoted in your tender are considered high. You are therefore, requested to come for negotiations of rates, on..... (date) at..... (time) at..... (venue).

You should, however, come for negotiations only in case you are prepared to furnish before such date the declaration appended herewith.

A copy of the form in which you may submit your revised offer after negotiations is enclosed.

Yours faithfully,

Enclosure:

(Authorised Officer)

- i) Form of Declaration
- ii) Form of Revised Offer

FORM OF DECLARATION

(To be signed and submitted before start of negotiations)

(On company letterhead)

No: _____ Dt: _____

To _____

Sub: **Tender No** ----- **Opened on** ----- **for the supply of** -----

Ref: Your invitation for negotiations No: dated:

Dear Sir,

I _____ duly authorised on behalf of M/s. _____ do declare that in the event of failure of the contemplated negotiations relating to Tender No. _____ opened on _____ my original tender shall remain open for acceptance on its original terms and conditions.

Yours faithfully,

Place: _____

Date: _____

Signatures of bidder, or officer authorised to sign the bid documents on behalf of the bidder

Annexure 13: Format of Revised Offer in Negotiations

(Refer Para 5.5.7)

Revised Offer in Negotiations

(On company letterhead)

From.....

Full address.....

To

Sir,

Sub: **Tender No ----- opened on -----for the supply of -----**

Ref: Your invitation for negotiations no: dated:

1. On further discussions with your representatives onin
response to your letter no dated

We are not prepared to reduce the rates already quoted in the original tender, which
will remain valid up to.....

Or

1. I / we reduce my/our rates as shown in the enclosed schedule of items.

2. I / we am/are aware that the provisions of the original bidding document
remain valid and binding on me.

3. I/we undertake to execute the contract as per following Schedule.....

4. I/we agree to abide by this tender on the revised rate quoted by me/us, it is open
for acceptance for a period of 120/180 (one hundred twenty to one hundred eighty) days
from this date, *i. e.*, up to and in default of my/our doing so, I/we will
forfeit the earnest money deposited with the original tender/ attached herewith. Eligibility as
valid tenderers shall be deemed to be the consideration for the said forfeiture.

Yours faithfully,

Signatures of bidder or
officer authorised to sign the bid
documents on behalf of the bidder

Annexure 14: Letter (Notification) of Award (LoA) of Contract

(Refer Para 7.6.1)

Name of the procuring
entity _____

Letter of Award of Contract

Confidential

Contract No: [Insert date]

Contract Title:

To,

M/s. [Insert name & address]

Sub: Award of contract for contract no: [insert contract number] and contract title: [insert contract title]

REF. Your offer no. [insert offer number] against our tender no. [insert tender no] opened on [insert date of opening of tender]

Dear Sir/ Madam

I am directed to inform you that after evaluating the bid documents submitted by you on ---- [enter date] -----[Enter Name of Procuring Entity] is pleased to inform you that you have been selected as the successful bidder for the supply of [enter description]. The total purchase price shall be [enter amount] as indicated in your financial bid submitted on [enter date], in accordance with the procedures intimated in the relevant bid documents.

You/your authorised representative(s) are requested to be personally present at [insert address] for the signing of the contract by [enter date].

In this respect, we also request you to submit the performance security of [insert amount of Rupees in words] by [insert date]. Security deposit being 10% (ten percent) of the total cost = Rs. _____.

Please apply for refund of EMD deposited over and above the SD of if any.

You are requested to execute necessary agreement within seven days from the date of issue of this letter in the enclosed agreement form. Special adhesive stamp of Rs.10 (Rupees Ten) and revenue stamp of Rupee one shall be affixed on the enclosed agreement form. Treasury receipts of EMD and SD shall be deposited in office within the stipulated time limit as above.

This notification concludes the legally binding contract between you and the Government of India, till issue of a formal contract.

Yours truly,

[Authorised Officer]

Enclosure: Agreement Form along with the schedule of delivery

Annexure 15: Example of Formula for Price Variation Clause

(Refer Para 6.6)

(The formula for price variation should ordinarily include a fixed element, a material element and a labour element. The figures representing the material element and the labour element should reflect the corresponding proportion of input costs, while the fixed element may range from 10 to 25% (ten to twenty-five percent). That portion of the price represented by the fixed element and profits and is not subject to variation. The portions of the price represented by the material element and labour element along will attract price variation.)

The formula for price variation will thus be:-

$$Pa = Po \left[\frac{\left(F + a \left(\frac{M1}{Mo} \right) + b \left(\frac{L1}{Lo} \right) \right)}{100} \right] - Po$$

Where: -

P_a is then adjustment amount payable to the supplier (a minus figure will indicate a reduction in the contract price) on the date of supply.

P_o is the contract price on the base date (which is taken as the date on which tender is due to open).

F is the fixed element (as the percentage of the total price) not subject to price variation.

a is the assigned percentage to the material element in the contract price.

b is the assigned percentage to the labour element in the contract price.

(F, a and b being percentages should total 100)

L_o and L_1 are the average wage indices for the quarter before the quarter in which base month falls and for the quarter before the quarter in which date of supply falls; respectively. For example for a tender opening on March 17, 2016 (base date), L_o would be average wage index for the quarter of Oct-Dec 2015.

M_o and M_1 are the material prices/indices as average of the month, two month prior to the month in which base month falls and average of the month, two month prior to the month in which date of supply falls, respectively. For example, for a tender opening on March 17, 2016 (base date), M_o would be prices/index as average of the month of January 2016. All material prices/indices will be basic prices without excise duty and without any other central, state, local taxes and duties and Octroi.

If more than one major item of material is involved, the material element can be broken up into two or three components such as M_x , M_y , M_z .

The following conditions would be applicable to price adjustment:

- Base dates shall be due dates of opening of bids (technical bid in two or three envelop/cover system).
- Date of supply shall be the date of calculation/determination of the price variation.
- No price increase is allowed beyond original delivery period.

- No price adjustment shall be payable on the portion of contract price paid to the seller as an advance/interim payment after the date of such payment.
- Total adjustment will be subject to maximum ceiling of ____%.
- No price adjustment shall be payable if this is less than or equal to 2% (two percent) of P_0 .
- Payments for each supply would initially be made as per the base price mentioned in the contract. Price adjustment bill should be submitted only quarterly for the supplies made during the quarter.
- In GTE tenders extra care should be taken in selecting the price indices. Preferably the price indices should be from the same country and of same currency as the country and currency of the bidder. In case price is in a currency of a country where inflation is low and the indices are from country with much higher inflation rates, $\left(\frac{M_1}{M_0}\right)$ and $\left(\frac{L_1}{L_0}\right)$ should be multiplied by a correction factor of exchange rates $\left(\frac{E_0}{E_1}\right)$, where E_0 is the exchange rate of country of M and L indices with reference to currency of price P. For example, if M&L are from India and P is in \$, then E_0 is Number of Rs. in a \$ on base date and E_1 is the exchange rate on determination date.
- Even if there is no price adjustment claim, supplier must submit all relevant data to prove that there is no downward variation. In any case he must submit a declaration as follows;

“It is certified that there has been no decrease in the price of price variation indices and in the event of any decrease of such indices during the currency of this contract we shall promptly notify the same to the purchaser and offer requisite reduction in the contract rate.”

Annexure 16: Incoterms

(Refer Para 6.9)

More Common Terms in Incoterms							
TERM SERVICE	EXW Ex-Works	FCA Free Carrier	FAS Free Alongside Ship	FOB FOB Vessel	CFR Cost & Freight	CIF Cost Insurance & Freight	CPT Carriage Paid to
	Who Pays	Who Pays	Who Pays	Who Pays	Who Pays	Who Pays	Who Pays
Warehouse storage at point of origin	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Warehouse labour at point of origin	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Export packing	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Loading at point of origin	Buyer	Seller	Seller	Seller	Seller	Seller	Seller
Inland freight	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller
Port receiving charges	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller
Forwarders fee	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller
Loading on ocean carrier	Buyer	Buyer	Buyer	Seller	Seller	Seller	Seller
Ocean/air freight charges	Buyer	Buyer	Buyer	Buyer	Seller	Seller	Seller
Insurance charges for transit risk of the buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Seller	Seller
Charges at foreign port/airport	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Seller
Customs, duties & taxes abroad	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer
Delivery charges to final destination	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer

Annexure 17: Progress of Supply Order Register

(Refer Para 9.6)

Progress of Supply Order Register

Sr. No.	Supply Order No. and Date	Brief Description of Material	Name of the Supplier & Registration No.	Quantity & Due Date of Delivery		Quantity & Actual Date of Delivery		Whether Delay was Attributable to the Supplier or Procuring Entity?	Whether Penalty is Imposed or not?	Status of Security Deposit	Remarks
				Qty,	Date	Qty,	Date				
1	2	3	4	5	6	7	8	9	10	11	12

Office Superintendent

Procuring Officer

Note:

1. The register will be reviewed and signed by Head of Office every month.
2. A summary will be prepared and submitted to HOD every quarterly.

Annexure 18: Proposal for Extension of Delivery Period

(Refer Para 9.7.4)

Proposal for Extension of Delivery Period

Department		Office	
Description		Contract value	
Contract No:		Date:	
Variations applicable	PVC/ ERV/ Statutory Variations	Type of contractor	Govt. Dept. / PSU/ MSE
Contractor & Regn. No.:		Quantity on order	
Quantity already supplied		Quantity remaining	
Details of earlier extensions granted		Is it a contract:	Development/ Indigenisation
Reference and date of request for extension		Reasons cited for extension	
Original/extended delivery period/ date		Proposed extension of period/ date	
Signature of Procuring Officer		Date	

Remarks of Indenter:

Regarding the proposed extension of delivery period/date, the following remarks are given regarding loss and inconvenience due to delay:

Loss: (strike out options not applicable): No loss would be incurred/ loss is incurred but cannot be quantified/ loss to the extent of Rs. ----- would be incurred

Inconvenience: (strike out what is not applicable): No inconvenience would be incurred/inconvenience would be incurred

Proposed extension in delivery is recommended with above remarks.

Signature of Indenting Officer and Date

Proposal by Procuring Entity

It is certified that:

- That a higher rate in the original tender was not accepted against other lower quotations in consideration of the earlier delivery;
- That there is no falling trend in prices for this item as evidenced from the fact that in the intervening period neither orders have been placed at rates lower than this contract nor any tender has been opened where such rates have been received even though tender is not yet decided.

It is proposed to grant extension of delivery period/date up to _____, (strike out options not applicable) with recovery of liquidated damages/ with recovery of token liquidated damages/ without any liquidated damages and with/without denial clause, in view of justifications recorded below:

In view of value of the contract and proposal regarding liquidated damages, this would require approval of ----- (competent authority). This would/ would not require financial concurrence.

Signature of Procuring Officer and Date

Head of Office recommendations/approval
Signature of Superintending Engineer/date

Annexure 19: Format for Extension of Delivery Period/Performance Notice

(Refer Para 9.7.4, 9.7.6 and 9.7.8)
Name of the Procuring Entity _____

Registered A/D or

Extension of Delivery Period/Performance Notice

To M/s (name and address of form)

Sub: Contract No ----- **dated** -----**for the supply of** -----
--

Ref: Your letter no. ----- **dated:** -----

Dear Sir,

1. You have failed to deliver {the (fill in qty.) of Stores/ the entire quantity of Stores} within the contract delivery period [as last extended up to] (fill in date). In your letter under reply you have asked for [further] extension of time for delivery. In view of the circumstances stated in your said letter, the time for delivery is extended from (fill in date) to (fill in date)
2. Please note that notwithstanding the grant of this extension in terms of Clause (fill in clause number) of the subject contract an amount equivalent to.....% (.....per cent) of the delivered price of the delayed goods for each week of delay or part thereof (subject to the ceiling as provided in the aforesaid clause) beyond the original contract delivery date/the last unconditionally re-fixed delivery date (as & if applicable), viz., (fill in date) will be recovered from you as liquidated damages. You may now tender the Stores for inspection [balance of the Stores] in terms of this letter. Stores if any already tendered by you for inspection but not inspected will be now inspected accordingly.
3. You are also required to extend the validity period of the performance guarantee for the subject contract from (fill in present validity date) to (fill in required extended date) within 15 (fifteen) days of issue of this amendment letter.
4. The above extension of delivery date will also be subject to the following Denial Clause.
 - 1) That no increases in price on account of any statutory increase in or fresh Imposition of customs duty, excise duty, Sales Tax, CST, VAT or on account of any other taxes/duty, including custom duty), leviable in respect of the Stores specified in the said contract which takes place after (insert the original delivery date) shall be admissible on such of the said Stores, as are delivered after the said date; and.
 - 2) That notwithstanding any stipulation in the contract for increase in price on any other ground including foreign exchange rate variation, no such increase which takes place after (insert the original delivery date) shall be admissible on such of the said Stores as are delivered after the said date.
 - 3) But nevertheless, the purchaser shall be entitled to the benefit of any decrease in price on account of reduction in or remission of customs duty, excise duty, Sales Tax, VAT/ CST or on account of any other Tax or duty or on any other ground as stipulated in the

price variation clause or foreign exchange rate variation which takes place after the expiry of the above mentioned date namely (insert the original delivery date)

5. All other terms and conditions of the contract remain unaltered. This is without any prejudice to purchasers' rights under the terms and conditions of the subject contract.
6. Please intimate your unconditional acceptance of this amendment letter within 10 (ten) days of the issue of this letter failing which the contract will be cancelled at your risk and expense without any further reference to you.

Yours faithfully,
(Authorised Officer)
Duly authorised, for and on behalf of
The President of India

Note: Select one option within { } brackets; delete portion within [] brackets, if not applicable; fill in () brackets. Brackets and this note are not to be typed.

Substitute following first para instead of first para in format above, for issuing a performance notice.

1. You have failed to deliver {the (fill in qty.) of Stores/ the entire quantity of Stores} within the contract delivery period [as last extended up to] (fill in date). In spite of the fact that the time of delivery of the goods stipulated in the contract is deemed to be of the essence of the contract, it appears that (fill in the outstanding quantity) are still outstanding even though the date of delivery has expired. Although not bound to do so, the time for delivery is extended from (fill in date) to (fill in date) and you are requested to note that in the event of your failure to deliver the goods within the delivery period as hereby extended, the contract shall be cancelled for the outstanding goods at your risk and cost.

Annexure 20: Model Format for Correspondence with Supplier after Expiry of Delivery Date

(Ref Para 9.8)

Registered Acknowledgement Due

To

M/s _____

Sub : Contract No..... dated for supply of

Dear Sirs,

The date of delivery of the subject contract expired on _____. As supplies against the same have not yet been completed, there is a breach of the contract on your part. As information is required regarding past supplies against this contract, you are requested to send the particulars regarding the quantity supplied so far and, also, the quantity inspected so far, but not yet dispatched and the quantity ready but so far not tendered for inspection before the expiry of the date of delivery.

The above information is required for the purpose of verification of our records and is not intended to keep the contract alive and does not waive the breach. This is without prejudice to the rights and remedies available to the purchaser in terms of the contract and law applicable in this behalf.

Yours faithfully,

(-----)

for.....

Annexure 21: No Claim Certificate

(Refer Para 9.5 and 9.10)

(On company letterhead)

To,

(Contract Executing Officer)

Procuring Entity _____

NO CLAIM CERTIFICATE

Sub: **Contract Agreement no. ----- dated -----for the supply of -----**

We have received the sum of Rs. (Rupees _____ only) in full and final settlement of all the payments due to us for the supply of _____ un

der the abovementioned contract agreement, between us and Government of India. We here by unconditionally and without any reservation whatsoever, certify that with this payment, we shall have no claim whatsoever, of any description, on any account, against Procuring Entity, against aforesaid contract agreement executed by us. We further declare unequivocally, that with this payment, we have received all the amounts payable to us, and have no dispute of any description whatsoever, regarding the amounts worked out as payable to us and received by us, and that we shall continue to be bound by the terms and conditions of the contract agreement, as regards performance of the contract.

Yours faithfully,

Signatures of contractor or
officer authorised to sign the contract documents
on behalf of the contractor
(company stamp)

Date: _____

Place: _____

Annexure 22: Goods Receipt and Inspection Report

(Refer Para 9.14.1)

Purchase Order No.		RR/GC No. & Date		Procuring Entity _____
Name of Supplier M/s.		Date of Clearance from Transporter		GOODS RECEIPT AND INSPECTION REPORT
Indenter.		Date of Inspection and Acceptance/Rejection		ACCEPTANCE/ REJECTION
Materials procured for Project/ Scheme		Earlier GRIR No. for Part Supply		Part/ Full Quantity
Allocation		Code No.		GRIR No.
				Date

Nos	Description of Materials	Code No.	Invoice No.	Qty. as per S.O.	Qty. Recd.	Qty. Inspected		Rate Unit Rs.	Amount Rs.	Taxes/ Duties	Packing/ Forwarding	Total Amount Rs.
						Accepted	Rejected					

Copy To	Reason for not accepting the material	
A/c Officer	Inspected by me	Received above material of correct quantity and Quality
Indenting Officer	sign	sign
Procuring Officer	inspecting Officer	Indenting/ Receiving Officer
Book-Keeping		(Not below the Rank of Supervisor)
Inspecting Officer		

In case of rejected quantity: replacement required/not required _____. Rejected materials of local firms will normally be delivered at the designated consignee. Firms are required to arrange collection within 14 (fourteen) days from the date of rejection failing which Procuring Entity's responsibility will cease and after that time they will remain at supplier's entire risk and if not removed before a further period of seven days, Procuring Entity shall have the right to dispose of such stores as deemed fit at the supplier's risk and account without further reference to them and to recover thereafter from the supplier's as ground rent or demurrage at the rate of Rs.....per day for consignments occupying less than 0.2 (point two) cubic meters, or 50 (fifty) kilograms in weight and up to Rs..... per day for articles bulkier or heavier than above. Rejected materials of firm from outstation if not removed within 21 (twenty one) days of the rejection will be dispatched to them by goods train freight to pay at public tariff rate. A/c Officer may please recover any advance payment or freight charges paid for such rejected quantity.

Annexure 23: Pay Order Form

(Refer Para 9.14.2)

Pay Order Form

Name of Procuring

Entity _____

Indenter
Sub-office
Allocation
Name of work
Estimate No., etc.
Name of the Supplier
P.O No. & Date, etc.
Whether full payment or part
payment
Ref. to GRIR No. Page No., etc.
No. of enclosures (Sub- voucher etc.)
Ref. to Materials at Site A/c
Consumable Register Page/Item No.

Sr. No.	Particulars	Ref. to Item No. of PO	Qty.	Unit	Rate	Amount

Certificate:-

- 1 Certified that the materials have been received on _____ in accordance with the specifications of the PO and good condition.
- 2 Certified that the terms and conditions prescribed in the PO have been duly observed by the supplier and payment can be made in full (other certificates where necessary may be given on reverse)

Passed for Rs. _____
Office Superintendent (_____) Accounts Officer (_____) Head of
Office (_____)

Passed for Payment of Rs. _____ Rupees

Pay Rs. _____ Rupees

Auditor (_____) D A / Supdt, (_____) AAO
(_____)

Bill paid/cheque issued No. _____ Date _____

Pay Order No. _____

Cashier (_____)

Annexure 24: Survey Committee's Report

(Refer Para 10.3.2)

Name of the Organisation _____

SURVEY COMMITTEES REPORT

Report Reference No:											Date:		
Sr No.	Code No.	Description of Stores	Quantity		Book Value			Total	Total	User Dept.	Reason of Survey	Recommendation of Survey Committee	Remarks by the Competent Authority
			No.	Wt.	Rate	Unit	Amount	Est Scrap Value	Est Loss				
1	2	3	4	5	6	7	8	9	10	11	12	13	14
(Signature)					(Signature)					(Signature)			
Committee Member Designation					Committee Member Designation					Committee Member Designation			
Date and Place:													
Signature													
Competent Authority													

Annexure 25: Sale Account for Goods Disposed

(Refer Para 10.10.9)

Name of the Organisation _____

Sale Account for Goods Disposed

Lot No.	Particulars of Stores	Quantity/ Weight	Name and Full Address of Purchaser	Highest Bid Accepted (Name of bidder & bid value)	Amount and Date Earned Money/ Security Deposit Realised	Amount & Date on which the Complete Amount is Realised and Credited with Cashier and Reference thereof	The Actual Date of Handing over of the Articles with Quantities with reference of Issue Notes and Gate pass	Signatures of the Purchaser	eAuction Service Provider's Commission and Acknowledgement for its Payment	Book Value	Profit/ Loss w.r.t Book Value
(Signature)					(Signature)			(Signature)			
Auction Disposal Officer					Accounts Representative			Security Staff			

Annexure 26: Deleted

Annexure 27: List of Medicines Reserved for procurement from Pharma CPSEs

SI No.	CAPSULES
1.	AMOXYCILLIN IP
2.	AMOXYCILLIN IP + CLOXACILLIN IP
3.	AMPICILIN IP
4.	B-COMPLEX + VIT.- C & ZINC
5.	CEPHALEXIN IP
6.	DOXYCYCLINE IP
7.	FLUCONAZOL
8.	OMEPRAZOLE IP
9.	OMEPRAZOLE+DOMPERIDONE
10.	CEFADROXIL
11.	TETRACYCLINE
	TABLETS
12.	ACECLOFENAC + PARACETAMOL
13.	ACECLOFENAC 100 MG
14.	ALBENDAZOLE
15.	AMLODEPIN
16.	AMOXYCILLIN+CLAVULANIC ACID
17.	ASCORBIC ACID IP
18.	ATENOLO
19.	ATROVASTATIN
20.	AZITHROMYCIN
21.	CALCIUM+VITAMIN D3
22.	CEFIXIME TABS/CAPS
23.	CEFPODOXIME PROXETIL
24.	CEFUROXIME AXETIL
25.	CETRIZINE HCL BP
26.	CETRIZINE+PARACETAMOL+PHENYL EPHERIN
27.	CHLOROQUINE PHOSPHATE IP
28.	CIPROFLOXACIN+TINIDAZOLE
29.	CIPROLOXACIN IP
30.	CO-TRIMOXAZOLE IP
31.	DICLOFENAC SODIUM
32.	DICYLOMINE+PARACETAMOL
33.	DOMPERIDONE
34.	ERYTHROMYCIN STERATE IP
35.	IBUPROFEN IP
36.	LEVOCETRIZINE
37.	LEVOFLOXAACIN
38.	LOSARTAN
39.	METRONIDAZOLE IP
40.	NIMESULIDE
41.	NORFLOXACIN+TINIDAZOLE
42.	NORFLOXACIN IP
43.	OFLOXACIN
	TABLETS
44.	OFLOXACIN+ORNIDAZOLE

45.	ORAL CONTRACEPTIVE PILLS
46.	PANTOPRAZOLE
47.	PARACETAMOL
48.	PARACETAMOL IP+DICLOFENAC SODIUM
49.	PARACETAMOL+IBUPROFEN
50.	PENICILLIN V
51.	POLY VITAMIN PROPHYLACTIC (NFI)
52.	RANITIDINE HCL IP
53.	ROXITHROMYCIN
54.	METFORMIN
55.	SPARFLOXACIN
56.	TINIDAZOLE
57.	VITAMINE B-COMPLEX
	SUSPENSIONS/SYRUPS
58.	ALBENDAZOLE SUSP.
59.	AMOXYCILLIN DRY SYP.
60.	CETRIZINE SYRUP
61.	COTRIMOXAZOLE SUSP.
62.	COUGH SYP. EACH 5 ML CONTAINS-CPM IP : 3MG+AMMONIUM CHLORIDE IP: 110MG+SODIUM CITRATE IP : 4SMG+MENTHOL IP: 9MG
63.	COUGH SYP. EACH 5ML CONTAINS- DYPHENHYDRAMINE HCL:14MG+AMMONIUM CHLORIDE IP: 135MG+SODIUM CITRATE IP: 57MG+MENTHOL IP: 9MG
64.	DOMPERIDONE SUSP.
65.	PRACETAMOL SYP.
66.	VITAMIN A SOLUTION IP
	ORAL POWDERS
67.	ORAL REHYDRATION SALT (WHO FORMULA)
	EXTERNAL LOTIONS/SOLUTIONS
68.	GLUTARALDEHYDE
69.	CHLORHEXIDINE GLUCONATE SOLUTION
	OINTMENTS
70.	CLOTRIMAZOLE OINTMENT
71.	DICLOFENACO GEL
72.	POVIDONE IODINE SOLUTION/OINTMENT
73.	SILVER SULPHADIAZINE
	I.V. FLUIDS (INFUSION)
74.	CIPROFLOXACIN
75.	LEVOFLOXACIN IV
76.	MANNITOL
77.	METRONIDAZOLE
78.	PLAZMA VOLUME EXPENDER
79.	RINGER LACTATE I.V.
	DRY POWDERS/LIQUID INJECTIONS
80.	AMIKACIN
81.	AMOXYCILLIN SODIUM+CLAVULANATE POTASSIUM
82.	AMPICILLIN IP
83.	AVS LIQUID (LYFOLYSED)
84.	BENZATHENE PENICILLIN IP
85.	BENZYLE PENICILLIN IP
	DRY POWDERS/LIQUID INJECTIONS
86.	CEFEPIME

87.	CEFOPERAZONE
88.	CEFOPERAZONE+SULBACTAM
89.	CEFOTAXIME SODIUM USP
90.	CEFOTAXIME SODIUM+SULBACTAM
91.	CEFTAZADIME
92.	CEFTRIAZONE
93.	CEFTRAXONE+SULBACTAM
94.	DICLOFENAC SODIUM
95.	ETO-THEOPHYLLINE
96.	ATROPIN INJ.
97.	FRUSEMIDE
98.	GENTAMYCIN IP
99.	MEROPENEM INJ.
100.	PENTAZOCIN
101.	PIPERACILLIN+TAZOBACTAM
102.	RANITIDINE IP
	TABLETS
103.	GLIMEPIRIDE (1MG/2MG)

Annexure 28 Deleted

APPENDIX

Appendix 1: Advanced Concepts of Value for Money

1.0 The Concept of Value

Value is a management and economics concept. It represents the extent of satiation of a hierarchy of needs of a person by a product bought for this purpose. This is subjective and difficult to quantify. This is because different persons (or the same persons under different circumstances) would have different hierarchy of needs and would perceive different extents of satiation or value from the same product. There are three sources of the value of a product. The first source of value is from the functional usage of the product (known as use value) and the second source comes from the social status associated with the ownership of the product (esteem value). This can be shown as the difference between a luxury branded gold-plated, diamond encrusted pen and a disposable non-descript functional pen, though both fulfil the broadly same function and have the same use value. The luxury branded pen, in addition to the use value, also has additional esteem value. The third source of value comes from the price that one can get by exchanging or scrapping the product at the end of the useful life of the product. This is called the disposal value. Normally, when people buy a car, they do consider the estimated disposal value of different choices of models. Value is the sum total of all the three values.

2.0 Total Cost of Ownership

While the value of a product covers all components of value over the “Whole-Of-Life” (WOL), the costs incurred on the product should also take into consideration the total of various elements of costs incurred over WOL of the product. For this purpose, future costs are discounted to present value (not to be confused with the value we are discussing – this is a financial discounting concept). For example, it would not be prudent to buy a cheap car, which has a very high cost of operating. This is called variously as WOL or “Life-Time-Cost” (LCC) or “Total Cost of Ownership” (TCO). The last is a preferred nomenclature in procurement and is defined as the total of all costs associated with a product, service, or capital equipment that are incurred over its expected life. Typically, these costs can be broken into four broad categories:

- i) **Procurement price.** The amount paid to the vendor/ contractor for the product, service, or capital equipment;
- ii) **Acquisition costs.** All costs associated with bringing the product, service, or capital equipment into operation at the customer's location. Examples of acquisition costs are sourcing, administration, freight, taxes, and so on;
- iii) **Usage costs.** In the case of a product, all costs associated with converting the procured part/material into the finished product and supporting it through its usable life. In the case of a service, all costs associated with the performance of the service that is not included in the procurement price. In the case of capital equipment, all costs associated with operating the equipment through its life. Examples of usage costs are inventory, conversion, wastage, lost productivity, lost sales, warranty, installation, training, downtime, and so on; and

- iv) **End-of-life costs.** All costs incurred when a product, service, or capital equipment reaches the end of its usable life, net of amounts received from the sale of the remaining product or the equipment (disposal value) as the case may be. Examples of end-of-life costs are obsolescence, disposal, clean-up, and project termination costs

3.0 Value for Money

Besides value of a product or service, the customer also has his own notion of “value” of a particular sum of money. This is different for different people or even for the same person in different circumstances. When the perceived value of a product matches the perceived value of the amount of money (cost of the product), the customer feels he got the full value for his money. This is called the VfM. In procurement, Total Cost of Ownership is taken to evaluate value for money. Given the limited resources available to the Government, ensuring VfM in procurement is the key to ensuring the optimum utilisation of scarce budgetary resources. It usually means buying the product or service with the lowest WOL costs that is ‘fit for purpose’ and just meets the specification. VfM also incorporates affordability; clearly, goods or services that are unaffordable cannot be bought. This should be addressed as soon as possible within the process, ideally at the need assessment stage before procurement commences. In order to address this issue, a change in the procurement approach, specification or business strategy may be required.

Where an alternative is chosen that does not have the lowest WOL costs, then the additional ‘value added’ benefit must be proportional and objectively justifiable. Assessment of bids should be conducted only in relation to a published set of evaluation criteria (which should be relevant to the subject of the contract), and any ‘added value’ that justifies a higher price must flow from these defined criteria. In public procurement VfM is often primarily established through the competitive process. A strong competition from a vibrant market will generally deliver a VfM outcome. However, where competition is limited, or even absent, other routes may have to be used to establish VfM. These can include benchmarking, construction of theoretical cost models or ‘shadow’ bids by the procurement agency. For major contracts, this can require considerable financial expertise and external support. A VfM assessment, based on the published conditions for participation and evaluation, may include consideration of some factors such as:

- i) Fitness for purpose;
- ii) Potential vendor/contractor’s experience and performance history;
- iii) Flexibility (including innovation and adaptability over the lifecycle of the procurement);
- iv) Environmental sustainability (such as energy efficiency and environmental impact); and
- v) Total cost of ownership

But due to uncertainties in estimates of various components of TCO (and actual costs over the life-cycle) and intangibles of Value, some element of subjectivity may become unavoidable, and hence is not normally useable in routine Public Procurement cases. Therefore preference is given to alternative means for ensuring VfM by way of optimal description of needs; development of value-engineered specifications/ Terms of Reference and appropriate packaging/ slicing of requirements and selection of appropriate mode/ bidding systems of procurement etc.

Appendix– 2: Legal Aspects of Public Procurement

1.0 Relevant Provisions of the Constitution of India

1.1 Equality for Bidders

Article 19 (1) (g) of the Constitution of India (under Part III – ‘Fundamental Rights’) grants all its citizens the right “to practise any profession or to carry out any occupation, trade or business”. This has been interpreted by courts in a way so as to ensure that every citizen of India has a right to get equal opportunity to bid for and be considered for a public procurement contract. However, this provision does permit stipulation of reasonable eligibility or pre-qualification criteria for the selection of successful bidders in a public procurement contract. Thus a public procurement organisation should be ready to prove in court that no eligible bidder has been denied reasonable and equal opportunity under this article to bid and be considered for the concerned contract.

1.2 Persons Authorised to Make and Execute Contracts on Behalf of Governments

As per Article 299 (Part XII – Finance, Property, Contracts and Suits) of the Constitution of India, all contracts on behalf of the Union Government or state Governments are to be entered into and executed by authorised persons on behalf of the President of India or Governor of the state, respectively. The President of India, Governor of the state and the authorised persons who enter into or execute such contracts are granted immunity from personal liability under this article. That is why, above the signatures of such persons, on the contract documents, a legal phrase “For and on Behalf of the President of India/the Governor of State” is written to signify this fact. In a state Government, the persons who are authorised to do so are listed in the DFPR.

Provisions of DFPR are expanded upon by various Departments by issuing SoPP. Rule 224 (1) & (2), Chapter 8: Contract Management of the GFR, 2017 covers this aspect also

“Part III - FUNDAMENTAL RIGHTS - Right to Freedom

§19 Protection of certain rights regarding freedom of speech, etc.

1. All citizens shall have the right-

- (a) to freedom of speech and expression;
- (b) to assemble peaceably and without arms;
- (c) to form associations or unions;
- (d) to move freely throughout the territory of India;
- (e) to reside and settle in any part of the territory of India; [and]
- (f) to practise any profession, or to carry on any occupation, trade or business.”

“Part XII. - Finance, Property, Contracts and Suits

§299 Contracts:

All contracts made in the exercise of the executive power of the Union or of a State shall be expressed to be made by the President, or by the Governor of the State, as the case may be, and all such contracts and all assurances of property made in the exercise of that power shall be executed on behalf of the President or the Governor by such persons and in such manner as he may direct or authorise.

Neither the President nor the Governor shall be personally liable in respect of any contract or assurance made or executed for the purposes of this Constitution, or for the purposes of any enactment relating to the Government of India heretofore in force, nor shall any person making or executing any such contract or assurance on behalf of any of them be personally liable in respect thereof.”

1.3 Other Mercantile Laws

A procurement contract besides being a commercial transaction is also a legal transaction. There are a number of commercial/mercantile laws that are applicable equally to the private sector and public procurement, such as the Indian Contract Act, Sales of Goods Act, Arbitration and Conciliation Act, and so on. Although a public procurement professional is expected to have a working knowledge of the following basic laws relating to procurement, yet he is not expected to be a legal expert. If standard contract forms are used, the procurement official can discharge his normal functions without frequent legal help. In case any complex legal issue arises, or a complex contract beyond the standard contract form is to be drafted, an appropriate legal professional may be associated with the procurement from an early stage.

Salient features of these mercantile laws relating to Procurement are summarised below.

2.0 Salient Features of the Indian Contract Act

2.1 Legal Aspects Governing Public Procurement of Goods - Introduction

A public procurement contract, besides being a commercial transaction, is also a legal transaction. There are a number of laws that may affect various commercial aspects of public procurement contracts. A public procurement professional is expected to be generally aware of the implications of following basic laws affecting procurement of goods; however, he or she is not expected to be a legal expert. Where appropriate in complex cases, legal advice may be obtained. In other categories of procurement, additional set of laws may be relevant:

- i) The Constitution of India;
- ii) Indian Contracts Act, 1872;
- iii) Sale of Goods Act, 1930;
- iv) Arbitration and Conciliation Act, 1996 read with the Arbitration and Conciliation (Amendment) Act, 2015 and 2021;
- v) Competition Act, 2002 as amended with Competition (Amendment) Act, 2007;
- vi) Micro, Small and Medium Enterprises Development (MSME Development) Act, 2006;
- vii) Information Technology Act, 2000 (IT Act, regarding e-procurement and e-auction, popularly called the Cyber Law);
- viii) Right to Information (RTI) Act 2005;
- ix) Central Vigilance Commission Act, 2003;
- x) Delhi Special Police Establishment Act, 1946 (basis of the Central Bureau of Investigation);
- xi) Prevention of Corruption Act, 1988;
- xii) The Foreign Trade (Development and Regulation) Act, 1992 and the Foreign Trade Policy (EXIM Policy), 2015; Foreign Exchange Management Act (FEMA), 1999 and FEMA (Current Account Transactions) Rules, 2000.

The elements and principles of contract law and the meaning and import of various legal terms used in connection with the contracts are available in the Indian Contract Act, 1872 read with the Sale of Goods Act, 1930. Some of the salient principles relating to contracts are set out briefly in this chapter.

2.2 Elementary Legal Practices

2.2.1 What is a Contract? The proposal or offer when accepted is a promise, a promise and every set of promises forming the consideration for each other is an agreement and an agreement if made with free consent of parties competent to contract, for a lawful consideration and with a lawful object is a contract.

2.2.2 Proposal or Offer: When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of the other to such act or abstinence, he is said to make a proposal or offer. In a sale or purchase by tender, the tender signed by the tenderer is the proposal. The invitation to tender and instructions to tenderers do not constitute a proposal.

2.2.3 Acceptance of the Proposal: When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal when accepted becomes a promise.

2.2.4 What agreements are contracts: An agreement is a contract enforceable by law when the following are satisfied. A defect affecting any of these renders a contract un-enforceable

- i) Competency of the parties
- ii) Freedom of consent of both parties
- iii) Lawfulness of consideration
- iv) Lawfulness of object

2.3 Competency of Parties

Under law any person who has attained majority and is of sound mind or not debarred by law to which he is subject, may enter into contracts. It, therefore, follows that minors and persons of unsound mind cannot enter into contracts nor can insolvent person do so.

2.3.1 Categories of persons and bodies who are parties to the contract maybe broadly sub-divided under the following heads: -

- i) Individuals
- ii) Partnerships
- iii) Limited Companies
- iv) Corporations other than limited companies

a) Contracts with Individuals: Individuals tender either in their own name or in the name and style of their business. If the tender is signed by any person other than the concerned individual, the authority of the person signing the tender on behalf of another must be verified and a proper power of attorney authorizing such person should be insisted on. In case, a tender is submitted in a business name and if it is a concern of an individual, the constitution of the business and the capacity of the individual must appear on the face of the contract and the tender signed by the individual himself as proprietor or by his duly authorized attorney.

(b) Contracts with Partnerships: A partnership is an association of two or more individuals formed for the purpose of doing business jointly under a business name. It is also called a firm. It should be noted that a partnership is not a legal entity by itself, apart from the individuals constituting it. A partner is the implied authority to bind the firm in a contract coming in the purview of the usual business of the firm. The implied authority of a partner, however, does not extend to enter into arbitration agreement on behalf of the firm. While entering into a contract with

partnership firm care should be taken to verify the existence of consent of all the partners to the arbitration agreement.

- (c) **Contracts with Limited Companies:** Companies are associations of individuals registered under Companies Act in which the liability of the members comprising the association is limited to the extent of the shares held by them in such companies. The company, after its incorporation or registration, is an artificial legal person which has an existence quite distinct and separate from the members of shareholders comprising the same. A company is not empowered to enter into a contract for purposes not covered by its memorandum of association; any such agreement in excess of power entered into the company is void and cannot be enforced. Therefore, in cases of doubt, the company must be asked to produce its memorandum for verification or the position may be verified by an inspection of the memorandum from the office of the Registrar of Companies before entering into a contract. Normally, any one of the Directors of the company is empowered to present the company. Where tenders are signed by persons other than Directors or authorized Managing Agents, it may be necessary to examine if the person signing the tender is authorized by the company to enter into contracts on its behalf.
- (d) **Corporation other than Limited Companies:** Associations of individuals incorporated under statutes such as Trade Union Act, Co-operative Societies Act and Societies Registration Act are also artificial persons in the eye of law and are entitled to enter into such contracts as are authorized by their memorandum of association. If any contract has to be entered into with any one or such corporations or associations, the capacity of such associations to enter into contract should be verified and also the authority of the person coming forward to represent the said Association.

2.4 Consent of both Parties

Two or more persons are said to consent when they agree upon the same thing in the same sense. When two persons dealing with each other have their minds directed to different objects or attach different meanings to the language which they use, there is no agreement. The misunderstanding which is incompatible with agreement may occur in the following cases: -

- i) When the misunderstanding relates to the identity of the other party to the agreement;
- ii) When it relates to the nature or terms of the transactions;
- iii) When it related to the subject matter of the agreement.

2.5 Free consent of both Parties

2.5.1 The consent is said to be free when it is not caused by coercion, undue influence, fraud, mis-representation or mistake. Consent is said to be so caused when it would not have been given but for the existence of coercion, undue influence, fraud, mis-representation or mistake. When consent to an agreement is caused by coercion, undue influence, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was caused. A party to a contract, whose consent was caused by fraud or misrepresentation may, if he thinks fit, insist that the contract shall be performed, and that he shall be put in the position in which he would have been if the representations made had been true.

2.5.2 In case consent to an agreement has been given under a mistake, the position is slightly different. When both the parties to an agreement are under a mistake as to a matter essential to the agreement, the agreement is not voidable but void. When the mistake is unilateral on the part of one party only, the agreement is not void.

2.5.3 Distinction has also to be drawn between a mistake of fact and a mistake of law. A contract is not void because it was caused by a mistake as to any law in force in India but a mistake as to law not in force in India has the same effect as a mistake of fact.

2.6 Consideration

Consideration is something which is advantageous to the promisor or which is onerous or disadvantageous to the promisee. Inadequacy of consideration is, however, not a ground avoiding the contract. But an act, forbearance or promise which is contemplation of law has no value is no consideration and likewise an act or a promise which is illegal or impossible has no value.

2.7 Lawfulness of object

The consideration or object of an agreement is lawful, unless it is forbidden by law or is of such a nature that if permitted, it would defeat the provisions of any law, or is fraudulent or involves or implies injury to the fraudulent property of another or the court regards it as immoral or opposed to public policy. In each of these cases the consideration or object of an agreement is said to be unlawful.

2.8 Communication of an Offer or Proposal

The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made. A time is generally provided in the tender forms for submission of the tender. Purchaser is not bound to consider a tender, which is received beyond that time.

2.9 Communication of Acceptance

A date is invariably fixed in tender forms upto which tenders are open for acceptance. A proposal or offer stands revoked by the lapse of time prescribed in such offer for its acceptance. If, therefore, in case it is not possible to decide a tender within the period of validity of the offer as originally made, the consent of the tenderer firm should be obtained to keep the offer open for further period or periods.

2.9.1 The communication of an acceptance is complete as against the proposer or offerer, where it is put in the course of transmission to him, so as to be out of the power of the acceptor, and it is complete as against the acceptor when it comes to the knowledge of the proposer or offerer. The medium of communication in Government contracts is generally by post and the acceptance is, therefore, complete as soon as it is posted. So that there might be no possibility of a dispute regarding the date of communication of acceptance, it should be sent to the correct address by some authentic foolproof mode like registered post acknowledgement due, etc.

2.10 Acceptance to be identical with Proposal

If the terms of the tender or the tender, as revised, and modified, are not accepted or if the terms of the offer and the acceptance are not the same, the acceptance remains a mere counter offer and there is no concluded contract. It should, therefore, be ensured that the

terms incorporated in the acceptance are not at variance with the offer or the tender and that none of the terms of the tender are left out. In case, uncertain terms are used by the tenderers, clarifications should be obtained before such tenders are considered for acceptance. If it is considered that a counter offer should be made, such counter offer should be carefully drafted, as a contract is to take effect on acceptance thereof.

If the subject matter of the contract is impossible of fulfilment or is in itself in violation of law such contract is void.

2.11 Withdrawal of an Offer or Proposal

A tenderer firm, who is the proposer may withdraw its offer at any time before its acceptance, even though the firm might have offered to keep the offer open for a specified period. It is equally open to the tenderer to revise or modify his offer before its acceptance. Such withdrawal, revision or modification must reach the accepting authority before the *date and time of opening of tender*.

No legal obligations arise out of such withdrawal or revision or modification of the offer as a simple offer is without a consideration. Where, however, a tenderer agrees to keep his offer open for a specified period for a consideration, such offers cannot be withdrawn before the expiry of the specified date. This would be so where earnest money is deposited by the tenderer in consideration of his being supplied the subsidiary contract and withdrawal of offer by the tenderer before the specified period would entitle the purchaser to forfeit the earnest money.

2.12 Withdrawal of Acceptance

An acceptance can be withdrawn before such acceptance comes to the knowledge of the tenderer. A telegraphic revocation of acceptance, which reaches the tenderer before the letter of acceptance, will be a valid revocation.

2.13 Changes in terms of a concluded Contract

No variation in the terms of a concluded contract can be made without the consent of the parties. While granting extensions or making any other variation, the consent of the contractor must be taken. While extensions are to be granted on an application of the contractor, the letter and spirit of the application should be kept in view in fixing a time for delivery.

2.14 Discharge of Contracts

A contract is discharged or the parties are normally freed from the obligation of a contract by due performance of the terms of the contract. A contract may also be discharged: -

- i) **By mutual agreement:** If neither party has performed the contract, no consideration is required for the release. If a party has performed a part of the contract and has undergone expenses in arranging to fulfil the contract it is necessary for the parties to agree to a reasonable value of the work done as consideration for the value.
- ii) **By breach:** In case a party to a contract breaks some stipulation in the contract which goes to the root of transaction, or destroys the foundation of the contract or prevents substantial performance of the contract, it discharges the innocent party to proceed further with the performance and entitles him to a right of action for

damages and to enforce the remedies for such breach as provided in the contract itself. A breach of contract may, however, be waived.

- iii) **By refusal of a party to perform:** On a promisor's refusal to perform the contract or repudiation thereof even before the arrival of the time for performance, the promisee may at his option treat the repudiation as an immediate breach putting an end to the contract for the future. In such a case the promisee has a right of immediate action for damages.
- iv) **In a contract where there are reciprocal promises:** If one party to the contract prevents the other party from performing the contract, the contract may be put to an end at the instance of the party so prevented and the contract is thereby discharged.

2.15 Stamping of Contracts

Under entry 5 of Schedule I of the Indian Stamp Act, an agreement or memorandum of agreement for or relating to the sale of goods or merchandise exclusively is exempt from payment of stamp duty. (A note or memorandum sent by a Broker or Agent to his principal intimating the purchase or sale on account of such principal is not so exempt from stamp duty.)

The Stamp Act provides that no Stamp Duty shall be chargeable in respect of any instrument executed by or on behalf of or in favour of the Government in cases where but for such exemption Government would be liable to pay the duty chargeable in respect of such instrument. (Cases in which Government would be liable are set out in Section 29 of the Act).

2.16 Authority for Execution of Contracts

As per Clause 1 of Article 299 of the Constitution, the contracts and assurances of property made in the exercise of the executive power of the Union shall be executed on behalf of the President. The words "for and on behalf of the President of India" should therefore follow the designation appended below the signature of the officer authorized in this behalf.

Note 1: The various classes of contracts and assurances of property, which may be executed by different authorities, are specified in the Notifications issued by the Ministry of Law from time to time.

Note 2: The powers of various authorities, the conditions under which such powers should be exercised and the general procedure prescribed with regard to various classes of contracts and assurances of property are laid down in Rule 21 of the Delegation of Financial Powers Rules.

2.17 Contract Effective Date

The date of commencement of the obligations under the contract on the parties to a contract is referred as the contract effective date. This date should be invariably indicated in each contract, as per agreed terms and conditions. The Ministries/Departments are advised to set the effective date to be a date after the following:

- i) Date of signing of the contract.
- ii) Furnishing of performance bond in terms of performance security.
- iii) Receipt of Bank Guarantee for advance payment.

- iv) Obtaining Export Licence for supply of stores by seller and confirmation by the buyer.
- v) Receipt of End User's Certificate. The supplier shall provide the End User's Certificate within 30 (thirty) days of the signing of the contract.

3.0 Salient Features of the Sales of Goods Act, 1930

3.1 Scope

Agreements for the sale of goods are governed by the general principles of the contract law. A contract for sale of goods has, however, certain peculiar features such as transfer of ownership of the goods and quality aspects implied under a contract for sale of goods, and so on, are not covered in the Contract Act. These peculiarities are the subject matter of the provisions of the Sale of Goods Act, 1930. In this act, the two parties to the contract are called "seller" and "buyer". This act defines goods, for the purpose of applicability of this act, as every kind of movable property, including stocks and shares, growing crops, goodwill, patents, trademarks, electricity, water, gas, and so on—all that can be exchanged for money but not any kind of immovable property (for example, real estate).

3.2 Concept of Transfer of Property (Passing of Title)

Proprietary (ownership) rights and obligations in "goods" are called legally "title to goods" or "property in goods". The meaning of property here is different from the common connotation of the word. At what point of time or stage in a contract does this passing of title of (property in) goods happen is laid down by this Act. This ownership of goods is different from 'possession of goods' which means the physical custody or control of the goods. Delivery of goods is only a transfer of 'possession of goods'; and may or may not coincide with the passing of title in goods. This distinction is very important in procurement.

The transfer of property in the goods, from the seller to the buyer, is the essence of a procurement of goods. Therefore, the moment when the property in goods passes from the seller to the buyer is significant for following reasons:

3.3 Ownership

The moment the property in goods passes, the seller ceases to be their owner and the buyer acquires the ownership. The buyer can exercise proprietary rights over the goods. For example, the buyer may sue the seller for non-delivery of the goods or when the seller has resold the goods, and so on.

3.4 Concept of "Res Prit Domine" -- Risk Follows Ownership

This concept simply means that, as a general rule, risk follows the ownership, irrespective of whether the delivery (or transfer of possession of goods) has been made or not. If the goods are damaged or destroyed, the loss shall be borne by the person who was the owner of the goods at that time – irrespective of whosoever is in the "possession of the goods".

3.5 Action against Third parties

When the goods are, in any way, damaged or destroyed by the action of third parties, it is only the owner of the goods who can take action (claim, litigation) against them.

3.6 Time at which Property in Goods is Transferred

The property in goods is transferred to the buyer at such time as the parties to the contract intend this to happen, as recorded in the terms of the contract. This needs neither to coincide with the point when payment is made nor with the delivery of Goods and not even with the point of time when the seller dispatches the goods.

3.7 Document of Title to Goods

These are the voucher, bill, document, receipt, cash memo, bill of lading, lorry receipt, railway receipt, or any such acknowledgement which proves the ownership of the goods that, in the ordinary course of business, the buyer may receive. These are called documents of title to goods.

3.8 Doctrine of Caveat Emptor

The Sales of Goods Act lays down this important concept that the buyer must act with due diligence when buying goods; it is not a seller's duty to point out the defects in goods. This is a doctrine which is not in consonance with modern times but, unfortunately, is a legal position. This, however, does not apply if the buyer's consent to buy is obtained by the seller by knowingly concealing the defects which could not have been discovered by the buyer reasonably at the time of procurement. The caveat emptor is also diluted under some implied conditions in a contract for sale.

3.9 Provision of the Act regarding Statutory Variations in Taxes and Duties

Statutory variations in the taxes and duties (customs duties, excise duty, tax on the sale or procurement of goods), after the making of any contract, has to be borne by the buyer even if there is no such express stipulation in the contract.

4.0 Salient Features of the Indian Arbitration & Conciliation Act 1996

Indian Arbitration & Conciliation Act 1996 provides for dispute settlement either by a process of conciliation and/or by arbitration. This act is based on a 'United Nation's Commission on International Trade Law Model Arbitration Law' with an object to minimise the supervisory role of courts in the arbitral process and to provide that every final arbitral award is enforced in the same manner, as if it was a decree of the court. It covers both international and domestic arbitration and conciliation.

4.1 Arbitration

Arbitration is one of the oldest methods of settling civil disputes arising out of and in the course of performance of the contract between two or more persons by reference of the dispute to an independent and impartial third person called the arbitrator, instead of litigating the matter in the usual way through the courts. It saves time and expense, avoids unnecessary technicalities and, at the same time, ensures "substantial justice within limits of the law".

4.2 Arbitrator, Arbitration and Arbitral Award

The person or persons appointed to determine differences and disputes are called the arbitrator or arbitral tribunal. The proceeding before him is called arbitration proceedings. The decision is called an Award. For the purpose of Law of Limitations, The Arbitration for a particular dispute is deemed to have commenced on the date, on which a request for arbitration is received by the respondent.

4.3 Arbitration Agreement

It is an agreement by the parties to submit to arbitration all or certain disputes, which have arisen or which may arise between them, in respect of a defined legal relationship, whether contractual or non-contractual. The dispute resolution method of arbitration, as per the Arbitration and Conciliation Act, can be invoked only if there is an arbitration agreement (in the form of an arbitration clause or a separate arbitration agreement) in the contract. If there is such an agreement, courts are barred from directly entertaining any litigation in respect of such contracts, and are bound instead to refer the parties to arbitration.

4.4 Appointment and Composition of Arbitral Tribunal

Both parties can mutually agree on the number of arbitrators (which cannot be an even number) to be appointed. In case there is no agreement, a single (sole) arbitrator may be appointed. The parties can mutually agree on a procedure for appointing the arbitrator or arbitrators, or else in case of arbitration with three arbitrators, each party will appoint one arbitrator and the two appointed arbitrators will appoint the third arbitrator, who will act as a presiding arbitrator. If one party fails to appoint an arbitrator within 30 (thirty) days, or if the two appointed arbitrators fail to agree on the third arbitrator, then the court may appoint any person or institution as arbitrator. In case of an international commercial dispute, the application for appointment of arbitrator has to be made to the Chief Justice of India. In case of other domestic disputes, the application has to be made to the Chief Justice of the High Court within whose jurisdiction the parties are situated.

4.5 Challenge to Appointment of Arbitrator

An arbitrator is expected to be independent and impartial. If there are some circumstances due to which his independence or impartiality can be challenged, he must disclose the circumstances before his appointment. The appointment of an arbitrator cannot be challenged on any ground, except when there is justifiable doubt as to the arbitrator's independence or impartiality or when he does not possess the qualifications for the arbitrator agreed to by the parties. The challenge to appointment has to be decided by the arbitrator himself. If he does not accept the challenge, the arbitration can continue and the arbitrator can make the arbitral award. However, in such a case, application for setting aside the arbitral award can be made to the court, after the award is made by the arbitrator. Thus the other party cannot stall further arbitration proceedings by rushing to court.

4.6 Conduct of Arbitral Proceedings

The parties are free to agree on the procedure to be followed for conducting proceedings, location, language of hearings and written proceedings. Failing any agreement, the arbitral tribunal may decide themselves on these aspects. The parties shall be treated with equality and each party shall be given a full opportunity to present its case. The arbitral tribunal shall observe the rules of natural justice but is bound neither by Civil Procedure Code 1908 nor by Indian Evidence Act 1872. Limitation Act, 1963 is applicable from the date of commencement of arbitral proceedings. Arbitral tribunals have powers to do the following:

- i) Determine admissibility, relevance, materiality and weight of any evidence;
- ii) Decide on their own jurisdiction;
- iii) Decide on interim measures;
- iv) Termination of proceedings; and
- v) Seek court assistance in taking evidence.

4.7 Arbitral Award

The decision of the arbitral tribunal is termed as 'arbitral award'. The decision of arbitral tribunal shall be by majority. The arbitral award shall be in writing, mentioning the place and date, and signed by the members of the tribunal. It must state the reasons for the award. A copy of the award should be given to each party. The tribunal can make interim award also. An arbitral award is enforceable in the same manner as if it were a decree of the court.

4.8 Recourse against Arbitral Award

Recourse to a court against an arbitration award can be made by an application (within three months from the date of the arbitral award), only on the grounds specified in the act, that is, the party was under some incapacity; arbitration agreement was not valid; proper opportunity was not given to present the case; award deal with disputes not falling within the terms of reference of arbitrator; composition of the arbitral tribunal is not as per agreement of parties; subject matter of dispute is not capable of settlement through arbitration under the law or the arbitral award is in conflict with the public policy.

4.9 Conciliation

This is a new concept added in the Act for settlement of disputes. The party initiating conciliation shall send a written invitation to the other party to conciliate and proceedings shall commence when the other party accepts the initiations to conciliation. The parties may agree on the name of a sole conciliator or each party may appoint one conciliator. The conciliation shall assist the parties to reach an amicable settlement of their dispute. When the parties sign the settlement agreement, it shall be final and binding on the parties. The conciliator shall authenticate the settlement agreement and furnish a copy thereof to each party. This process has not yet come into a common use.

4.10 Changes introduced by the Arbitration and Conciliation (Amendment) Act, 2015

i) Independence, Disqualification and Obligations of arbitrators at the time of appointment

- a) **Independence, Impartiality and Accountability of Arbitrators:** A fixed fee structure ensures the independence of the arbitral tribunal and also provides a reasonable cost estimate to the parties entering into arbitration. The Amendment Act in the Fourth Schedule prescribes the model fees for arbitrators and the High Courts have been assigned the responsibility of framing the rules for determination of the fees and the manner of its payment. The model fee varies from Rs 45,000 to Rs 30 Lakh (Rupees forty-five to rupees thirty lakh) for various slabs of disputed value from Rupees five Lakh to above Rs 20 (Rupees twenty) Crore (with a sole arbitrator entitles to 25% (twenty-five percent) extra above the model fee). However it is clarified that such fees shall not be applicable in International Commercial Arbitration and in cases where parties have agreed for determination of fees as per the rules of an arbitral institution.
- b) **Disqualification from appointment:** A long and exhaustive list of specific circumstances which shall act as a bar against any person from being appointed as an arbitrator in a dispute, have been enumerated in the seventh schedule. However, the parties to the dispute have been given the opportunity, after the dispute has arisen, to waive the applicability of the seventh schedule, by mutual written agreement, if they so deem fit. Especially of interest in Public Procurement is disqualification of past or present employees, consultant, advisors or other related business relationship not only with the Procuring Entity but also with any affiliated entity thereof. Thus the earlier practice of appointing serving officers of procuring entity as arbitrator is no more legal.
- c) **Disclosures:** An arbitrator who is approached for appointment is obligated to disclose as per Sixth Schedule of the Act. The declaration as per a set format removes any ambiguity and ensures uniformity:

1. conflict of Interest the existence either direct or indirect, of any past or present relationship with or interest in any of the parties or in relation to the subject matter in dispute, whether financial, business, professional or other kind, which is likely to give rise to justifiable doubts as to his independence or impartiality as per fifth schedule to the Act for arbitrator.
2. Time constraints: An arbitrator shall disclose all circumstances which may affect his ability to deliver an award within 12 (twelve) months.

ii) **Fast-tracking Arbitration in India**

a) **Award within 12 (Twelve) months:** The arbitral tribunal is statutorily obligated to deliver an award within 12 (twelve) months from the date when arbitral tribunal enters into reference. The arbitral tribunal is said to have entered upon the reference on the date on which the arbitrator(s) have received notice of their appointment. The award can be delayed by a maximum period of six months only under the special circumstances where all parties give their consent to such extension of time. Where the award is not made out within the statutory period the mandate of arbitrators shall automatically terminate. It is open for the courts to extend the time period for making an award upon receipt of an application by any of the parties. Such extension is to be granted only for sufficient cause and the court in its discretion may impose the following penalties depending on the facts and circumstances of the case:

1. Reduce the fees of arbitrators by up to 5% (five percent) for each month of delay.
2. Substitute one or all the arbitrators.
3. Impose actual or exemplary costs on any of the parties.

b) **Oral arguments to be held on a day-to-day basis:** Oral arguments as far as possible shall be heard by the arbitral tribunal on a day to day basis and no adjournments shall be granted without sufficient cause. Provision for imposition of exemplary cost on the party seeking adjournment without sufficient cause has also been made.

c) **Fast Track Procedure:** The parties to arbitration may choose to opt for a new fast track procedure either before or after the commencement of the arbitration. The award in fast track arbitration is to be made out within six months. Where the Arbitral Tribunal delivers the award within a period of six months the arbitral tribunal shall be entitled to additional fees. The quantum of such additional fees shall be determined by the parties. The salient features of the fast track arbitration are:

1. Dispute is to be decided based on written pleadings only.
2. Arbitral Tribunal shall have the power to call for clarifications in addition to the written pleadings where it deems necessary.
3. Oral hearing maybe held only if all the parties make a request or if the arbitral tribunal considers it necessary.
4. The parties are free to decide the fees of the arbitrator(s).

d) **Appointment within 60 (sixty) days:** Whenever an application for appointment of Arbitrator(s) is moved before a court such application shall be disposed of as expeditiously as possible and an endeavour shall be made to dispose of the matter within a period of sixty days from the date of service of notice on the opposite party. The

court while appointing arbitrators shall confine itself to the examination of the existence of an arbitration agreement.

iii) **Procedural and Jurisprudence simplified**

- a) **Arbitration to commence within 90 (ninety) days of interim relief:** Where the court grants interim relief before the commencement of arbitration, the arbitration must commence within 90 (ninety) days from such order of interim relief. The court however has been given the authority to extend the period within which the arbitration must commence, if it deems such extension necessary. The Act prohibits courts from entertaining any application for interim relief once the arbitration has entered into reference, unless the court finds that circumstances exist which may not render the remedy provided under section 17 efficacious.
- b) **Powers of Interim Relief in Section 9 also to Arbitral Tribunal:** The parties to arbitration can now directly approach the arbitral tribunal for seeking interim relief on the same grounds as were available to the parties under section 9 of the previous act. Further, the tribunal has now been granted the powers of a court while making interim awards in the proceedings before it.
- c) **Arbitral tribunal not bound to rule in accordance with terms of the contract:** The arbitral tribunal was previously bound to deliver an award in accordance with the terms of the agreement and was required to take into consideration the 'usages of the trade applicable to the transaction'. Vide the Amendment the arbitral tribunal has been freed of the obligation to only rule in accordance with the terms of the agreement. The arbitral tribunal is only required to take the agreement into account while delivering its award and is free to deviate from the terms of the agreement if the circumstances so warrant.
- d) **Act made applicable on International Commercial Arbitration with even seat outside India:** Part I of the act has been made applicable for limited purpose (listed below) on International Commercial Arbitrations even in instances where the seat of the arbitration is outside India, however giving freedom to exclude the applicability the Act by entering into an agreement to this effect:
 - 1) Seeking interim relief from courts [section 9]
 - 2) Seeking the assistance of the court in taking evidence [section 27]
 - 3) Appealing against the order of a court where the court refuses to refer the parties to arbitration. [section 37(1) (a)]
 - 4) Restricting the right to second appeal and preserving the right of parties to approach the Supreme Court in appeal. [section 37 (3)]

5.0 Salient Features of Competition Act, 2002 relating to Anti-competitive Practices

- i) The **Preamble of the Competition Act, 2002**, provides for the establishment of a Commission keeping in view of the economic development of the country to promote and sustain competition in markets; prevent practices having adverse effect on competition; protect consumer interest; and ensure freedom of trade carried on by participants in Indian markets.
- ii) The Act was amended by Competition (Amendment) Act, 2007 and again by Competition (Amendment Act), 2009.
- iii) In India, Competition Commission of India ("CCI"), formulated under the Competition Act is a quasi-judicial and regulatory body entrusted with the task enforcement of the

Competition Act, 2002. Apart from specific functions under the Competition Act, 2002 the CCI also has extra-territorial jurisdiction, inquiry into anticompetitive conduct, sector-specific regulatory work, competition advocacy, power of appointment of professional and experts, and procedure for investigation (in terms of regulating its own procedure).

- iv) Section 8 dealing with composition of Commission provides for a chairperson and not less than two and not more than six members which are to be appointed by Central Government. The CCI is vested with inquisitorial, investigative, regulatory, adjudicatory and also advisory jurisdiction. Vast powers have been given to the Commission and under Section 64, the Commission can frame regulations.
- v) The Competition Appellate Tribunal (COMPAT) is another body entrusted with the responsibility of hearing and disposing of appeals against any direction or decision or order of the CCI. It also adjudicates on compensation claims arising from the findings of the CCI or its own findings on appeals against the CCI orders and passes orders on the recovery of compensation.
- vi) Any person aggrieved by the order or decision of the CCI may prefer an appeal to the Competition Appellate Tribunal ('COMPAT') within 60 (sixty) days from the date of communication of such order or decision. The second and final appeal under Section 53T lies before the Supreme Court of India from the orders of the COMPAT within a period of 60 (sixty) days from the date of communication of the order by the COMPAT.
- vii) CCI may initiate an inquiry:
 - a) On its own motion on the basis of information and knowledge in its possession, or
 - b) On receipt of any information, in such manner and accompanied by such fee as may be determined by regulations, from any person, consumer or their association or trade association, or
 - c) On receipt of a reference from the Central Government or a State Government or a statutory authority
- viii) The Act provides for Director General office as a separate investigative wing to assist the CCI. The DG looks into the complaints received from the CCI and submits all findings to it. DG is solely responsible for making enquiries, for examining documents and for making investigations into complaints. The DG is vested under the Act with powers of summoning of witnesses, examining them on oath, requiring the discovery and production of documents, receiving evidence on affidavits, issuing commissions for the examination of witnesses etc.
- ix) The Act in Section 49 (3) lays down the advocacy function of CCI and lays down that the CCI shall take suitable measures for the promotion of competition advocacy, creating awareness and imparting training about competition issues. Section 32 of the Act grants the CCI extra-territorial jurisdiction over anticompetitive conduct which has an appreciable adverse effect on competition within India. Any anticompetitive activity taking place outside India but having an appreciable adverse effect on competition within India shall be subject to the application of the Competition Act.
- x) Under Section 21 of the Act, any statutory authority can suo motto or on request of a party in the course of a proceeding before it can make a reference to CCI. CCI shall give its opinion within sixty days of receipt of such reference by such statutory

authority. Under the provisions of the Act, the authority which made reference shall consider the opinion of the Commission and thereafter, give its findings recording reasons on the issues referred to in the said opinion by CCI. Section 21A in the same language provides for such reference by CCI to any statutory authority.

xi) The key provisions of the Competition Act include:

- 1) Section 3 of the Competition Act, 2002 dealing with anti-competitive agreements;
 - 2) Section 4 of the Competition Act, 2002 which discusses abuse of dominance;
 - 3) Section 5 and 6 of the Competition Act, 2002 dealing with the regulation of combinations.
- xii) The term 'agreement', has been defined broadly in the Competition Act. It extends to a mere 'arrangement', 'understanding' or 'action in concert', none of which need be in writing or enforceable by law.
- xiii) Section 3(1) of the Competition Act lays down that no enterprise or association of enterprises or person or association of persons shall enter into any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition within India. The Act prohibits an anti-competitive agreement and declares that such an agreement shall be void.
- xiv) Section 3(3) of the Competition Act deals with the horizontal agreements as it covers the agreements between entities engaged in identical or similar trade of goods or provision of services. It also includes cartels. The section covers:
 - 1) Agreement entered into between enterprises or associations of enterprises or persons or associations of persons or between any person and enterprise
 - 2) Practice carried on by any association of enterprises or association of persons
 - 3) Decision taken by any association of enterprises or association of persons
- xv) Section 3(3) of the Competition Act enlists four broad classifications of horizontal agreements which are presumed to cause an appreciable adverse effect on competition (AAEC) in India.
 - 1) Agreements regarding Prices
 - 2) Agreements regarding Quantity / Quality
 - 3) Market Allocation
 - 4) Bid Rigging

These four horizontal agreements are not presumed to have appreciable adverse effect on competition and excluded from the provisions of Section 3(3) of the Competition Act, 2002 provided they are entered into by way of joint ventures and increase efficiency in production, supply, distribution, storage, acquisition or control of goods or provision of services.

Cartels, by their very nature are secretive and thus it is difficult to find the direct evidence of their presence. The orders of the CCI clearly point that CCI relies on circumstantial evidence, both economic and conduct-based, to reach its decision on the existence of a cartel agreement.

The Act provides a definition for bid rigging and it covers agreements having effect of eliminating or reducing competition for bids or adversely affecting or manipulating the process for bidding:

- 1) Collusive bidding: Agreement between firms to divide the market, set prices or limit production – involves, kickbacks and misrepresentation of independence
- 2) Bid Rotation
- 3) Bid Suppression
- 4) Complementary Bidding
- 5) Subcontracting arrangements
- 6) Market Allocation

The Act gives wide discretion to CCI to frame the remedies to overcome the anticompetitive situation:

1. Declare Anticompetitive Agreements Void
2. Impose Heavy Penalties

- 1) Penalty can be up to 10% (ten percent) of the average turnover for the last three preceding financial years upon each of such persons or enterprises which are parties to bid-rigging
- 2) Cartel, a penalty of up to three times of its profit for each year of the continuance of such agreement or 10% (ten percent) of its turnover for each year of the continuance of such agreement, whichever is higher
3. Order the parties to Cease & Desist
4. Modification of agreements
5. Remedy Damage to reputation
6. Fix Individual Liability
7. Grant Interim orders
8. Any other order as CCI deems fit

xvi) **Who can file the information:** Raising issues regarding anti-competitive behaviour for action by CCI under the act is called filing the information:

- a) Any person, consumer or their association or trade association can file information before the Commission.
- b) Central Govt. or a State Govt. or a statutory authority can also make a reference to the Commission for making an inquiry.
- c) "Person" includes an individual, HUF, firm, company, local authority, cooperative or any artificial juridical person.

xvii) **What are the issues on which information can be filed?**

- a) The information can be filed on the issues like anti-competitive agreements and abuse of dominant position or a combination.
- b) Class of consumers.

xviii) **The fee -**

- a) Rupees 5000/- (Five thousand only) in case of individual, or Hindu undivided family (HUF), or Non-Government Organisation (NGO), or Consumer Association, or Co-operative Society, or Trust, duly registered under the respective Acts,
- b) Rupees 20,000/-(twenty thousand only) in case of firms, companies having turnover in the preceding year upto Rupees one Crore, and
- c) Rupees 50,000/- (fifty thousand only) in case not covered under clause (a) or (b) above.

6.0 Salient Features of the Whistle Blowers Protection Act, 2011 and the Whistle Blowers Protection (Amendment) Act, 2015

- i) The Act seeks to protect whistle blowers, i.e. persons making a public interest disclosure related to an act of corruption, misuse of power, or criminal offence by a public servant.
- ii) Any public servant or any other person including a non-Governmental organization may make such a disclosure to the designated agencies i.e. Central or State Vigilance Commission. The Time Limit for making any complaint or disclosure to the Competent Authority is seven years from the date on which the action complained against is alleged to have taken place.
- iii) The Designated Agency cannot entertain any disclosure relating to any inquiry ordered under the Public Servants (Inquiries) Act, 1850 and Commissions of Inquiry Act, 1952.
- iv) Similarly, the Amendment Act, 2015, The Bill prohibits the reporting of a corruption related disclosure if it falls under any 10 (ten) categories including information related to:
 - 1) The sovereignty, strategic, scientific or economic interests of India, or the incitement of an offence
 - 2) Records of deliberations of the Council of Ministers
 - 3) That which is forbidden to be published by a court or if it may result in contempt of court;
 - 4) A breach of privilege of legislatures;
 - 5) Commercial confidence, trade secrets, intellectual property (if it harms a third party);
 - 6) That relayed in a fiduciary capacity;
 - 7) That received from a foreign Government;
 - 8) That which could endanger a person's safety etc.;
 - 9) That which would impede an investigation etc.;
 - 10) Personal matters or invasion of privacy.

However, if information related to (ii), (v), (vi), and (x) is available under the Right to Information Act, 2005, then it can be disclosed under the Act.

- v) Any public interest disclosure received by a Competent Authority will be referred to a Government authorised authority if it falls under any of the above prohibited categories. This authority will take a decision on the matter, which will be binding.
- vi) The Identity of the Complainant must be included in the Complaint or the Disclosure. However the Designated Agency shall conceal the identity of the complainant unless the complainant himself has revealed his identity to any other office or authority while making public interest disclosure or in his complaint or otherwise. However, the Designated Agency can reveal the identity of the complainant in circumstances where it becomes inevitable or extremely necessary for the purposes of the enquiry.
- vii) The Designated Agency may, with the prior written consent of the complainant, reveal the identity of the complainant to such office or organization where it becomes necessary to do so. If the complainant does not agree to his name being revealed, in that case, the complainant shall provide all documentary evidence in support of his complaint to the Designated Agency.
- viii) Any person who negligently or with malafide reveals the identity of the complainant shall be punished with imprisonment up to three years and fine not exceeding Rs. 50,000 (Rupees fifty thousand).

- ix) Similarly any disclosure made with mala fide and knowingly that it was false or misleading shall be punished with imprisonment up to two years and fine not exceeding Rs. 30,000 (Rupees thirty thousand).
- x) After receipt of the report or comments relating to the complaint, if the Designated Agency is of the opinion that such comments or report reveals either wilful misuse of power or wilful misuse of discretion or substantiates allegations of corruption, it shall recommend to the public authority to take appropriate corrective measures such as initiating proceedings against the concerned public servant or other administrative and corrective steps. However, in case the public authority does not agree with the recommendation of the Designated Agency, it shall record the reasons for such disagreement.
- xi) While dealing with any such inquiry, the Designated Agency shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908 in respect of matters like receiving evidence, issuing commissions, discovery and production of any document etc. Also, every proceeding before the Designated Agency shall be deemed to be a judicial proceeding under the Code of Criminal Procedure, 1973 and Indian Penal Code.
- xii) No obligation to maintain secrecy or other restrictions upon the disclosure of information shall be claimed by any Public Servant in the proceedings before the Designated Agency.
- xiii) But, no person is required to furnish any information in the inquiry under this act if such information falls under the 10 (ten) categories mentioned before.
- xiv) It shall be the responsibility of the Central Government to ensure that no person who has made a disclosure is victimised on the ground that such person had made a disclosure under this act.
- xv) If any person is victimised or likely to be victimised on the above-mentioned ground, he may contact the Designated Agency and the Designated Agency may pass appropriate directions in this respect. The Designated Agency can even restore status quo ante with respect to the Public Servant who has made a disclosure. Also, the Designated Agency can pass directions to protect such complainant.
- xvi) If an offence under this act has been committed by any Head of the Department unless he proves that the offence was committed without his knowledge or that he exercised all due diligence in this respect.
- xvii) This Act extends to all the Companies as well. When any offence under this act has been committed by a company, every person who at the time of the offence was responsible for the conduct of the business of the company shall be deemed to be guilty of the offence unless he proves that the offence was committed without his knowledge or that he exercised all due diligence in this respect.
- xviii) No court can take cognizance of any offence under this act save on a complaint made by the Designated Agency. No court inferior to that of a Chief Metropolitan Magistrate or a Chief Judicial Magistrate shall try any offence under this act. The High Court shall be the appellate authority in this respect.

Appendix 3: Electronic Procurement (e-Procurement) and e-Auction

(The details given in this appendix are generic in nature are not prescriptive part of this Manual of Policies and Procedures. Procuring Entities may settle and decide the details with the service provider)

1.0 Electronic procurement (e-procurement) is the use of information and communication technology (specially the internet) by the buyer in conducting procurement processes with the vendors/ contractors for the acquisition of goods (supplies), works and services aimed at open, non-discriminatory and efficient procurement through transparent procedures. The Procurement Policy Division, Department of Expenditure, MoF, has vide Office Memorandum no: 10/3/2012-PPC dated January 9, 2014⁹³ prescribed mandatory publishing of tenders through the e-procurement mode for tenders valued above Rupees two lakh.

2.0 Service Provider:

A service provider is engaged to provide an e-procurement system covering the following:

- i) All steps involved, starting from hosting of tenders to determination of techno-commercially acceptable lowest bidder, are covered;
- ii) The system archives the information and generates reports required for the management information system/decision support system;
- iii) A helpdesk is available for online and offline support to different stakeholders;
- iv) The system arranges and updates the Digital Signature Certificate (DSC) for Departmental users; and
- v) Different documents, formats, and so on, for the e-procurement systems are available.

3.0 Process:

In e-procurement, all processes of tendering have the same content as in normal tendering and are executed, once the necessary changes have been made, online by using the DSC as follows:

- i) **Communications:** Wherever traditional procedures refer to written communication and documents, the corresponding process in e-procurement would be handled either fully online by way of uploading/downloading/emails or automatically generated SMSs or else partly online and partly offline submission. It is advisable to move to full submissions online. More details would be available from e-procurement service provider's portal. In e-procurement, the tender fee, EMD and documents supporting exemption from such payments are submitted in paper form to the authority nominated in the NIT, but scanned copies are to be uploaded – without which the bid may not get opened. In future, such payments may be allowed online also;

⁹³http://eprocure.gov.in/cppp/sites/default/files/instruction_contents/INST_DOC_NO_1/eProcurement0901208.4.pdf

- ii) **Publishing of tenders:** Tenders are published on the e-procurement portal by authorised executives of Procuring Entity with DSC. After the creation of the tender, a unique "tender id" is automatically generated by the system. While creating/publishing the tender, the "bid openers" are identified – four officers (two from the procuring entity and two from the associated/integrated Finance) with a provision that tenders may be opened by any two of the four officers. The downloading of the tender may start immediately after e-publication of NIT and can continue till the last date and time of bid submission. The bid submission will start from the next day of e-publication of NIT. In case of limited and PAC/ single tenders, information should also be sent to target vendors/contractors through SMS/email by the portal;
- iii) **Registration of bidders on portal:** In order to submit the bid, bidders have to register themselves online, as a one-time activity, on the e-procurement portal with a valid DSC. The registration should be in the name of the bidder, whereas DSC holder may be either the bidder himself or a duly authorised person. The bidders will have to accept, unconditionally, the online user portal agreement which contains all the terms and conditions of NIT including commercial and general terms and conditions and other conditions, if any, along with an online undertaking in support of the authenticity of the declarations regarding facts, figures, information and documents furnished by the bidder online;
- iv) **Bid submission:** The bidders will submit their techno-commercial bids and price bids online. No conditional bid shall be allowed/ accepted. Bidders will have to upload scanned copies of various documents required for eligibility and all other documents as specified in NIT, techno-commercial bid in cover-I, and price bid in cover-II. To enable system generated techno-commercial and price comparative statements, such statements should be asked to be submitted in Excel formats. The bidder will have to give an undertaking online that if the information/declaration/scanned documents furnished in respect of eligibility criteria are found to be wrong or misleading at any stage, they will be liable to punitive action. EMD and tender fee (demand draft/banker's cheque/pay order) shall be submitted in the electronic format online (by scanning) while uploading the bid. This submission shall mean that EMD and tender fee are received electronically. However, for the purpose of realisation, the bidder shall send the demand draft/banker's cheque/pay order in original to the designated officer through post or by hand so as to reach by the time of tender opening. In case of exemption of EMD, the scanned copy of the document in support of exemption will have to be uploaded by the bidder during bid submission;
- v) **Corrigendum, clarifications, modifications and withdrawal of bids:** All these steps are also carried out online mutatis mutandis the normal tendering process;
- vi) **Bid opening:** Both the techno-commercial and price bids are opened online by the bid openers mentioned at the time of creation of the tender online. Relevant bidders can simultaneously take part in bid opening online and can see the resultant bids of all bidders. The system automatically generates a technical scrutiny report and commercial scrutiny report in case of the techno-commercial bid opening and a price comparative statement in case of price bid opening which can also be seen by participating bidders online. Bid openers download the bids

and the reports/statements and sign them for further processing. In case of opening of the price bid, the date and time of opening is uploaded on the portal and shortlisted firms are also informed through system generated emails and SMS alerts – after shortlisting of the techno-commercially acceptable bidders;

- vii) **Shortfall document:** Any document not enclosed by the bidder can be asked for, as in case of the traditional tender, by the purchaser and submitted by the bidder online, provided it does not vitiate the tendering process;
- viii) **Evaluation of techno-commercial and price bids:** This is done offline in the same manner as in the normal tendering process, based on system generated reports and comparative statements;
- ix) **Award of contract:** Award of the contract is done offline and a scanned copy is uploaded on the portal. More needs to be done in this regard. The information and the manner of disclosure in this regard must conform to Section 4(1) (b), 4(2) and 4(3) of the RTI Act to enhance transparency and also to reduce the need for filing individual RTI applications. Therefore, the award must be published in a searchable format and be linked to its NIT; and
- x) **Return of EMD:** EMD furnished by all unsuccessful bidders should be returned through an e-payment system without interest, at the earliest, after the expiry of the final tender validity period but not later than 30 (thirty) days after conclusion of the contract. EMD of the successful bidder should be returned after receipt of performance security as called for in the contract.

4.0 Disposal through e-Auction

4.1 Contractual Legal Aspects of Auction Sale of Scrap

Ministry/ Departments should decide the calendar for holding auctions/ tenders for groups of lots. A brief summary of this Auction Schedule is given publicity in Newspapers and on websites, indicating how to obtain/ download Auction Catalogues. For each Auction a Catalogue is prepared containing details of Schedule of Lots in the Auction, as well as General and Special Terms and Conditions of Sale (GTC and STC). In contractual terms, Publishing of an Auction catalogue in sale of scrap is equivalent to NIT/ SBD in Tenders for procurement and forms the basis of bids by the purchasers. In e-Auction, the General Conditions of Sale are available on the website and Special Conditions of Sale of each lot is hyperlinked to the Lot Description. In case of Tender/ Physical Auctions Catalogue contains these in printed format.

In Auction, the bidders keep bidding higher and the highest accepted bid is accepted. In such a case a Bid-Sheet is immediately signed by the Seller and Bidder's representative, which along with the delivery order serves as a legal contract document. In e-Auction, Bid Sheet is generated with DSCs of Buyer and Seller.

4.2 Legal Status of e-Auction

e-Auction through E- Auction Service Provider (eASP) is a triangular contract. eASP is a sub-agent of the seller through a standing contract entered between them, which is subject to general terms and conditions (GTC) of eASP. eASP is also a sub-agent of the successful buyer through a standing contract between them which is subject to Buyer Specific Terms and Conditions (BSTC). eASP gets a commission of fixed percentage of sale value from the purchaser directly – which is deducted from the amount payable to the seller. The e-auction

sale is governed by GTC, BSTC and Special Terms and Conditions (STC) of the e-auction. In case of conflict or differences among any provisions of GTC, BSTC and STC, the provisions of STC would prevail. Normally, successful purchasers pay all monies to eASP who, in turn, transfers it to the seller. But the seller may, if desired, negotiate with eASP to accept such payments directly from purchaser.

4.3 Creating an Auction Event: Auction Catalogue

The seller lists items to be auctioned on a specified date. This list is generally called an auction catalogue. Besides the list of items, it also contains any special conditions of contract applicable generally or to specific lots. The following auction details are provided in this list: **Auction Catalogue.**

- i) Auction number;
- ii) Auction Opening date and time,
- iii) Auction Closing date and time;
- iv) Type of Auction Ending: Close Ended/ Open Ended
- v) Max Auto Extensions Allowed (five to ten)/ Duration of Auto Extensions (90 Secs– ninety seconds)
- vi) Auction Catalogue Number and Date
- vii) Inspection from date;
- viii) Inspection closing date;
- ix) Seller/Unit name;
- x) Address; Contact details;
- xi) Details of the contact person;
- xii) Details of ED and Sales Tax (CST/ VAT) in each Lot and TCS (including Surcharge and Edu Cess) for all lots;
- xiii) Whether Subject to Acceptance (STA) is applicable for bids within (10% (ten percent) or any other percentage) of the Reserve Price and
- xiv) List of lots to be included: (Lot Description is hyper-linked to relevant details containing special terms of lifting, etc)

The fixed reserve price also has to be uploaded on the portal for each lot, which is kept

Auction Sq No:	Lot No	Lot Desc	Quantity	ED/(ST /Vat)%	Custodian/ Location	Start Time	Close Time	Minimum Increment	STA applicable Y/N
Total Number of Lots =									

confidential. It should also be mentioned if bids below the reserve price up to a percentage can be accepted on an STA basis. The auction details can be posted by eASP but to maintain the sanctity of the reserve price, it is better for the seller to do so through his login and password. The bidder's queries before the auction will reach seller by e-mail and can be answered online. The seller will not be allowed to edit any item once the auction starts. To attract bidders to the auction to get a higher price, the seller should describe items in detail to include information such as condition and size of the item. The more information is provided, the more bidders will bid with confidence. A photo can also be uploaded. Generally, auctions with images have higher sell-through. Many buyers like to browse

through the eASP categories and, therefore, listing the item in the appropriate category increases the likelihood of interested bidders viewing it.

4.4 Buyer Eligibility

All prospective e-auction sellers and bidders will have to register themselves by filling in the relevant details online. Bidders have also to pay the specified non-refundable registration fee (usually Rs.10,000 – Rupees ten thousand) off line. Only registered bidders will be able to access the auction floor. The auction notification will, however, be seen by all internet users. If it is found that the bidder is not adhering to the terms and conditions of the e-auction and also indulging in any malpractices either himself or through his agents, deputies or observer, such a bidder is liable to be blacklisted and appropriate action will be taken as deemed fit by the seller. There are various reports available by which seller can rate a bidder. The seller can restrict or blacklist a buyer from bidding by making a formal request to eASP.

4.5 Conduct of Auction

The seller cannot close/cancel an auction once it starts. It can be cancelled/ amended prior to the starting of the auction by making a request for cancellation. The following information will be present on the auction floor web-page:

- i) Opening date and time,
- ii) Closing date and time,
- iii) Item number,
- iv) Item name, hyper-linked to relevant details containing duties, etc., /special terms of lifting, etc.;
- v) Quantity and unit of measurement;
- vi) Location of material/item;
- vii) Last bid or basic price, if any;
- viii) Bidders' bid in Rs./unit; and
- ix) Bid history.

The closing time of an auction shall automatically be extended by period indicated in Auction Catalogue for all auctions if bid continues (e.g., in case the closing time is 5.30 pm of any particular date and if a bidder bids at 5.29 pm then the closing time will be automatically extended). Maximum number of auto extensions are also specified.

Bidders are able to indicate the bid price through their login. A bid, once given, cannot be retracted. Conditional offers will not be accepted/entertained. Each bidder will have the option to declare his maximum value of bid (which cannot be viewed by other bidders) up to which his automatic bidding will continue.

The seller can monitor auction activity and view the bidding history of the live auctions, reserve prices (reserve price can only be viewed by seller and no one else), and other features. However, the seller will get an automated email once the auction ends with detailed information on the auction (highest bidder, subject to approval items, rejected items).

The respective items will be marked "sold" after closing of the auction when the highest bid is greater than the reserve price and an automatic intimation to the concerned buyer will be sent online to make the payment.

If the bid price matches the limits specified for inclusion in STA, then it shall be shown under the STA category and the seller will be accordingly informed. In case of STA, the seller has to convey the acceptability of the bid amount or otherwise of the bid value to eASP as well as the bidder within three days (excluding holidays) of the close of the auction.

In case of "Sold" or STA a Bid-Sheet is displayed (Annexure 20), indicating the details of the accepted bid, which is printed and shows digital signatures of Auction Supervising Officer and the Bidder. As mentioned before this serves the role of legal Contract document.

If the reserve price has not been met by close of auction, the auction closes without a winning bidder. On the seller's request, eASP will arrange for inclusion of the unsold item in the next auction.

4.6 Earnest Money Deposit

EMD is payable within seven calendar days from the date of closing of the e-auction (excluding the date of closing) by the successful bidder. EMD is equivalent to 25 per cent of material value of the accepted lots and 10 (ten) per cent of the material value for STA lots in the forms of a demand draft drawn in favour of the authority mentioned in the auction catalogue. On receipt of the EMD by eASP, an acceptance letter/sale order will be issued for sold lots. In case of failure to pay the EMD in time, the login of the party will be deactivated in addition to other actions as deemed fit and the offer will stand withdrawn.

4.7 Payment of Balance Sale Value (BSV)

In case of sold/accepted lots and lots taken on STA basis, the balance payment has to be made within 15 (fifteen) calendar days from the date of the acceptance letter/sale order (excluding the date of issue of the acceptance letter/sale order), by way of a demand draft as per the following manner:

- i) Commission percentage as per STC/ GTC/ BSTC to be paid in favour of eASP, by way of demand draft/pay order;
- ii) The balance amount (after deducting the EMD and amount payable to eASP) plus applicable VAT/duties, income tax and other charges if any must be paid in favour of authority mentioned in auction catalogue;
- iii) In case of delay, a late payment charge @ one per cent per week or part thereof will be charged up to two weeks only and thereafter the EMD will stand forfeited without any notice; and
- iv) Tax Collected at Source (TCS) at the applicable percentage (presently@ one per cent) of the gross value (material value + excise duty + VAT + any other applicable taxes/duties/cess, etc.) may be deducted by the purchaser and a TDS certificate may be given. A surcharge of 10% (ten percent) on TCS and a further Education cess of 3% (three percent) is leviable on the TCS+ Surcharge.

4.8 Delivery Order

eASP will hand over, to the successful buyer, a delivery order authorising the Stores Department to make such a delivery, after getting the requisite material value. The

purchaser will approach the seller with the delivery order to allow him to lift the material. The validity of the delivery order is 60 (sixty) days from the date of the e-auction. The delivery order should show the following particulars:

- i) Lot number;
- ii) Description of material;
- iii) Purchaser's name and address;
- iv) Approximate quantity in the lot;
- v) Rate at which sold;
- vi) Value realised;
- vii) Reference to the cash remittance note, under which the value was remitted to the nominated cashier;
- viii) Chief cashier or treasurer's receipt note and date; and
- ix) Amount of loading charges recovered by the store keeper.

Note: Information sought in S.No i) to viii) shall be filled in by eASP in tabular form (Columns 1 to 8). Information pertaining to S.No. ix) (Column 9) shall be filled by the store keeper.

Appendix 4: Management of Public Procurement Function

1.0 Organisation of Procurement Function

The procurement function should be so organised that procurement executives get an opportunity to develop expertise in a particular market segment, and internal customers may have to deal with only a single point of interface. Thus, work distribution in the procurement entity may be segmented based on markets, but there may be nodal officers to provide a single window interface to internal clients.

In a procurement entity, beside procurement activities, there are also ancillary activities. In a small procurement entity, these ancillary activities may be distributed among various executives. Ancillary procurement activities are:

- i) Administration and management services;
- ii) Human resources development and training;
- iii) Policy and guidelines;
- iv) Procurement performance measurement and management reporting
- v) IT systems and master data management;
- vi) Advertising, bidding document sale/ issue/receipt, tender boxes, tender opening, custody of samples;
- vii) Direct contracting/local purchase;
- viii) Liaison and progressing;
- ix) Supplier relations management and registration; and
- x) Legal and arbitration matters.

2.0 Management Reporting

2.1 Procurement Key Performance Indices and Management Reporting

As in all management and financial functions, it is possible to measure the pulse of the procurement function by using certain Procurement Key Performance Indices (KPIs). As part of management reporting, these KPIs can be devised to reflect the status of workload, throughput and efficiency of the procurement function. Some KPIs are given in *Appendix 5: Templates for Management Reports and KPIs*.

2.2 Management Reports for Monitoring of Procurement Function

For proper monitoring and control of the procurement function, regular monthly reports to procurement managers should highlight throughput and stagnation at important milestones of the procurement process. The milestones where workload, throughput and stagnation need to be studied in procurement management are:

- i) Receipt of indent;
- ii) Issue of tenders;
- iii) Finalisation of tender decision;
- iv) Signing of contracts;

v) Successful performance of the contract; and

vi) Payments for supplies/works/services.

This will highlight stages where urgent intervention is required for efficient procurement to the management. These reports would be compiled by the procuring entity. Templates for management reports are given in *Appendix 5: Templates for Management Reports and KPIs*.

3.0 Record Keeping

3.1 All procurements done by the organisation are subject to post audit by internal audit, statutory audit and various internal and external vigilance agencies. Hence, all documents related to the procurement should be filed and kept systematically and safely. Files shall be properly numbered on the notes and correspondence side. The period of retention of various types of documents should be laid down. The procuring entity should also maintain following basic records (either in manual or electronic form):

- i) **Item/Asset Master Database:** The heart of the procurement system is the item/asset master database. It contains complete data about an item or asset handled in the past. It contains: code-number; category; description long/short; specification; drawings; trade group of vendors; book-rate; estimated annual consumption; replenishment data; inventory parameters (buffer stock, safety stock levels) – to the extent relevant to goods, works or services;
- ii) **Vendor/Contractors Database:** Contains vendor/contractor information such as name; address ; small scale and minority enterprise categorisation; registration data (registration code, trade groups, monetary limits of registration, NSIC registrations); past performance ratings;
- iii) **Procurement Register:** Key information at various stages of procurement operations, from receipt of indents till the issue of the contract, is recorded (manually or electronically) in the procurement register. The Procurement register thus enables ascertaining of status of a particular procurement and also overall monitoring of efficiency and throughput of procurement operations;
- iv) **Procurement Order Guard Register:** An indexed register with only machine numbered stubs of pages (instead of full pages) is used for this purpose. One ink signed copy of all orders issued by the procuring entity is compulsorily pasted in these stubs in chronological order. This is the most authentic record which is used as a guard and ultimate reference against any tampering/falsification/misreporting of procurement orders; and
- v) **Procurement Order Progress Register:** It contains record of all procurement orders issued and progress of supplies against these contracts. It contains procurement order numbers, vendor/contractor name, brief description of procurement, total value of the order, delivery dates, actual dates of supply, and so on.

Appendix 5: Templates for Management Reports and KPIs

(Refer Appendix 4, Para 1.3)

1. Delays by more than one month in floating of tenders against indents received

Serial No.	Item/Work Code and Description	Quantity, Value Required/ Indented	Date Received in Procuring Entity	Date of Floating Tenders	Remarks

2. Delays by more than one month in finalising tenders over ideal time (Chapter 7, Para 1.2)

Serial No.	Tender Number & Opening date	Item/Work Code and Description	Quantity & Value	Date Indent Received in Procuring Entity	Delay as per Ideal Time	Likely Date of Contract/ Remarks

3. Cases of tenders discharged or proposed for re-tendering

Serial No.	Tender No. & Opening Date	Item/Work Code and Description	Quantity & Value	Reasons of Discharge/ Retendering	Level of Approval	Is it a Case of Repeat Retendering ?	Actions Taken to Avoid Repetition

4. Delays by over one month in signing contracts after finalisation of tender

Serial No.	Tender Number & Opening date	Item/Work Code and Description	Quantity & Value	Date of Finalisation of Decision	(Likely) Date of Contract Signing	Remarks

5. **Delays by over three month in Performance of Contract**

Po No & Dt.	Item/Work Code and Description	Contractor Name /Code	Original Delivery /Performance Period/ Date	Delay in Weeks	Indicative Delivery/ Performance Date	Proposed Action/ Remarks

6. **Delays in payment by over three months from due date**

Po No & Dt.	Item/Work Code and Description	Vendor Name /Code	Date of Performance/ Delivery	Due Date of Payment as Per Contract	Date of Signing Payment Order Voucher	Likely Date of Payment	Proposed Action/ Remarks

7. **Top 10 Contractors during the current year**

Serial No.	Vendor Name /Code	Item/ Work Code/ Description	Number and Value of Orders			Remarks
			Outstanding as on April 1, ----	Further Ordered Since Then	Value of Supplies since April 1,-----	

8. **KPIs during last month/quarter/financial year**

Work Load & Throughput	Number/ Value/ Ratio
Number and Value of Indent pending contract placement	
Number and value of indents received during the month	
Number and value of tenders floated during the month	
Number and value of tenders finalised during the month	
Number and value of contracts signed during the month	
Number and value of payments made for deliveries/performance during the month	
Efficiency of procurement process	
Productivity– number and value wise tenders finalised/on hand per head of staff	
Average time taken for award decision for OTE, GTE, LTE, PAC/ OEM/ STE categories of procurement	
Proportions of tenders on PAC, STE basis with reference to the total number/value of tenders	
Proportions of tenders on limited/selective bidding with reference to the total number/value of tenders	
Proportion of tenders through e-procurement with reference to the total number/value of tenders	

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**Government of India
Ministry of Finance
Department of Expenditure**



MANUAL FOR PROCUREMENT OF WORKS

(Updated June, 2022)



**Government of India
Ministry of Finance
Department of Expenditure**

Manual for Procurement of Works

(Updated June, 2022)

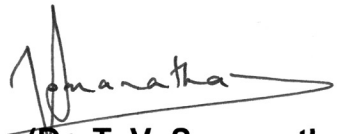
Government of India
Ministry of Finance
Department of Expenditure

FOREWORD

1. The Manual for Procurement of Works was comprehensively revised and issued in 2019. The manual, over a period of time, has become a standard reference document for officials involved in Public Procurement across all Ministries/ Departments/ Attached and Sub-ordinate bodies/ Central Public Sector Enterprises, etc. The Manual is also a resource material for institutes providing training on Public Procurement.
2. Public Procurement is a dynamic field where policies are constantly reviewed to help Government achieve its socio-economic or strategic goals. Hence, there is a need to keep reference documents, like manuals, updated to ensure their continued relevance.
3. Instructions on procurement issued by Department of Expenditure from time to time, since issuance of last Manual, have been incorporated in the current edition. **Further, all procurement related instructions issued by Central Vigilance Commission have been subsumed into the Manual, in collaboration with the Commission.**
4. Manuals issued by this Department are to be taken as generic guidelines, which are necessarily broad in nature. Ministries/ Departments are advised to supplement this manual to suit their local/ specialized needs, by issuing their own detailed manuals (including customized formats); Standard Bidding Documents and Schedule of Procurement Powers to serve as detailed instructions for their own procuring officers.

However, certain instructions containing “shall” in the Manual are mandatory (indicated at the end of respective paragraphs); any deviation from these instructions shall require relaxation from this Department (for Ministries/ Departments etc.) or from the Board of Directors (for Central Public Sector Enterprises).

5. I would like to acknowledge the hard work of the concerned officers not only in this Department but in other Organisations, Ministries and Departments; the role of Shri Vikram Rajvanshi, Consultant (Public Procurement) is also specifically acknowledged.
6. I hope that this updated Manual will help procuring officials working in various Ministries/ Departments and Public Enterprises as a guiding template, deepen the impact of policy initiatives and improve the ease of doing business with the Government.


(Dr. T. V. Somanathan)
Finance Secretary

Date: 1st July, 2022

FOREWORD

1. Government organizations procure a wide variety of goods and services and undertake execution of works in pursuance of their duties and responsibilities. With a view to improving transparency in decision making in public procurement and reducing the scope for subjectivity, Department of Expenditure in 2006 had prepared a set of three Manuals on Policies and Procedures for Procurement of Goods, Works and hiring of Consultants, in conformity with the General Financial Rules (GFR), 2005. Over the years, these Manuals have served as a guide book for procurement.
2. In the last few years, the Government of India has issued new instructions in the domain of public procurement. Some of these important changes include introduction of Central Public Procurement Portal (CPPP), preference for domestic contractors, inclusion of integrity pact, etc. The GFR has been revised comprehensively in March 2017 covering *inter-alia* these set of new instructions. Consequently, the Manual of Procurement of Goods and Manual for Procurement of Consultancy & Other Services too have been revised.
3. The new Manual on Procurement of Works has been extensively revised in keeping with GFR 2017 and in consonance with the fundamental principles of transparency, fairness, competition, economy, efficiency and accountability. Efforts have been made to cover all major aspects of procurement in this Manual in a user-friendly manner. The manual is the outcome of extensive consultations with Ministries/ Departments/ PSUs and other organizations over a period of more than one year.
4. Manuals issued by this Department are to be taken as generic guidelines, which have to be necessarily broad in nature. Ministries/ Departments are advised to supplement this manual to suit their local/ specialized needs, by issuing their own detailed manuals (including customized formats); Standard Bidding Documents and Schedule of Procurement Powers to serve as detailed instructions for their own procuring officers.
5. I would like to acknowledge the efforts taken by Shri Sanjay Prasad, Joint Secretary (PF C-II), Shri Sanjay Aggarwal, Director (PPD), Shri Kotluru Narayana Reddy, Deputy Secretary (PPD) and Shri Girish Bhatnagar, Consultant (Public Procurement) in revision of this Manual. I would also like to thank the Ministries, Departments, other organisations and individuals who reviewed the drafts of the Manual and provided their valuable inputs.
6. I hope that this Manual would be useful to procuring officials working in various Ministries/ Departments as operating instructions and will bring about greater transparency and predictability in government procedures and help in improving the ease of doing business with the Government.



(G. C. Murmu)

Secretary (Expenditure)

Date : 06.06.2019

CAUTION

While every care has been taken to ensure that the contents of this Manual are accurate and up to date till June 2022, the procuring entities are advised to check the precise current provisions of extant law and other applicable instruction from the original sources. In case of any conflict between the provisions stipulated in this Manual and in the original sources. Such as GFR or the prevailing laws, the provisions contained in the extant law and the original instructions shall prevail.

Table of Contents

FOREWORD	iii
CAUTION	vii
Table of Contents	ix
Abbreviations and Acronyms	xiii
Procurement Glossary	xvii
Chapter 1: Introduction to Procurement of Works	1
1.1 Procurement Rules and Regulations; and this Manual	1
1.2 Clarification, Amendments and Revision of this Manual	8
1.3 Applicability of this Manual	8
1.4 Basic Aims of Procurement – Five R’s of Procurement	10
1.5 Fundamental Principles of Public Procurement	10
1.6 Standards (Canons) of Financial Propriety	10
1.7 Public Procurement Infrastructure at the Centre	11
1.8 Legal Aspects Governing Public Procurement of Works	12
1.9 The Law of Agency – applicable to Procurement of Works	13
1.10 The Basic Principles of undertaking works:	13
1.11 Processing of Public Works	15
1.12 Administrative Control and Powers to Sanction	16
Chapter 2: Preparation of Estimates	17
2.1 Perspective Planning for Works	17
2.2 Preparation of Preliminary Project Report (PPR) or Rough Cost Estimate	17
2.3 Acceptance of necessity and issue of in-Principle Approval	18
2.4 Preparation of Detailed Project Report (DPR) /Preliminary Estimates (PE)	18
2.5 Administrative Approval and Expenditure Sanction (A/A and E/S)	20
2.6 Detailed Designs, Detailed Estimates and Technical Sanction	20
2.7 Appropriation of funds	21
2.8 Reference Documents used in preparation of Estimates	21
2.9 Procurement Planning	21
Chapter 3: Agency for Procurement; Types of Contract, Bidding Systems and Modes of Procurement	22
3.1 Agency for Procurement	22
3.2 Types of Contract	23
3.3 Bidding Systems	28
3.4 Electronic Procurement (e-Procurement)	38

3.5	Modes of Tendering	39
Chapter 4: Preparing Bid Documents, Publication, Receipt and Opening of Bids		51
4.1	Bid Documents.....	51
4.2	Preparation of Bid Documents by Procuring Entity	53
4.3	Publication of Bid Documents	54
4.4	Issue/ Availability and Cost of tender documents	56
4.5	Eligibility and Qualifications of Bidders	56
4.6	Clarification of Tender Documents.....	57
4.7	Amendment of Tender Documents	57
4.8	Pre-bid Conference	57
4.9	Submission of Bids by Bidders.....	58
4.10	Receipt and Opening of Bids.....	62
4.11	Bid Security/ Earnest Money Deposit (EMD).....	64
4.12	Performance Guarantee	65
4.13	Security Deposit/ Retention Money	66
4.14	Sources and Verification of Bank Guarantees.....	66
4.15	Safe Custody and Monitoring of Securities	67
4.16	Goods and Services Tax (GST)	67
4.17	Risks and Mitigations- Preparing Bid Documents, Publication, Receipt and Opening of Bids	69
Chapter 5: Evaluation of Bids and Award of Work		71
5.1	Evaluation of Bids	71
5.2	Schedule of Procurement Powers (SoPP).....	71
5.3	Preparation of Comparative Statement and Briefing Note.....	72
5.4	Preliminary Examination	72
5.5	Evaluation of Responsive Bids.....	74
5.6	Deliberations by the Tender Committee.....	76
5.7	Award of Work.....	82
5.8	Evaluation of Bids and Award of Contract - Risks and Mitigations	86
Chapter 6: Execution and Monitoring of Works and Quality Assurance.....		89
6.1	Execution and Monitoring of Work.....	89
6.2	Quality Assurance	91
6.3	Design Approvals	91
6.4	Time Monitoring	91
6.5	Financial Monitoring	93
6.6	Commissioning and Documentation	101

6.7	Closure of Contract	102
6.8	Dispute Resolution Mechanism.....	103
6.9	Conciliation.....	104
6.10	Arbitration	104
6.11	Breach of Contract, Remedies and Termination	106
6.12	Preparation of Revised Project Report.....	107
Chapter 7: Registration/ Enlistment of Contractors and Governance Issues		109
7.1	Contractor Relationship Management.....	109
7.2	Code of Integrity for Public Procurement (CIPP)	109
7.3	Integrity Pact (IP)	112
7.4	Development of New Sources and Registration/ Enlistment of Contractors	115
7.5	Debarment	118
7.6	Project Management.....	121
ANNEXURE.....		129
Annexure 1: Procurement Guidelines.....		130
Annexure 2: Bid Opening Attendance Sheet cum Report		131
Annexure 3: Tender Committee Minutes Format		132
Annexure 4: Invitation and Declaration for Negotiations		134
Annexure 5: Format of Revised Offer in Negotiations		135
Annexure 6: Letter (Notification) of Award (LOA) of Contract		136
Annexure 7: No Claim Certificate		137
Annexure 8: A Sample MOU		138
Annexure 9: Flowchart of Process of Procurement of Works.....		146
Annexure 10: Additional Resources relating to Procurement of Works		148
Annexure 11: Format for seeking the approval of the Competent Authority for inviting Global Tender Enquiry for procurements less than Rs. 200 crores		149
Annexure 12: List of Medical Devices and IVDs, where local manufacturers are not available, as on 17.12.2021 (as verified with the Medical Devices Manufacturing Associations)		151
Annexure 13: Model Clause/ Certificate to be inserted in tenders etc. w.r.t Order (Public Procurement No.1)		154
Annexure 14: Example of Formula for Price Variation Clause		157
Appendix 1: Advanced Concepts of Value for Money and Fundamental Principles of Public Procurement.....		159
1.0	The Concept of Value	159
2.0	Total Cost of Ownership.....	159
3.0	Value for Money	160
4.0	Fundamental Principles of Public Procurement	160

Appendix– 2: Legal Aspects of Public Procurement.....	170
1.0 Relevant Provisions of the Constitution of India.....	170
2.0 Salient Features of the Indian Contract Act	171
3.0 Salient Features of the Indian Arbitration & Conciliation Act 1996 and Arbitration and Conciliation (Amendment) Act, 2015	176
4.0 Salient Features of Competition Act, 2002 relating to Anti-competitive Practices	180
5.0 Salient Features of the Whistle Blowers Protection Act, 2011 and the Whistle Blowers Protection (Amendment) Act, 2015.....	184
Appendix 3: Electronic Procurement (e-Procurement).....	187
1.0 Electronic procurement (e-procurement)	187
2.0 Service Provider	187
3.0 Process	187

Abbreviations and Acronyms

AAEC	Appreciable Adverse Effect on Competition
AITB	Appendix to Instructions to Bidders (ITB, also named as BDS, sometimes, see below)
BC (selling)	Bill for Collection Selling (Foreign Exchange) Rate
BDS	Bid Data Sheet
BG	Bank Guarantee
BIS	Bureau of Indian Standards
BOC	Bid Opening Committee
BOQ	Bill of Quantities
BRO	Border Roads Organisation
C&AG	Comptroller and Auditor General (of India)
CA	Competent Authority
CBI	Central Bureau of Investigation
CCI	Competition Commission of India
CEC	Consultancy Evaluation Committee
CIPP	Code of Integrity for Public Procurement
CMC	Contract Management Committee
CPO	Central Purchasing Organizations
CPPP	Central Public Procurement Portal
CPSE	Central Public Sector Enterprise, see PSU also
CPWD	Central Public Works Department
CV	Curriculum Vitae
CVC	Central Vigilance Commission
CVO	Chief Vigilance Officer
DFPR	Delegation of Financial Power
DG	Director General
DGS&D	Directorate General of Supplies and Disposals
DLC	Defect Liability Certificate
DLP	Defect Liability Period
DoE	Department of Expenditure
DPR	Detailed Project Report
DSC	Digital Signature Certificate

DSPE	Delhi Special Police Establishment Act, 1946
EC	Evaluated Cost
ECS	Electronic Clearing System
EIA	Environmental impact assessment
EMD	Earnest Money Deposit
EOI	Expression of Interest (Tender)
EPC	Engineering, Procurement and Construction
EPF	Employee Provident Fund
ESI	Employee State Insurance
FA	Financial Advisor
FBS	Fixed Budget System
FEMA	Foreign Exchange Management Act
FM	Force Majeure
FTP	Full Technical Proposal
GCC	General Conditions of Contract
GePNIC	Government e-Procurement (System) of National Informatics Centre
GFR	General and Financial Rules, 2017
GOI	Government of India
GTE	Global Tender Enquiry
HOD	Head of the Department
HUF	Hindu Undivided Family
ICT	Information & Communications Technology
IEM	Independent External Monitor
IP	Integrity Pact
ISO	International Organization for Standardization
IT	Information Technology
ITB	Instructions to Bidders (may in some instance be called Instructions to Tenderers -
ITT)	
ITC	Instructions to Consultants
ITJ	Indian Trade Journal
JV	Joint Venture (Consortium)
L1	Lowest Bidder
L2	Second Lowest Bidder
L3	Third Lowest Bidder

LCC	Life Cycle Cost
LCS	Least Cost System
LD	Liquidated Damages
LEC	Lowest Evaluated Cost
LOA	Letter of Acceptance
LOI	Letter of Invitation
LTE	Limited Tender Enquiry
MB	Measurement Book
MES	Military Engineering Service
MoF	Ministry of Finance
MOU	Memorandum of Understanding (of JV)
MoUD	Ministry of Urban Development
MSTC	Metal Scrap Trading Corporation
NGO	Non Government Organisation
NIC	National Informatics Centre
NIT	Notice Inviting Tender
OTE	Open Tender Enquiry
PAN	Personal Account Number
PBG	Performance Bank Guarantee
POL	Petroleum Oils and Lubricants
PPD	Procurement Policy Division
PPP	Public Private Partnership
PPP-MII	Public Procurement (Preference to Make in India), Order
PPR	Preliminary Project Report
PQB	Prequalification Bidding
PQC	Pre-qualification Criteria
PSARA	Private Security Agencies Regulation Act, 2005
(C)PSU/ PSE	(Central) Public Sector Undertaking/ Enterprise
PWO	Public Works Organisations
QA	Quality Assurance
QCBS	Quality and Cost Based Selection
(S)RFP	(Standard) Request for Proposals (Document)
RFQ	Request for Qualification
RTI	Right to Information (Act)

SBD Standard Bidding Document
SCC Special Conditions of Contract
SD Security Deposit
SLA Service Level Agreement
SoPP Schedule of Procurement Powers
SOR Schedule of Rates
SSS/ STE Single Source Selection/ Single Tender Enquiry
STP Simplified Technical proposal
TC Tender Committee also called Tender Purchase or Evaluation Committee (TPC/ TEC) or Tender Scrutiny Committee
TCO Total Cost of Ownership
TOC Taking Over Certificate
TOR Terms of Reference
URDG Uniform Rules for Demand Guarantees
VAT Value Added Tax
VfM (Best) Value for Money
WOL Whole of Life (Cost) or Total Cost of Ownership TCO

Procurement Glossary

In this Manual and in the 'Procurement Guidelines', unless the context otherwise requires:

- i) "Bid" (including the term 'tender', 'offer', 'quotation' or 'proposal' in certain contexts) means an offer to supply goods, services or execution of works made in accordance with the terms and conditions set out in a document inviting such offers;
- ii) "Bidder" (including the term 'tenderer', 'consultant' or 'service provider' in certain contexts) means any eligible person or firm or company, including a consortium (that is an association of several persons, or firms or companies), participating in a procurement process with a procuring entity;
- iii) "(Standard) Bid(ding) documents" (including the term 'tender (enquiry) documents' or 'Request for Proposal Documents' – RFP documents in certain contexts) means a document issued by the procuring entity, including any amendment thereto, that sets out the terms and conditions of the given procurement and includes the invitation to bid. A Standard (Model) Bidding Document is the standardised template to be used for preparing Bidding Documents after making suitable changes for specific procurement;
- iv) "Bidder enlistment document" means a document issued by a procuring entity, including any amendment thereto, that sets out the terms and conditions of enlistment proceedings and includes the invitation to enlist;
- v) "Bid security" (including the term 'Earnest Money Deposit'(EMD), in certain contexts) means a security from a bidder securing obligations resulting from a prospective contract award with the intention to avoid: the withdrawal or modification of an offer within the validity of the bid, after the deadline for submission of such documents; failure to sign the contract or failure to provide the required security for the performance of the contract after an offer has been accepted; or failure to comply with any other condition precedent to signing the contract specified in the solicitation documents.;
- vi) "Central Public sector enterprise" means a body incorporated under the Companies Act or established under any other Act and in which the Central Government or a Central enterprise owns more than 50 (fifty) per cent of the issued share capital;
- vii) "Central Purchase Organisation" means a procuring entity which is authorised by the Government of India by an order, made in this behalf, to make procurement for one or more procuring entities or to enter into rate contracts or framework agreements for procurement by other procuring entities. However, Government can authorise other Organisations for specific categories of materials;
- viii) "Class-I local supplier" means a supplier or service provider, whose goods, services or works offered for procurement, meet the minimum local content as prescribed for 'Class-I local supplier' under the Public Procurement (Preference to Make in India), Order 2017¹;
- ix) "Class-II local supplier" means a supplier or service provider, whose goods, services or works offered for procurement, meets the minimum local content as prescribed for 'Class-

¹Notified vide Order No. P-45021/2/2017-PP (BE-II) issued by Department of Promotion of Industry and Internal Trade dated 16.09.2020

II local supplier' but less than that prescribed for 'Class-I local supplier' under the Public Procurement (Preference to Make in India), Order 2017²;

- x) "Competent Authority" or the "Competent Financial Authority" means the officer (s) who have been delegated the financial powers to approve the decision.
- xi) "Consultancy services" covers a range of services that are of an advisory or professional nature and are provided by Consultants. These Services typically involve providing expert or strategic advice e.g., management consultants, policy consultants or communications consultants, Advisory and project related Consultancy Services and include, for example: feasibility studies, project management, engineering services, Architectural Services, finance and accounting services, training and development. It may include small works or supply of goods or non-Consultancy services which are incidental or consequential to such services;
- xii) "e-Procurement" means the use of information and communication technology (specially the internet) by the procuring entity in conducting its procurement processes with bidders for the acquisition of goods (supplies), works and services with the aim of open, non-discriminatory and efficient procurement through transparent procedures;
- xiii) "Enlisted Contractor" means any contractor who is on a list of enlisted contractors of the procuring entity or a Central Purchase Organisation (Please refer to registration to appreciate the differentiation);
- xiv) "Enlisting authority" means an authority which enlists bidders for different categories of procurement(Please refer to registration to appreciate the differentiation);
- xv) "Enlistment" means including the name of the contractor in the list of after verification of credentials.(Please refer to registration to appreciate the differentiation)
- xvi) "Goods" includes all articles, material, commodity, livestock, furniture, fixtures, raw material, spares, instruments, machinery, equipment, industrial plant, vehicles, aircrafts, ships, medicines, railway rolling stock, assemblies, sub-assemblies, accessories, a group of machineries comprising an integrated production process or such other categories of goods or intangible products like software, technology transfer, licenses, patents or other intellectual properties purchased or otherwise acquired for the use of Government but excludes books, publications, periodicals, etc., for a library. The term 'goods' also includes works and services which are incidental or consequential to the supply of such goods, such as, transportation, insurance, installation, commissioning, training and maintenance;
- xvii) "Indenter" (or the term 'User (Department)' in certain contexts) means the entity and its officials initiating a procurement indent, that is, a request to the procuring entity to procure goods, works or services specified therein;
- xviii) "Inventory" means any material, component or product that is held for use at a later time;
- xix) "Invitation to (pre-)qualify" means a document including any amendment thereto published by the procuring entity inviting offers for pre-qualification from prospective bidders;
- xx) "Invitation to Enlist" means a document including any amendment thereto published by the procuring entity inviting offers for bidder enlistment from prospective bidders;
- xxi) "Local Content" means the amount of value added in India which shall, unless otherwise prescribed by the Nodal Ministry, be the total value of the item procured

²Notified vide Order No. P-45021/2/2017-PP (BE-II) issued by Department of Promotion of Industry and Internal Trade dated 16.09.2020

(excluding net domestic indirect taxes) minus the value of imported content in the item (including all customs duties) as a proportion of the total value, in percent³.

- xxii) "Non-Local supplier" means a supplier or service provider, whose goods, services or works offered for procurement, has local content less than that prescribed for 'Class-II local supplier' under the Public Procurement (Preference to Make in India), Order 2017⁴
- xxiii) "Notice inviting tenders" (including the term 'Invitation to bid' or 'request for proposals' in certain contexts) means a document and any amendment thereto published or notified by the procuring entity, which informs the potential bidders that it intends to procure goods, services and/ or works.;
- xxiv) "Other Services" (including the term 'Non-consultancy services' in certain contexts) are defined by exclusion as services that cannot be classified as Consultancy Services. Other services involve routine repetitive physical or procedural non-intellectual outcomes for which quantum and performance standards can be tangibly identified and consistently applied and are bid and contracted on such basis. It may include small works, supply of goods or consultancy service, which are incidental or consequential to such services. Other Services may include transport services; logistics; clearing and Forwarding; courier services; upkeep and maintenance of office/ buildings/ Estates (other than Civil & Electrical Works etc.); drilling, aerial photography, satellite imagery, mapping and similar operations etc;
- xxv) "Outsourcing of Services" means deployment of outside agencies on a sustained long-term (for one year or more) for performance of other services which were traditionally being done in-house by the employees of Ministries/ departments (e.g. Security Services, Horticultural Services, Janitor/ Cooking/ Catering/ Management Services for Hostels and Guest Houses, Cleaning/ Housekeeping Services, .Errand/ Messenger Services, and so forth). Besides outsourcing, other services also include procurement of short-term stand-alone services.
- xxvi) "Pre-qualification (bidding) procedure" means the procedure set out to identify, prior to inviting bids, the bidders that are qualified to participate in the procurement;
- xxvii) "Pre-qualification document" means the document including any amendment thereto issued by a procuring entity, which sets out the terms and conditions of the pre-qualification bidding and includes the invitation to pre-qualify;
- xxviii) "Procurement" or "public procurement" (or 'Purchase', or 'Government Procurement/ Purchase' in certain contexts) means acquisition by way of purchase, lease, license or otherwise, either using public funds or any other source of funds (e.g. grant, loans, gifts, private investment etc.) of goods, works or services or any combination thereof, including award of Public Private Partnership projects, by a procuring entity, whether directly or through an agency with which a contract for procurement services is entered into, but does not include any acquisition of goods, works or services without consideration, and the term "procure" or "procured" shall be construed accordingly;
- xxix) "Procurement contract" (including the terms 'Purchase Order' or 'Supply Order' or 'Withdrawal Order' or 'Work Order' or 'Consultancy Contract' or 'Contract for Other Services' under certain contexts), means a formal legal agreement in writing relating to

³Notified vide Order No. P-45021/2/2017-PP (BE-II) issued by Department of Promotion of Industry and Internal Trade dated 16.09.2020

⁴Notified vide Order No. P-45021/2/2017-PP (BE-II) issued by Department of Promotion of Industry and Internal Trade dated 16.09.2020

the subject matter of procurement, entered into between the procuring entity and the contractor, service provider or contractor on mutually acceptable terms and conditions and which are in compliance with all the relevant provisions of the laws of the country. The term “contract” will also include “rate contract” and “framework contract”;

- xxx) “(Public) Procurement Guidelines” means guidelines applicable to Public Procurement, consisting of under relevant context a set of – i) Statutory Provisions (The Constitution of India; Indian Contract Act, 1872; Sales of Goods Act, 1930; and other laws as relevant to the context); ii) Rules & Regulations (General Financial Rules, 2017; Delegation of Financial Power Rules and any other regulation so declared by the Government); iii) Manuals of Policies and Procedures for Procurement (of Goods; Works; Consultancy/ other services or any for other category) promulgated by the Ministry of Finance and iv) Procuring Entity’s Documents relevant to the context (Codes, Manuals and Standard/ Model Bidding Documents);
- xxxii) "Procurement process" means the process of procurement extending from the assessment of need; issue of invitation to pre-qualify or to enlist or to bid, as the case may be; the award of the procurement contract; execution of contract till closure of the contract;
- xxxiii) "Procuring Entity" (including Procuring Authority or Employer) means any Ministry or Department of the Central Government or a unit thereof or its attached or subordinate office to which powers of procurement have been delegated;
- xxxiiii) “Project” means one-time, short-term expenditure resulting in creation of capital assets, which could yield financial or economic returns or both. A project may comprise one or more related but independent task-oriented ‘Works’. Projects may either be approved as individual projects within an approved scheme envelope or on a stand-alone basis. They may be executed through budgetary, extra-budgetary resources, or a combination of both.
- xxxv) "Prospective bidder" means anyone likely or desirous to be a bidder;
- xxxvi) "Public Private Partnership" means an arrangement between the central, a statutory entity or any other government-owned entity, on one side, and a private sector entity, on the other, for the provision of public assets or public services or a combination thereof, through investments being made or management being undertaken by the private sector entity, for a specified period of time, where there is predefined allocation of risk between the private sector and the public entity and the private entity receives performance-linked payments that conform (or are benchmarked) to specified and predetermined performance standards, deliverables or Service Level agreements measurable by the public entity or its representative;
- xxxvii) “Registration” means simply registering the bidder/ supplier/ service provider/ contractor, without any verification, say on a website etc. (Please refer to enlistment to appreciate the differentiation).
- xxxviii) "Reverse auction" (or the term ‘Electronic reverse auction’ in certain contexts) means an online real-time purchasing technique utilised by the procuring entity to select the successful bid, which involves presentation by bidders of successively more favourable bids during a scheduled period of time and automatic evaluation of bids;
- xxxix) "service" is defined by exception as any subject matter of procurement other than goods or works, except those incidental or consequential to the service, and includes physical, maintenance, professional, intellectual, training, consultancy and advisory services or any other service classified or declared as such by a procuring entity but does

not include appointment of an individual made under any law, rules, regulations or order issued in this behalf. It includes 'Consultancy Services' and 'Other (Non-consultancy) Services';

xxxix) "Subject matter of procurement" means any item of procurement whether in the form of goods, services or works or a combination thereof;

xl) "Works" refer to any activity, sufficient in itself to fulfil an economic or technical function, involving construction, fabrication, repair, overhaul, renovation, decoration, installation, erection, excavation, dredging, and so on, which make use of a combination of one or more of engineering design, architectural design, material and technology, labour, machinery and equipment. Supply of some materials or certain services may be incidental or consequential to and part of such works. The term "Works" includes (i) civil works for the purposes of roads, railway, airports, shipping-ports, bridges, buildings, irrigation systems, water supply, sewerage facilities, dams, tunnels and earthworks; and so on, and (ii) mechanical and electrical works involving fabrication, installation, erection, repair and maintenance of a mechanical or electrical nature relating to machinery and plants.

Chapter 1: Introduction to Procurement of Works

1.1 Procurement Rules and Regulations; and this Manual

- i) Various ministries, departments, attached and subordinate offices, local urban bodies, public sector enterprises and other government (including autonomous) bodies (hereinafter referred as 'Procuring Entities') spend a sizeable amount of their budget on procurement of goods, works and services to discharge the duties and responsibilities assigned to them.
- ii) The Ministries/ Departments have been delegated powers to make their own arrangements for procurement of works under the Delegation of Financial Power Rules, which have to be exercised in conformity with the 'Procurement Guidelines'.
- iii) To ensure that these procurements are made by following a uniform, systematic, efficient and cost-effective procedure and also to ensure fair and equitable treatment of bidders/ contractors, there are statutory provisions; rules; financial, vigilance, security, safety, counter- trade and other regulations; orders and guidelines of the Government on the subject of public procurement (hereinafter referred as 'Procurement Guidelines') which provide framework for the public procurement system.
- iv) At the apex of the statutory framework governing public procurement is Article 299 of the Constitution of India, which stipulates that contracts legally binding on the Government have to be executed in writing by officers specifically authorized to do so. The Constitution also enshrines Fundamental Rights (In particular Article 14 – Right to Equality before law and Article 19 (1) (g) – Right to carry on a Profession) which have implications for Public Procurement. Further, the Indian Contract Act, 1872 and the Arbitration and Conciliation Act, 1996 (as amended in 2015) are major legislations governing contracts for procurement (both private and public) in general. There are in addition guidelines issued by Central Vigilance Commission (CVC) relating to Governance issues which are applicable to Public Procurement also. There is no law exclusively governing public procurement.
- v) However, comprehensive Rules and Regulations in this regard are available in the General Financial Rules (GFR), 2017, Delegation of Financial Powers Rules (DFPR); Public Procurement (Preference to Make in India), Order 2017 and the guidelines issued by the Central Vigilance Commission to increase transparency and objectivity in public procurement.
- vi) Without purporting to be a comprehensive compendium of all such 'Procurement Guidelines', this Manual is intended to serve as a portal to enter this vast area and draw attention to basic norms and practices governing public procurement.

These guidelines would not be applicable to projects funded by World Bank and other International Funding Agencies, as, such external aid/ loans etc. received are covered under the applicable policies/ legal agreements executed as permitted under Rules 264 of GFR 2017.

1.1.1 Preference to Make in India

To encourage 'Make in India' and promote manufacturing and production of goods and services in India with a view to enhancing income and employment, Department of Promotion of Industry and Internal Trade (DPIIT), Ministry of Commerce and Industry, Government of India, issued Public Procurement (Preference to Make in India), Order 2017⁵. The order is issued pursuant to Rule 153 (iii) of GFR, 2017. The Order is applicable on the procurement of Goods, Works and Services. For the purpose of this Order:-

- a) 'L1' means the lowest tender or lowest bid or the lowest quotation received in a tender, bidding process or other procurement solicitation as adjudged in the evaluation process as per the tender or other procurement solicitation.
- b) 'Margin of purchase preference' means the maximum extent to which the price quoted by a "Class-I local supplier" may be above the L1 for the purpose of purchase preference. It has been fixed as 20 (twenty) percent.
- c) 'Nodal Ministry' means the Ministry or Department identified pursuant to this order in respect of a particular item of goods or services or works.
- d) 'Procuring entity' means a Ministry or department or attached or subordinate office of, or autonomous body controlled by, the Government of India and includes Government companies as defined in the Companies Act.
- e) 'Works' means all works as per Rule 130 of GFR- 2017, and will also include 'turnkey works'.

(i) Eligibility of 'Class-I local supplier' / 'Class-II local supplier' / 'Non-local suppliers' for different types of procurement

- a) In procurement of all goods, services or works in respect of which the Nodal Ministry/ Department has communicated that there is sufficient local capacity and local competition, only 'Class-I local supplier', shall be eligible to bid irrespective of purchase value.
- b) Only 'Class-I local supplier' and 'Class-II local supplier', shall be eligible to bid in procurements undertaken by procuring entities, except when Global tender enquiry has been issued. In global tender enquiries, 'Non-local suppliers' shall also be eligible to bid along with 'Class-I local suppliers' and 'Class-II local suppliers'. In procurement of all goods, services or works, not covered by sub-para (i)(a) above, and with estimated value of purchases less than Rs. 200 Crore, in accordance with Rule 161(iv) of GFR, 2017, Global tender enquiry shall not be issued except with the approval of competent authority as designated by Department of Expenditure.
- c) For the purpose of this Order, works includes Engineering, Procurement and Construction (EPC) contracts and services include System Integrator (SI) contracts.

(ii) Purchase Preference

- a) Subject to the provisions of the Order and to any specific instructions issued by the Nodal Ministry or in pursuance of the Order, purchase preference shall be given to 'Class-I local supplier' in procurements undertaken by procuring entities in the manner specified here under.

⁵Latest revision to the Order notified vide OM No. P-45021/2/2017-PP (BE-II) issued by DPIIT, dated 16.09.2020

- b) In the procurements of goods or works, which are covered by para (i)(b) above and which are divisible in nature, the 'Class-I local supplier' shall get purchase preference over 'Class-II local supplier' as well as 'Non-local supplier', as per following procedure:
1. Among all qualified bids, the lowest bid will be termed as L1. If L1 is 'Class-I local supplier', the contract for full quantity will be awarded to L1.
 2. If L1 bid is not a 'Class-I local supplier', 50 (fifty) percent of the order quantity shall be awarded to L1. Thereafter, the lowest bidder among the 'Class-I local supplier' will be invited to match the L1 price for the remaining 50 (fifty) percent quantity subject to the Class-I local supplier's quoted price falling within the margin of purchase preference, and contract for that quantity shall be awarded to such 'Class-I local supplier' subject to matching the L1 price. In case such lowest eligible 'Class-I local supplier' fails to match the L1 price or accepts less than the offered quantity, the next higher 'Class-I local supplier' within the margin of purchase preference shall be invited to match the L1 price for remaining quantity and so on, and contract shall be awarded accordingly. In case some quantity is still left uncovered on Class-I local suppliers, then such balance quantity may also be ordered on the L1 bidder.
- c) In the procurements of goods or works, which are covered by para (i)(b) above and which are not divisible in nature, and in procurement of services where the bid is evaluated on price alone, the 'Class-I local supplier' shall get purchase preference over 'Class-II local supplier' as well as 'Non-local supplier', as per following procedure:
1. Among all qualified bids, the lowest bid will be termed as L1. If L1 is 'Class-I local supplier', the contract will be awarded to L1.
 2. If L1 is not 'Class-I local supplier', the lowest bidder among the 'Class-I local supplier', will be invited to match the L1 price subject to Class-I local supplier's quoted price falling within the margin of purchase preference, and the contract shall be awarded to such 'Class-I local supplier' subject to matching the L1 price.
 3. In case such lowest eligible 'Class-I local supplier' fails to match the L1 price, the 'Class-I local supplier' with the next higher bid within the margin of purchase preference shall be invited to match the L1 price and so on and contract shall be awarded accordingly. In case none of the 'Class-I local supplier' within the margin of purchase preference matches the L1 price, the contract may be awarded to the L1 bidder.
 4. "Class-II local supplier" will not get purchase preference in any procurement, undertaken by procuring entities.

(iii) Applicability in tenders where contract is to be awarded to multiple bidders

In tenders where contract is awarded to multiple bidders subject to matching of L1 rates or otherwise, the 'Class-I local supplier' shall get purchase preference over 'Class-II local supplier' as well as 'Non-local supplier', as per following procedure:

- a) In case there is sufficient local capacity and competition for the item to be procured, as notified by the nodal Ministry, only Class I local suppliers shall be eligible to bid. As such,

the multiple suppliers, who would be awarded the contract, should be all and only 'Class I Local suppliers'.

- b) In other cases, 'Class II local suppliers' and 'Non local suppliers' may also participate in the bidding process along with 'Class I Local suppliers' as per provisions of the Order.
- c) If 'Class I Local suppliers' qualify for award of contract for at least 50 (fifty) percent of the tendered quantity in any tender, the contract may be awarded to all the qualified bidders as per award criteria stipulated in the bid documents. However, in case 'Class I Local suppliers' do not qualify for award of contract for at least 50 (fifty) percent of the tendered quantity, purchase preference should be given to the 'Class I local supplier' over 'Class II local suppliers' / 'Non local suppliers' provided that their quoted rate falls within 20 (twenty) percent margin of purchase preference of the highest quoted bidder considered for award of contract so as to ensure that the 'Class I Local suppliers' taken in totality are considered for award of contract for at least 50 (fifty) percent of the tendered quantity.
- d) First purchase preference has to be given to the lowest quoting 'Class-I local supplier', whose quoted rates fall within 20 (twenty) percent margin of purchase preference, subject to its meeting the prescribed criteria for award of contract as also the constraint of maximum quantity that can be sourced from any single supplier. If the lowest quoting 'Class-I local supplier', does not qualify for purchase preference because of aforesaid constraints or does not accept the offered quantity, an opportunity may be given to next higher 'Class-I local supplier', falling within 20 (twenty) percent margin of purchase preference, and so on.
- e) To avoid any ambiguity during bid evaluation process, the procuring entities may stipulate its own tender specific criteria for award of contract amongst different bidders including the procedure for purchase preference to 'Class-I local supplier' within the broad policy guidelines stipulated in sub-paras above.

(iv) **Exemption of small purchases:** Notwithstanding anything contained in paragraph (i), procurements where the estimated value to be procured is less than Rs. 5 lakhs shall be exempt from the Order. However, it shall be ensured by procuring entities that procurement is not split for the purpose of avoiding the provisions of this Order.

(v) **Minimum local content:** The 'local content' requirement to categorize a supplier as 'Class-I local supplier' is minimum 50 (fifty) percent. For 'Class-II local supplier', the 'local content' requirement is minimum 20 (twenty) percent. Nodal Ministry/ Department may prescribe only a higher percentage of minimum local content requirement to categorize a supplier as 'Class-I local supplier' / 'Class-II local supplier'. For the items, for which Nodal Ministry/ Department has not prescribed higher minimum local content notification under the Order, it shall be 50 (fifty) percent and 20 (twenty) percent for 'Class-I local supplier' / 'Class-II local supplier' respectively.

(vi) **Requirement for specification in advance:** The minimum local content, the margin of purchase preference and the procedure for preference to Make in India shall be specified in the notice inviting tenders or other form of procurement solicitation and shall not be varied during a particular procurement transaction.

(vii) **Government E-marketplace:** In respect of procurement through the Government E-marketplace (GeM) shall, as far as possible, specifically mark the items which meet the minimum local content while registering the item for display, and shall, wherever feasible, make provision for automated comparison with purchase preference and without purchase preference and for obtaining consent of the local supplier in those cases where purchase preference is to be exercised.

(vii) **Verification of local content:**

- a) The 'Class-I local supplier'/ 'Class-II local supplier' at the time of tender, bidding or solicitation shall be required to indicate percentage of local content and provide self-certification that the item offered meets the local content requirement for 'Class-I local supplier'/ 'Class-II local supplier', as the case may be. They shall also give details of the location(s) at which the local value addition is made.
- b) In cases of procurement for a value in excess of Rs. 10 crores, the 'Class-I local supplier'/ 'Class-II local supplier' shall be required to provide a certificate from the statutory auditor or cost auditor of the company (in the case of companies) or from a practicing cost accountant or practicing chartered accountant (in respect of suppliers other than companies) giving the percentage of local content.
- c) Decisions on complaints relating to implementation of this Order shall be taken by the competent authority which is empowered to look into procurement-related complaints relating to the procuring entity.
- d) Nodal Ministries may constitute committees with internal and external experts for independent verification of self-declarations and auditor's/ accountant's certificates on random basis and in the case of complaints.
- e) Nodal Ministries and procuring entities may prescribe fees for such complaints.
- f) False declarations will be in breach of the Code of Integrity under Rule 175(1)(i)(h) of the General Financial Rules for which a bidder or its successors can be debarred for up to two years as per Rule 151 (iii) of the General Financial Rules along with such other actions as may be permissible under law.
- g) A supplier who has been debarred by any procuring entity for violation of the Order shall not be eligible for preference under the Order for procurement by any other procuring entity for the duration of the debarment. The debarment for such other procuring entities shall take effect prospectively from the date on which it comes to the notice of other procurement entities, in the manner prescribed under paragraph (h) below.
- h) The Department of Expenditure shall issue suitable instructions for the effective and smooth operation of this process, so that:
 1. The fact and duration of debarment for violation of the Order by any procuring entity are promptly brought to the notice of the Member-Convenor of the Standing Committee and the Department of Expenditure through the concerned Ministry /Department or in some other manner;
 2. on a periodical basis such cases are consolidated and a centralized list or decentralized lists of such suppliers with the period of debarment is maintained and displayed on website(s);
 3. in respect of procuring entities other than the one which has carried out the debarment, the debarment takes effect prospectively from the date of uploading

on the website(s) in the such a manner that ongoing procurements are not disrupted.

(viii) **Specifications in Tenders and other procurement solicitations:**

- a) Every procuring entity shall ensure that the eligibility conditions in respect of previous experience fixed in any tender or solicitation do not require proof of supply in other countries or proof of exports.
- b) Procuring entities shall endeavour to see that eligibility conditions, including on matters like turnover, production capability and financial strength do not result in unreasonable exclusion of 'Class-I local supplier'/ 'Class-II local supplier' who would otherwise be eligible, beyond what is essential for ensuring quality or creditworthiness of the supplier.
- c) Procuring entities shall review all existing eligibility norms and conditions with reference to sub-paragraphs (viii) (a) and (b) above.
- d) **Reciprocity Clause**
 1. When a Nodal Ministry/Department **identifies** that Indian suppliers of an item are not allowed to participate and/ or compete in procurement by any foreign government, due to restrictive tender conditions which have direct or indirect effect of barring Indian companies such as registration in the procuring country, execution of projects of specific value in the procuring country etc., it shall provide such details to all its procuring entities including CMDs/CEOs of PSEs/PSUs, State Governments and other procurement agencies **under their administrative control and GeM** for appropriate reciprocal action.
 2. **Entities of countries which have been identified by the nodal Ministry/Department** as not allowing Indian companies to participate in their Government procurement for any item related to that nodal Ministry shall not be allowed to participate in Government procurement in India for all items related to that nodal Ministry/ Department, except for the list of items published by the Ministry/ Department permitting their participation.
 3. The stipulation in (2) above shall be part of all tenders invited by the Central Government procuring entities stated in (1) above. All purchases on GeM shall also necessarily have the above provisions for items identified by nodal Ministry/ Department.
 4. State Governments should be encouraged to incorporate similar provisions in their respective tenders.
 5. The term 'entity' of a country shall have the same meaning as under the FDI Policy of DPIIT as amended from time to time.
- e) Specifying foreign certifications/ unreasonable technical specifications/ brands/ models in the bid document is restrictive and discriminatory practice against local suppliers. If foreign certification is required to be stipulated because of non-availability of Indian Standards and/or for any other reason, the same shall be done only after written approval of Secretary of the Department concerned or any other Authority having been designated such power by the Secretary of the Department concerned.
- f) "All administrative Ministries/Departments **whose procurement exceeds Rs. 1000 Crore per annum** shall notify/ update their procurement projections every year, including those of the PSEs/PSUs, for the next 5 years on their respective website."

- (ix) **Action for non-compliance of the Provisions of the Order:**In case restrictive or discriminatory conditions against domestic suppliers are included in bid documents, an inquiry shall be conducted by the Administrative Department undertaking the procurement (including procurement by any entity under its administrative control) to fix responsibility for the same. Thereafter, appropriate action, administrative or otherwise, shall be taken against erring officials of procurement entities under relevant provisions. Intimation on all such actions shall be sent to the Standing Committee.
- (x) **Assessment of supply base by Nodal Ministries:** The Nodal Ministry shall keep in view the domestic manufacturing / supply base and assess the available capacity and the extent of local competition while identifying items and prescribing the higher minimum local content or the manner of its calculation, with a view to avoiding cost increase from the operation of this Order.
- (xi) **Increase in minimum local content:** The Nodal Ministry may annually review the local content requirements with a view to increasing them, subject to availability of sufficient local competition with adequate quality.
- (xii) **Manufacture under license/ technology collaboration agreements with phased indigenization**
- a) While notifying the minimum local content, Nodal Ministries may make special provisions for exempting suppliers from meeting the stipulated local content if the product is being manufactured in India under a license from a foreign manufacturer who holds intellectual property rights and where there is a technology collaboration agreement / transfer of technology agreement for indigenous manufacture of a product developed abroad with clear phasing of increase in local content.
- b) In procurement of all goods, services or works in respect of which there is substantial quantity of public procurement and for which the nodal ministry has not notified that there is sufficient local capacity and local competition, the concerned nodal ministry shall notify an upper threshold value of procurement beyond which foreign companies shall enter into a joint venture with an Indian company to participate in the tender. Procuring entities, while procuring such items beyond the notified threshold value, shall prescribe in their respective tenders that foreign companies may enter into a joint venture with an Indian company to participate in the tender. The procuring Ministries/Departments shall also make special provisions for exempting such joint ventures from meeting the stipulated minimum local content requirement, which shall be increased in a phased manner.
- (xiii) **Powers to grant exemption and to reduce minimum local content:** The administrative Department undertaking the procurement (including procurement by any entity under its administrative control), with the approval of their Minister-in-charge, may by written order, for reasons to be recorded in writing,
1. reduce the minimum local content below the prescribed level; or
 2. reduce the margin of purchase preference below 20 (twenty) percent; or
 3. exempt any particular item or supplying entities from the operation of this Order or any part of the Order.

A copy of every such order shall be provided to the Standing Committee and concerned Nodal Ministry / Department. The Nodal Ministry / Department concerned will continue to have the power to vary its notification on Minimum Local Content.

(xiv) **Directions to Government companies:** In respect of Government companies and other procuring entities not governed by the General Financial Rules, the administrative Ministry or Department shall issue policy directions requiring compliance with this Order.

(xv) **Standing Committee.** A standing committee is hereby constituted with the following membership:

Secretary, Department for Promotion of Industry and Internal Trade-Chairman

Secretary, Commerce-Member

Secretary, Ministry of Electronics and Information Technology-Member

Joint Secretary (Public Procurement), Department of Expenditure-Member

Joint Secretary (DPIIT)-Member-Convenor

The Secretary of the Department concerned with a particular item shall be a member in respect of issues relating to such item. The Chairman of the Committee may co-opt technical experts as relevant to any issue or class of issues under its consideration.

(xvi) **Removal of difficulties:** Ministries /Departments and the Boards of Directors of Government companies may issue such clarifications and instructions as may be necessary for the removal of any difficulties arising in the implementation of the Order.

(xvii) **Ministries having existing policies:** Where any Ministry or Department has its own policy for preference to local content approved by the Cabinet after 1st January 2015, such policies will prevail over the provisions of the Order. All other existing orders on preference to local content shall be reviewed by the Nodal Ministries and revised as needed to conform to this Order, within two months of the issue of this Order.

(xviii) **Transitional provision:** The Order shall not apply to any tender or procurement for which notice inviting tender or other form of procurement solicitation has been issued before the issue of this Order.

(Rule 153 of GFR 2017)

1.2 Clarification, Amendments and Revision of this Manual

For revision, interpretation, clarification and issues relating to this manual, the Procurement Policy Division, Department of Expenditure, Ministry of Finance would be the nodal authority.

1.3 Applicability of this Manual

- i) **Works:** This manual is applicable to procurement of Works is defined as “any activity, sufficient in itself to fulfil an economic or technical function, involving construction, fabrication, repair, overhaul, renovation, decoration, installation, erection, excavation, dredging, and so on, which make use of a combination of one or more of engineering design, architectural design, material and technology, labour, machinery and equipment. Supply of some materials or certain services may be incidental or consequential to and part of such works. The term “Works” includes (i) civil works for the purposes of roads, railway, airports, shipping-ports, bridges, buildings, irrigation systems, water supply, sewerage facilities, dams, tunnels and earthworks; and so on, and (ii) mechanical and electrical works involving fabrication, installation, erection, repair and maintenance of a mechanical or electrical nature relating to machinery and plants”.

ii) **Classification of Works:** The civil works are classified in GFR 2017 (Rule 130) into three categories: (a) Original Works (b) Minor Works and (c) Repairs Works. “Original works” means all new constructions, site preparation, additions and alterations to existing works. It also includes special repairs to newly purchased or previously abandoned buildings or structures, including remodelling or replacement. “Minor works” mean works which add capital value to existing assets but do not create new assets. “Repair works” means works undertaken to maintain building and fixtures. Expenditure on Repair Work does not add to the value of the asset and only restores the functionality of the asset. Repair Work can be further categorized as (i) Annual repairs covering routine and yearly operation and maintenance work on buildings and services (ii) Special repairs, which are undertaken as and when required, covering major repairs to existing buildings or services. Some types of the Special repairs may qualify to be categorised as ‘Original Work’ as mentioned earlier.

iii) **Procurement Entities**

Procurement Entities which can benefit from this manual include ministries, departments, or a unit thereof, or an attached or subordinate offices/ units; any other body (including autonomous bodies) substantially owned or controlled by or receiving substantial financial assistance from the Central Government. It can still be utilised, if these procurement entities outsource the procurement process or bundle the procurement process with other contractual arrangements or utilise the services of procurement support agency or procurement agents to carry out the procurement on their behalf. But these procurement guidelines would not apply to procurements by these procuring entities for their own use from their subsidiary companies including Joint Ventures in which they have controlling share.

Major Works procuring Ministries/ Departments like the Central Public Works Department (CPWD); Military Engineering Service (MES); Border Roads Organisation (BRO); Ministries of Railways; Information & Broadcasting and Departments of Posts, and Space etc. already have their own detailed guidelines tailored to unique individual requirements, e.g. Manuals or Procedure Orders, which will continue to be applicable to these organizations.

This manual for procurement of works is more specifically addressed to those Ministries/ Departments and their attached and subordinate offices, as well as autonomous bodies (except to the extent the bye laws of an autonomous body provides for different provisions, which have been approved by the Government) which don't have in-house capabilities to execute Works and assign most of the procurement of works to third parties (Public Works Organisations or PSUs).

This Manual is also useful for directly execution of repair works by these agencies up to ⁶Rs. thirty lakh.

iv) For procurements financed by Loans/ Grants extended by International Agencies: The Articles of Agreement with the International Agencies like the World Bank, Asian Development Bank etc. stipulate specific procurement procedures to be followed by the borrowers. The procurement procedures, as finalized and incorporated in the

⁶ Rule 133(1) of GFR, 2017

Agreements after consideration and approval of the Ministry of Finance are to be followed accordingly.

1.4 Basic Aims of Procurement – Five R's of Procurement

In every procurement, public or private, the basic aim is to achieve just the right balance between costs and requirements concerning five parameters called the five R's of procurement. The entire process of procurement (from the time that need for an item, facility or services is identified till the need is satisfied) is designed to achieve following basic aims. Although couched in jargon of procurement of Goods, it's equally applicable to procurement of Works. The term 'Right' is used here in the sense of being optimal:

- i) Right quality;
- ii) Right quantity;
- iii) Right price;
- iv) Right time and place; and
- v) Right source.

(For more details on basic aims of procurement, please refer to Chapter 1 of the Manual for Procurement of Goods 2017 – reproduced in Appendix 1. Please refer to Broader obligation principle under Appendix 1 for instructions related to registration of bidders belonging to countries sharing land border with India, and Annexure-13).

1.5 Fundamental Principles of Public Procurement

Over and above the basic aims of procurement, the obligations of procuring authorities can be grouped into following five fundamental principles of public procurement, which all procuring authorities must abide by and be accountable for:

- i) Transparency principle;
- ii) Professionalism principle;
- iii) Broader obligations principle;
- iv) Extended legal principle; and
- v) Public accountability principle.

(For more details on basic aims of procurement, please refer to Chapter 1 of the Manual for Procurement of Goods-reproduced in Appendix 1).

1.6 Standards (Canons) of Financial Propriety

Public Procurement like any other expenditure in Government must conform to the Standards (also called Canons) of Financial Propriety. It may be useful to refer to the relevant provisions in the General Financial Rules, 2017

“Rule 21. Standards of financial propriety: Every officer incurring or authorizing expenditure from public moneys should be guided by high standards of financial propriety. Every officer should also enforce financial order and strict economy and see that all relevant financial rules and regulations are observed, by his own office and by subordinate disbursing officers. Among the principles on which emphasis is generally laid are the following:-

- i) *Every officer is expected to exercise the same vigilance in respect of expenditure incurred from public moneys as a person of ordinary prudence would exercise in respect of expenditure of his own money.*
- ii) *The expenditure should not be prima facie more than the occasion demands.*
- iii) *No authority should exercise its powers of sanctioning expenditure to pass an order which will be directly or indirectly to its own advantage.*
- iv) *Expenditure from public moneys should not be incurred for the benefit of a particular person or a section of the people, unless -*
 - i) *a claim for the amount could be enforced in a Court of Law, or*
 - ii) *The expenditure is in pursuance of a recognized policy or custom.*

The amount of allowances granted to meet expenditure of a particular type should be so regulated that the allowances are not on the whole a source of profit to the recipients.”

1.7 Public Procurement Infrastructure at the Centre

i) Procurement Policy Division

Procurement Policy Division (PPD) in Department of Expenditure; Ministry of Finance has been created to encourage uniformity and harmonisation in public procurement processes by setting guidelines, dissemination of best practices, providing guidance, oversight and capacity building and issuing of procurement manuals. However, Centralisation of procurement or involvement in procurement processes is not the intended purpose of creation of PPD.

ii) Central Public Procurement Portal

Central Public Procurement Portal (CPPP) has been designed, developed and hosted by National Informatics Centre (NIC, Ministry of Electronics & Information Technology) in association with Dept. of Expenditure to ensure transparency in the public procurement process. The primary objective of the Central Public Procurement portal is to provide a single point access to the information on procurements made across various Ministries and the Departments. The CPPP has e-publishing and e-procurement modules. It is mandatory for all Ministries/ Departments of the Central Government, Central Public Sector Enterprises (CPSEs) and Autonomous and Statutory Bodies to publish on the CPPP all their tender enquiries and information about the resulting contracts. CPPP provides access to information such as documents relating to pre-qualification, Bidders' enlistment, Bidding documents; details of bidders, their pre-qualification, enlistment, exclusions/ debarments; decisions taken regarding prequalification and selection of successful bid. GFR 2017 (Rule 160) makes it mandatory for Ministries/ Departments to receive all bids through e-procurement portals in respect of all procurements. Ministries/ Departments which do not have a large volume of procurement or carry out procurements required only for day-to-day running of offices and also have not initiated e-procurement through any other solution provided so far, may use e-procurement solution (CPPP) developed by NIC. Other Ministries/ Departments may either use e-procurement solution developed by NIC or engage any other service provider following due process. In the latter case, data on tenders are to be published on CPPP as well through web-service.

iii) Government e-Marketplace (GeM)

To ensure better transparency and higher efficiency an online Government e-Marketplace (GeM– an e-commerce marketplace) has been developed for common use goods and services. In GeM product or services are offered by a number of eligible sellers and all the eligible buyers can view/ compare all the product/ services and select the product/ services offered by any one of the seller. In general, because online marketplaces aggregate product/ services from a wide array of providers, selection is usually wider, availability is higher, and prices are more competitive than in vendor-specific online retail stores. The procurement process on GeM is online and electronic - end to end from placement of supply order to payment to suppliers. The registration of suppliers on GeM is online and automatic based on ID authentication etc. The procuring authorities have to assess the reasonability of rates. Buyer's transactions are processed by the GeM portal and then product/ services are delivered and fulfilled directly by the participating sellers. Tools of reverse bidding and e-auction are also available which can be utilised for the procurement of bulk quantities. More details are available in Rule 149, GFR, 2017. The Procurement of Goods and Services by Ministries or Departments are mandatory for Goods or Services available on GeM. Ministries/ Departments are expected to work with GeM in making available on the GeM platform as many products/ services by making available such Goods and Services which are regularly procured by them.

1.8 Legal Aspects Governing Public Procurement of Works

A public procurement contract, besides being a commercial transaction, is also a legal transaction. There are a number of laws that may affect various commercial aspects of public procurement contracts. A public procurement professional is expected to be generally aware of the implications of following basic laws affecting procurement of works; however, he or she is not expected to be a legal expert. In different contexts of the scope of work, an additional set of laws may be relevant.

- i) The Constitution of India;
- ii) Indian Contracts Act, 1872;
- iii) Arbitration and Conciliation Act, 1996 read with The Arbitration and Conciliation (Amendment) Act, 2015;
- iv) Competition Act, 2002 as amended with Competition (Amendment) Act, 2007;
- v) The Information Technology Act, 2000 (IT Act, regarding e-procurement and e-auction, popularly called the Cyber Law);
- vi) Right to Information (RTI) Act 2005;
- vii) Central Vigilance Commission Act, 2003;
- viii) Delhi Special Police Establishment Act, 1946 (DSPE – basis of the Central Bureau of Investigation);
- ix) Prevention of Corruption Act, 1988;
- x) Code of Criminal Procedure, 1973 (Sections 195(1) and 197(1));
- xi) Various labour laws applicable at the works' site;
- xii) Various building and safety acts, codes, standards applicable in the context of the scope of work; and

- xiii) Various environmental and mining laws, codes, standards applicable in the context of the scope of work.

(For salient features of laws applicable to public procurement, please refer to Appendix 2).

1.9 The Law of Agency – applicable to Procurement of Works

In addition to Laws which are applicable to Public Procurement of Works mentioned above, the Law of Agency (Section 182 to section 238, of the Indian Contract Act, 1872) implies that Contractor would be an Agent of the Procuring Entity, to execute the works on its behalf. Hence, there exists a Principal/ Employer and Agent relationship between Procuring Entity and such Contractor. As per this law, the employer is vicariously legally and financially liable for actions of its Agents. For example, a violation of certain labour laws in deputing staff for Procuring Entity's contract by the agents may render the Procuring Entity legally and financially liable for such violations, under certain circumstances. The Procuring Entities need to be aware of such eventualities. Standard Bidding Documents should take care of this aspect.

1.10 The Basic Principles of undertaking works:

- i) No new works should be sanctioned without
 - i) Careful assessment of the assets or facilities already available and time and cost required to complete the new works.
 - ii) A concept plan/ preliminary drawing have been approved by the Authority competent to accord sanction. While designing projects to the extent possible, principles of Life Cycle Costing may also be considered;
- ii) As budgetary resources are limited and granted on annual basis, adequate provisions should be ensured for works and services already in progress before new works are undertaken.
- iii) No project or work will be split up to bring it within the sanctioning powers of a lower authority.
- iv) ⁷For purpose of approval and sanctions, a group of works which forms one project, shall be considered as one work. The approval or sanction of the higher authority for such a project which consists of such a group of work should not be circumvented by resorting to approval of individual works using the powers of approval or sanction of a lower authority. ⁸If the component parts of a project are mutually independent of each other and are not dependent on the execution of one or more such component parts, each such part should be treated as a separate project. In case the functioning of a project is dependent on the execution of one or more other projects, the entire group of such projects should be taken as a single scheme/ project and provision made accordingly. If however, a scheme consists of revenue component, capital expenditure and loan content, etc. the provision for which is required to be exhibited separately under respective Heads of Account, there is no objection to the provision being made in the relevant Heads of Account; but the authorities concerned should ensure that the sanction of the Competent Authority is obtained for the integrated scheme as a whole

⁷ Rule 137, GFR, 2017

⁸ MoF OM No. F.1(26)-E-II(A)/66 dtd 04/01/1967 & 27/10/1967

depending on the total cost of the scheme. It will not be permissible in such cases to split up a scheme treating each part as a scheme in order to avoid the sanction of a higher authority.

- v) ⁹Any anticipated or actual savings from a sanctioned estimate for a definite project, shall not, without special authorisation, be applied to carry out additional work not contemplated in the original project.
- vi) ¹⁰Any development of a project considered necessary while a work is in progress, which is not contingent on the execution of work first sanctioned, shall have to be covered by a supplementary estimate.
- vii) The construction period and sanctioned cost stipulated in the sanction of Project will not be exceeded as far as possible.
- viii) ¹¹Ministry or Department shall put in place, as far as possible, empowered project teams for all large value projects and these teams should be tasked only with project execution and not given other operational duties.
- ix) The competent financial authority according administrative approval should be kept informed of the physical and financial progress of the work till their completion through regular periodical reports.
- x) ¹²Subject to the observance of these general rules (Rule 130 – 141, GFR, 2017), the initiation, authorization, procurement and execution of works allotted to a particular Ministry or Department shall be regulated by detailed rules and orders contained in the respective departmental regulations and by other special orders applicable to them. The detailed procedure relating to expenditure on such works shall be prescribed by departmental regulations framed in consultation with the Accounts Officer, generally based on the procedures and the principles underlying the financial and accounting rules prescribed for similar works carried out by the Central Public Works Department (CPWD).
- xi) ¹³No works shall be commenced or liability incurred in connection with it until:-
 - i) Feasibility Study Report / Preliminary Project Report (PPR) has been prepared in case of works of substantial value
 - ii) A proper Detailed Project Report (DPR) has been prepared by a competent agency;
 - iii) Administrative approval (A/A) has been obtained from the appropriate authority, in each case;
 - iv) Expenditure Sanction (E/S) to incur expenditure has been obtained from the competent authority;
 - v) Technical approval has been obtained of the detailed and coordinated design of all the Architectural, Civil, Electrical, Mechanical, Horticulture and any other

⁹Rule 138, GFR, 2017

¹⁰Rule 136(3), GFR, 2017

¹¹Rule 135(2), GFR, 2017

¹²Rule 135(1), and 139(i), GFR, 2017

¹³Rule 136(1) and 139(vi), GFR, 2017

services included in the scope of the sanction and of the Detailed Cost Estimates containing the detailed specifications and quantities of various items prepared on the basis of the schedule of rates maintained by CPWD or other Public Works Organizations.

- vi) Funds to cover the work, which will be executed, at least during the current year, have been provided by competent authority.
- vii) Tenders have been invited and processed in accordance with rules.
- viii) Award of work and execution of Contract Agreement;
- ix) A work order has been issued.
- x) Time taken in grant of statutory and other clearances also contributes to the time and cost overrun in public projects. These clearances are required to achieve specific objectives like concern for the environment, aviation safety, preservation of national heritage, conservation of forest and wildlife etc. Public Authorities/ Project Executing Authorities should plan for obtaining all necessary clearances quickly and proper efforts be made for the same, which also should be duly recorded. The progress regarding follow up of obtaining the statutory clearances should be closely monitored.
- xi) The process of land acquisition shall be started by the Procuring Entity, well ahead and completed entirely, or at least substantially, before the work is started. Availability of auxiliary services has been ensured - like roads/access, power, water, solid & liquid waste disposal system, street lighting and other civic services shall be ensured. It is desirable to have 100% of the required land in possession before award of contract; however, it may not always be possible to have the entire land due to prevailing circumstances. Also, it may not be prudent to put the entire process of award of contract on hold for want of the remaining portion of land, which in the assessment of public authority or the project executing authority, could possibly be acquired in a targeted manner after award of the contract, without affecting progress. Minimum necessary encumbrance free land should be available before award of contract. The minimum may be determined based on the circumstances of each case or general guidelines, issued by the concerned authorities. Such land, non-availability of which, will prevent essential components of work from execution, should be insisted upon. Public Authorities/ Project Executing Authorities should plan for acquiring balance land quickly and proper efforts be made for the same, which also should be duly recorded. The progress regarding land acquisition should be closely monitored.

1.11 Processing of Public Works

Following are the stages in planning, sanctioning and execution of work.

- i) Perspective Planning for works;
- ii) Preparation of Preliminary Project Report (PPR) or Rough Cost Estimate;
- iii) Acceptance of necessity and issue of in-Principle Approval;
- iv) Preparation of Detailed Project Report (DPR) or Preliminary Estimate (PE);

- v) Administrative Approval and Expenditure Sanction (A/A&E/S) or 'Go ahead' Approval;
- vi) Detailed Design, Estimate and Technical Sanction;
- vii) Appropriation/ re-appropriation of funds;
- viii) Preparation of Bid documents, Publication, Receipt and Opening of Bids;
- ix) Evaluation of Bids and Award of Work;
- x) Execution and Monitoring of works and Quality Assurance.

Note: For repair works up to Rs. 30 (thirty) lakh, expenditure sanction may be given on the basis of Preliminary Project Report itself.

Annexure 9 shows the above mentioned process of procurement of Public Works as a flow-chart.

1.12 Administrative Control and Powers to Sanction

- i) ¹⁴Administrative control of works includes.—
 - i) assumption of full responsibility for construction, maintenance and upkeep;
 - (b) Proper utilization of buildings and allied works;
 - (c) Provision of funds for execution of these functions.
- ii) ¹⁵ **Powers to Sanction Works:** The powers delegated to various subordinate authorities to accord administrative approval, sanction expenditure and re-appropriate funds for works are regulated by the Delegation of Financial Powers Rules (DFPR) and other orders contained in the respective departmental regulations. The powers of the Department relating to works are detailed in Rule 133 (1) and 133(2) of GFR, 2017 (Refer para 3.1.1 and 3.1.2 for details).
- iii) ¹⁶**Work under the administrative control of the Public Works Departments-** Works not specifically allotted to any Ministry or Department shall be included in the Grants for Civil Works to be administered by Central Public Works Department. No such work may be financed partly from funds provided in departmental budget and partly from the budget for civil works.

¹⁴Rule 131, GFR, 2017

¹⁵Rule 132, GFR, 2017

¹⁶Rule 134, GFR, 2017

Chapter 2: Preparation of Estimates

2.1 Perspective Planning for Works

Each Ministry/ Department shall prepare a perspective plan for undertaking different types of works. There shall also be a provision for annual review of the plan for making modifications, if any.

2.2 Preparation of Preliminary Project Report (PPR) or Rough Cost Estimate

2.2.1 In case the work is to be executed under its own arrangement by the Ministry/ Department, a preliminary project report (PPR) or Rough Cost Estimate shall be prepared by the Works Committee based on Land, Site Details, functional and space requirements (or Various Facilities, Special Requirements/ Features and Broad Specifications for specialised Equipment and Plants), Layout Plans etc, with the technical details/ documents mentioned below being prepared by (or under the guidance of) the technical member(s) of the Works Committee (please refer to Para 3.1.4 (iv) below. In case of execution of Work through Public Works Organisation (PWO) or the Public Sector Undertaking (PSU – refer Para 3.1 below), on requisition from Ministry/ Department for procurement of works, PWO or the PSU to whom work is entrusted for execution shall prepare such PPR or Rough Cost Estimate and submit it to the requiring Department/ Ministry. Based on PPR and Rough Cost Estimate, the competent authority in Administrative Ministry/ Department grants in Principle approval indicating approval of the concept and scope of the project at the rough cost assessed. Ministry of Finance (DoE) has issued detailed instructions regarding appraisal and approval of Public Funded projects/ schemes¹⁷.

2.2.2 The preliminary project report shall provide the following details:

- i) Background of the work/ project justifying the need for the work
- ii) Details of scope of the project
- iii) Exclusions (if any) - This will cover part of the work, which is not included in this particular project estimate.
- iv) Availability of land - There should be a clear indication about the availability of land required for completion of whole project. The land shall be made available free of all encumbrances.
- v) Availability of auxiliary services - like roads, power, water, solid & liquid waste disposal system, street lighting and other civic services shall be ensured.
- vi) Reference to Concept Plans/ Preliminary Drawings, if any and their acceptance - This shall indicate the details of Concept Plans/ Preliminary Drawings prepared and their approval by the requisitioning authority.
- vii) Agency of Procurement – through direct procurement, outsourcing to PWO/ PSUs or otherwise (Refer Para 3.1 below).

¹⁷No. 24(35)/PF-II/2012 dtd 05/08/2016 (where Schemes refers to a collection of Projects/Works of either Central Sector Schemes or Centrally Sponsored Schemes and Project refers to work which can be standalone or part of a scheme). The OM can be downloaded from: http://doe.gov.in/sites/default/files/GuidelinesAppraisal_Approval_Schemes_Projects.pdf

- viii) Rough Cost Estimate: Ministries/Department may carefully assess alternative technological options, their area requirements and obtain Rough Cost on the basis of prevailing Plinth Area rates (or any other reliable basis) without preparation of drawings to enable the competent authority to accord in principle approval.
- ix) If relevant, Cost benefits analysis of the project, including evaluation of options for cost sharing/ recovery (user charges) for infrastructure/ services. Principles of Life Cycle Cost may also be considered, to the extent feasible.
- x) Cash flow: This will show year-wise requirement.
- xi) Source & availability of funds - The manner of transferring the fund to the executing agency to be spelt out.
- xii) Appendices:
 - i) Requisition of the Department/ Ministry;
 - ii) Concept Plans/ Preliminary Drawings;
 - iii) Reference to approval of Concept Plans/ Preliminary Drawings.
- xiii) Any other relevant documents.
- xiv) A presentation on the findings of the feasibility study/ PPR may be made by a team (which may include engineers/ consultants/ outside experts, finance officers etc.) before the public authority/ or designated competent authority. This is to provide an opportunity to the public authority to have an overall assessment of the situation, appraisal of various options as well as likely challenges and mitigation measures. In the case of very large projects, such presentation may be made to the head of the public authority. The record of discussions during the presentation may become part of the Detailed Project Report (DPR) and tender file/ project record.

2.3 Acceptance of necessity and issue of in-Principle Approval

Approval of competent financial authority for accepting the necessity of works and its Scope should be sought on the basis of PPR or Rough Cost Estimate and in Principle Approval of the concerned Ministry/ Department shall be made available for preparation of Detailed Project Report or Preliminary Estimates.

2.4 Preparation of Detailed Project Report (DPR) /Preliminary Estimates (PE)

2.4.1 On receipt of in-Principle Approval of the project, the procuring entity shall finalize the Detailed Project Report giving reference to the documents mentioned below. The DPR should provide a level playing field to the bidders and should ensure as far as feasible, the widest possible competition:

- i) Reference to Concept plan/ preliminary drawings and their acceptance - This shall indicate the details of Concept plan/ preliminary drawings prepared and their approval by the requisitioning authority;
- ii) Details of scope of the project indicating clearly the list of Engineering Services (Mechanical/ Electrical/ Plumbing) as well as Operation and Maintenance included or not included in the DPR/PE;
- iii) Preliminary estimated cost – This will also include the expected escalation for the period of completion of the project and also the departmental or lump sum charges to

be paid to the executing agency (Public Works Organization or PSUs). Cash flow projection should show year-wise requirement. While designing the projects etc, if and to the extent possible, principles of Life Cycle Cost may also be considered;

- iv) Time of the completion – This will consist of two parts, one for pre- construction activity till award of the work and the other one for the execution;
- v) Details of land required along with land plan schedule to implement timely land acquisition procedures;
- vi) Environmental impact assessment (EIA) of the project and approval thereof, wherever applicable;
- vii) Social Impact Assessment and Resettlement and Rehabilitation: Social Impact Assessment needs to be done, based on baseline socio-economic survey and census survey data, to identify the Project Affected People (PAPs). A Resettlement and Rehabilitation Plan should be prepared for the PAPs in accordance with the LARR Act 2013 or National Policy on Resettlement and Rehabilitation (NPRR), and State Governments framework of resettlement policies and other social safeguard policies designed to protect the rights of the affected persons and communities as applicable;
- viii) List of Approval of Statutory Bodies required;
- ix) Annual plan allocation and cash flow;
- x) Systems to be adopted for project monitoring;
- xi) Works accounting system;
- xii) Quality assurance system/ mechanism;
- xiii) Bidding Systems - Single, two parts, pre-qualification, Post- qualification.

In case the work is being executed by the Ministry/ Department themselves, DPR and PE will be prepared by the Ministry/ Department itself. In case the Work is assigned to Public Works Organisation or the Public Sector Undertaking, that agency shall prepare the DPR and PE.

For repair works costing up to Rs. 30 (thirty) lakh, preparation of DPR and PE may be dispensed with, since repair work does not need detailed designing. Sanction may be accorded by the competent authority based on PPR itself.

2.4.2 Major reasons for the problem in works contracts (in particular relating to construction of roads, highways, ports, runways, dams etc. on item-rate or percentage rate basis) is the out-sourcing of preparation of Detailed Project Reports to consultants without sufficient relevant experience or giving them sufficient time to do so. It is therefore essential to stipulate & ensure successful project design/ supervision experience while selecting consultants, especially for large works contracts. DPR in such contracts is required to be based on proper ground investigation at each specified stretch (normally 50 metres), called “reach”, and the Consultant be directed to exercise such due diligence.

2.4.3 The involvement of the Ministry/ Department in providing proper inputs including user requirements during the preparation of the DPR and before accepting the draft DPR is paramount in ensuring successful implementation. Proper field surveys and investigations of ground conditions are critical in preparation of a reliable DPR. Providing scientifically valid data to bidders will depend on the quality of the investigations done by the DPR consultant.

As a corollary, the Ministry/ Department must insist on a qualified team of engineers with experience for carrying out DPR studies. It is also essential that the Ministry/ Department insists that the Consultant offers them technology options at the early stage of preparation of the DPR, so that a cost-efficient choice may be made using principles of Life Cycle Costing. In case the deviations between actual ground situation and the situation recorded in such DPR results in significant cost and time over-runs, the engineer, while doing valuation of variations [refer to Para 6.5.1 (iii)], must bring to Procuring Entity's notice the reach-wise differences and the Ministry/ Department may consider stringent action against the consultant who has prepared such DPRs, including debarment from future consultancy contracts, after following due procedure. Such clauses may be included in the contracts for preparation of DPR. Wherever consultants are appointed for preparation of DPR, field units of the public authorities should also be associated with the process. The inputs from these field units can be useful in proposing best solutions for design and execution of the work as they are the custodian of legacy data, which may not be available with the consultants, as they may not be operating regularly in that geographical region.

2.4.4 Presentation may be made about the DPR before the public authority, for projects above a threshold value, as decided by Project Executing Authorities. The presentation may include salient features of the project including general layout, architectural drawings, broad specifications, cash flow (over the life of the project), composition of the project team, quality management plan for the project, important milestones in the project execution, obligations of the authority and the contractor/ concessionaire (hereinafter referred to as "contractor") and possible risks and mitigation measures. In the case of very large projects such presentation may be made to the head of the public authority. The record of discussions during the presentation shall become part of tender file/project record.

2.5 Administrative Approval and Expenditure Sanction (A/A and E/S)

Administrative approval and Expenditure Sanction (A/A and E/S) will be accorded to the execution of work by the competent Financial authority in the Ministry/ Department after due examination of Detailed Project Report and Preliminary estimates. Post Sanction changes in scope and specification lead to delay, loss of quality and contractual penalties therefore such A/A and E/S shall be accorded after carefully assessing their requirements. The estimates framed by a PWO or other engineering organisation may be modified for such sanction only with their concurrence.

The sanction order should contain scope of work, estimated cost, and time schedule for completion of work and funding sources along with their share.

Where a project as a whole has been sanctioned after scrutiny and acceptance by the Finance Ministry, further concurrence of the Finance Ministry shall not be required for sanctioning expenditure on the various constituent schemes included in the project. [Rule 18(1), DFPR, 1978]

2.6 Detailed Designs, Detailed Estimates and Technical Sanction

Except where the work is to be undertaken in the EPC(Turnkey) mode, on receipt of sanction of the project, based on DPR or PE and assurance of funds, the procuring entity in consultation with the Works Committee (as mentioned in para 3.1.4 (iv) below) shall prepare and accord Technical Sanction to detailed and coordinated design of all the Architectural, Civil, Electrical, Mechanical, Horticulture and any other services included in the scope of the sanction and of the Detailed Cost Estimates containing the detailed specifications and

quantities of various items prepared on the basis of the schedule of rates maintained by CPWD or other Public Works Organizations - so as to ensure that proposals are structurally sound and that the estimates are accurately calculated based on adequate data. In case the work is to be executed through a Public Works Organization or Public Sector Undertaking, preparation of detailed design/ estimates and technical sanction shall be done/ accorded by that organization. Architectural and structural drawings: Architectural and structural drawings (fit for construction) are among the core requirements for projects. Finalization of these drawings at the earliest, preferably at the time of preparation of the cost estimate itself, can help to determine quantities of various items of the work. Adverse consequences of not preparing these drawings before invitation of tenders may manifest in the form of delay in execution of the work and deviations in quantities of the items of work. Hence, approved architectural and structural drawings should be available before invitation of tenders. Fit for construction (sometimes called Good for construction) drawings means the architectural and structural drawings approved by the project executing authority as well as by the authority governing the extant rules/ laws, including byelaws, such as local authorities.

2.7 Appropriation of funds

Before taking up the execution of work it shall be ensured that proper funds are available to meet out the expenditure on the work. It should also be emphasized that the DPR consultant is able to provide realistic year wise requirement of funds. This information is necessary so that concerned Ministries/ organizations may be intimated regarding the same. This will enable them to include such funds projection in their budget.

2.8 Reference Documents used in preparation of Estimates

For preparation of estimates and during execution of work following reference documents are used by PWOs. These may be separate for different regions, various types of works - Building, Electrical and Mechanical. *Annexure 10 lists further resources regarding Procurement of Works.*

- i) **Plinth Area Rates** which provide a quick but fairly accurate method of estimation of cost of buildings (e.g. CPWD DPAR – Delhi Plinth Area Rates).
- ii) **Schedule of Rates** for each kind of work commonly executed to facilitate the preparation of estimates, as also to serve as a guide in settling rates in connection with contract agreements, maintained up-to-date (e.g. CPWD DSR - Delhi Schedule of Rates). Endeavour may be made to enlarge the base of the 'Schedule of Rates' published by various organizations to bring a maximum number of items under its ambit. For non-scheduled items, rates may be finalized by a committee constituted by the organization concerned/ consultants as the casemay be.
- iii) **Analysis of Rates** by taking market rates of labour, materials, cartage etc and their quantities for each kind of work commonly executed (e.g. CPWD Analysis of Rates)
- iv) **Specifications** describing inputs, processes, tests and mode of measurement for each kind of work commonly executed (e.g. CPWD Specifications)

2.9 Procurement Planning

GFR 2017 [Rule 144 (x)] mandates that All Ministries/Departments shall prepare Annual Procurement Plan within 30 (thirty) days of Budget approval, before the commencement of the year and the same should also be placed on their website

Chapter 3: Agency for Procurement; Types of Contract, Bidding Systems and Modes of Procurement

3.1 Agency for Procurement

Rule 133 of the GFR, 2017, permits Ministries/ Departments at its discretion to assign execution of their original and repair works as follows:-

- i) Directly by the Ministry/ Department
- ii) Public Works Organisations (PWO)
- iii) Public Sector Undertaking (PSU)/ Organisations setup to execute Works

3.1.1 Directly by the Ministry/ Department

A Ministry or Department at its discretion may directly execute repair works estimated to cost up to Rupees thirty lakh after following due procedure 'laid down for Execution of Works' (Rule 139, 159 and 160 of GFR 2017).

3.1.2 Public Works Organisations

A Ministry or Department may, at its discretion, assign repair works estimated to cost above Rupees thirty lakh and original works of any value to any Public Works Organisation (PWO) such as Central Public Works Department (CPWD), State Public Works Department, others Central Government organisations authorised to carry out civil or electrical works such as Military Engineering Service (MES), Border Roads Organisation (BRO), etc. or Ministry/ Department's construction wings of Ministries of Railways, Defence, Environment & Forests, Information & Broadcasting and Departments of Posts, and Space etc.

3.1.3 Public Works PSU/ Organisations

As an alternative a Ministry or Department may assign repair works estimated to cost above Rupees thirty lakh and original works of any value to:

- i) any Public Sector Undertaking set up by the Central or State Government to carry out civil or electrical works or
- ii) to any other Central/ State Government organisation/ PSU which may be notified by the Ministry of Urban Development (MoUD) for such purpose after evaluating their financial strength and technical competence.

3.1.4 Procedure for Assigning Work to PWO or PSU/ Organisations

- i) For the assignment of work under provisions of para 3.1.3 above to PSUs, the Ministry/ Department shall ensure competition among all such eligible PSUs/ organisations. This competition shall be essentially on the lump sum service charges to be claimed for execution of work. The award of work to a PSU should be taken as Project Management Consultancy (PMC) and the concerned PSU shall be treated as consultancy firm. Relevant methods (QCBS, LCS etc) for procurement of consultancy will be applicable. For better understanding of selection methodology of consultant(s), Rule 192 to Rule 194 of GFR 2017 and Manual for Procurement of Consultancy and Other Services, 2017 may be referred.

- ii) In exceptional cases, for assignment of work on nomination basis under provisions of para 3.1.3 above to PSU, the conditions contained in para 3.5.7 below would apply. The work under these circumstances shall also be assigned only on the basis of lump sum basis.
- iii) ¹⁸For original works and repair works entrusted under the provisions of Para 3.1.2 and 3.1.3 above, the administrative approval and expenditure sanction shall be accorded and funds allotted by the concerned authority in accordance with the Para 1.12 (ii) above. The Public Works Organisation or the Public Sector Undertaking or any organisation allotted work shall then execute the work entrusted to it in accordance with the rules and procedures prescribed in that organisation.
- iv) A Memorandum of Understanding (MoU) may be drawn with the Public Works Organisation or the Public Sector Undertaking for proper execution of work. The MoU should spell out the obligations on the part of Public Works Organization or PSU regarding execution of works as per proper specifications and for maintaining proper quality and speed of execution of works. Different stages at which funds shall be released to the Public Works Organization should also be clearly spelt out. Such MoU would normally be for a specific standalone work, but could also be for a Project consisting of a collection of related works. In case of MoU with Public work Organisations (PWOs) it could also be as a long-term framework MoU. A Sample MOU delineating complete procedure of assignment of work to PWO/ PSUs and its monitoring is shown in Annexure 8. Procuring entity may change the MOU format suiting to their requirement, and If felt necessary may also get the MOU document vetted from the Ministry of Law/ or its own legal cell.
- v) For execution of any work, under the provisions of Para 3.1.2 and 3.1.3 above, the Ministry/ Department shall constitute a “Works Committee”, whether on ad hoc or standing basis; comprising of representatives of administrative wing and Finance wing and an officer possessing technical skills and experience of framing estimates and execution of works. If need be, members may be co-opted from User Department; CPWD/ Public Works Organization/ PSUs or any technically sound Government agency such as a relevant NIT/ IIT or a relevant National Research Institute etc. The Works Committee shall ensure observance of due process in the planning and execution of works, check the reasonability of the estimates and other technical details and monitor the execution of the works.

3.2 Types of Contract

There are different basis for linking payments to the performance of Contract (called types of contracts) – each having different risks and mitigation measures. Bids are called and evaluated based on the type of contract. The choice of the type of contract should be based on Value-for-Money (VfM) with due regard to the nature of Work. Adoption of an inappropriate type of contract could lead to a situation of lack of competition, contractual disputes and non-performance/ failure of the contract. Standard forms for all the types of contract mentioned below are available with Public Works Organizations like CPWD and the same may be used

¹⁸Rule 140, GFR, 2017

for calling the tenders. Each type of contract is described briefly in subsequent paras, and criteria are suggested for their adoption. Mostly used types of contracts are:

3.2.1 Lump sum (Fixed Price) Contract

- i) This form is used for work in which contractors are required to quote a lump sum fixed price figure for completing the works in accordance with the given designs, specifications and functional requirements. Bidder's price is deemed to include all elements of cost - no arithmetical correction or price adjustments are allowed during evaluation and execution. Lump sum contracts are easy to administer because it is a fixed price for a fixed scope and payments are linked to clearly specified outputs/ milestones.
- ii) There may be tendency for the Contractor to cut corners on quality and scope of work by saving on resources employed. Disputes may arise due to different possible interpretations of quality and scope of work. The contract should include provision for evaluation of quality and scope of work and certificate for its acceptability may be recorded.
- iii) As time is not linked to the payment, there may be tendency for the Contractor to save on deployment of resources which may result in time-over-run. While the payments are not linked to time, the assignment should be monitored per month to ensure that the progress of work per month is in line with planned and estimated time-line.
- iv) Lump sum service contracts should be used mainly for assignments in which the quality, scope and the timing of the Work are clearly defined. Lump sum contracts may be used where the Works can be defined in their full physical and qualitative characteristics and risk for change in quantity or specification, and unforeseen difficulties and site conditions (for example, hidden foundation problems) are minimal. Thus is suitable for stereotype/ repetitive residential buildings or other structures for which standard drawings are normally available. It is also suitable for minor bridge works, chimneys, bins/ silos, overhead tanks, etc. whether on Department's design or that of the contractor. In the latter case, the Department shall spell out the requirements in detail to enable the contractor to prepare his designs and drawings accordingly, and submit them to the Procuring Entity for check and approval before construction
- v) A Schedule of Rates (SOR) may still be specified in order to regulate the amounts to be added to or deducted from the fixed sum on account of additions and alterations to drawings, designs and specifications not covered by the contract.
- vi) The contractor shall be paid from time to time as per the schedule specified in the contract or the full amount on completion of the work. In The concept of priced "activity schedules" may be used, to enable payments to be made on the basis of percentage completion of each activity. The billing schedule shall commensurate with the actual work done, and the risk of front-loading strictly guarded against.
- vii) Detailed measurements of work done in a lump sum contract are not required to be recorded, except in respect of additions and omissions. No reference is made in the contract to the departmental estimate of the work, prevailing SOR or the quantities of work to be done. Payment of additions and omissions is regulated by prevailing SOR as agreed upon while approving the tender or the rates.

3.2.2 Item rate (Unit Rate) Contract

- i) For item rate tenders, contractors are required to quote rate for each individual items of work on the basis of Bill of quantities (BOQ) provided by the Procuring Entity in the Bid Documents. Reasonable variations in quantities can be allowed during the execution in terms of the contract. This is the most commonly used contract type for civil works.
- ii) The payment is made at the rate set out in the contract for the measured quantity within prescribed range [usually +/- 15 (fifteen) percent per item] of the estimated quantity of the initial BOQ.
- iii) This type of contract is suitable for all types of major works such as buildings, bridges, culverts, roads, sewer lines, irrigation works, and carries the least risk of uncertainty for the parties.
- iv) Specifications, design, drawings and contract conditions (including availability of land, forest clearance, social and environmental impact assessment, where applicable) have to be critically appraised before the initiation of procurement process, in order to minimise the incidence of internal inconsistencies, variations, and situation of claims/ disputes or contract failure.

3.2.3 **Percentage Rate Contract**

- i) For percentage rate contract, the contractors are required to quote rate as overall percentage above or below the total estimated cost.
- ii) This type of contract works best when the work does not involve major design process and directions, and simple drawings are sufficient for execution. It saves on the time and effort of detailed design before the procurement process. This type of tender can be used in respect of for small and routine types of original works for which estimates can be made based on available schedule of rates and all repair works e.g. levelling and development works including such works as storm water drainage, water supply and sewer lines.
- iii) Bills for percentage rate contracts shall be prepared at the estimated rates for individual items only and the percentage excess or less shall be added or subtracted from the gross amount of the bill. The payment is made for the measured quantity. Contract provisions are made to determine the price of the items not included in SOR. In the absence of a standard schedule of rates, a project-specific schedule of items and their rates is drawn.

3.2.4 **Piece Work Contract**

Piece Work Contract is to be used mainly in following cases:

- i) The cases, in which it is necessary to start the work in anticipation of formal acceptance of contract, an agreement on piece work contract may be drawn and the contract may be cancelled as soon as regular contract is signed.
- ii) For running contracts i.e. those for pipes, laying of sewerage etc. quotations are called periodically and a running rate contract is drawn up as a result of those quotations usually for one year. The piece work contract provides for payment of stipulated rates only when it refers to such quantity of time and also stipulates that the procuring entity may put an end to the agreement at his option at any time.

3.2.5 **Engineering, Procurement and Construction (EPC) Contracts**

- i) The Engineering, Procurement and Construction (EPC) (also called 'Design & Build' Contracts) approach relies on assigning the responsibility for investigations, design and construction to the contractor for a lump sum price determined through competitive bidding. The objective is to ensure implementation of the project to specified standards with a fair degree of certainty relating to costs and time while transferring the construction risks to the contractor.
- ii) On the recommendations of National Institution for Transforming India (NITI Aayog) the Cabinet Committee on Economic Affairs (CCEA)¹⁹ has recommended that Item Rate contracts may be substituted by EPC contracts wherever appropriate.
- iii) Unlike the normal practice of construction specifications, the technical parameters in the EPC Agreement are based mainly on output specifications / performance standards. Procuring Entity specifies only the core requirements of design and construction of the project that have a bearing on the quality durability, reliability, maintainability and safety of assets and enough room is left for the contractor to add value. The Contractor has full freedom to design and plan the construction schedule using best practices to achieve quality, durability, reliability, maintainability, and safety as specified along with efficiency and economy. Projects risks such as soil conditions and weather or commercial and technical risks relating to design and construction are assigned to the Contractor. The Procuring Entity bears the risk for any delays in handing over the land, approvals from local authorities, environment clearances, shifting of utilities and approvals in respect of engineering plans.
- iv) Selection of the contractor is based on open competitive bidding. All project parameters such as the contract period, price adjustments and technical parameters are to be clearly stated upfront, and short-listed bidders are required to specify only the lump sum price for the project. The bidder who seeks the lowest payment is awarded the contract. The contract price is subject to adjustment on account of price variation during the contract period as per a specified formula. It also lays down a ceiling of 10 (Ten) per cent of contract price to cater for any changes in the scope of project, the cost of which the Procuring Entity will bear.
- v) The selected Contractor carries out survey and investigations and also develops designs and drawings in conformity with the specifications and standards laid down in the Agreement. Procuring Entity's engineer (also called owner's engineer) reviews the design and drawings to ensure that these conform to the scope of the project, design standards and specifications. Any comments by the Procuring Entity on the design proposals submitted by the contractor are to be communicated in totality once in a time-bound manner as indicated in the schedule. The contractor is free to proceed with construction after the expiry of specified period in case no remarks/ clearances are given by the Procuring Entity.
- vi) The Contractor is liable to pay Liquidated Damages for each day of delay beyond the specified date of completion, subject to the total amount of Damages not exceeding 10 (ten) per cent of the Contract Price. However, the Contractor is entitled to time extension arising out of delays on account of change of scope and force majeure or delays caused by or attributable to the Procuring Entity. If so provided in the Bid

¹⁹Niti Aayog OM No. N-14070/14/2016-PPPAU dated September 05, 2016

Document, Procuring Entity is also liable to pay bonus (normally should not exceed ten percent) to the Contractor for completion of the project before the scheduled completion date, if so provided in the contract documents.

- vii) Monitoring and supervision of construction are undertaken through Procuring Entity's engineer, (a qualified firm that will be selected through a transparent process) acting as a single window for coordination with the contractor.
- viii) Each item of work is further sub-divided into stages and payment based on output specifications and performance standard is to be made for each completed stage of work. Defects liability period of two years may be specified in the Agreement in order to provide additional comfort to the Procuring Entity.
- ix) Federation Internationale Des Ingénieurs-Conseils (FIDIC - an International Federation of Consulting Engineers, known by its French acronym) has also published such contractual frameworks. Model EPC contract documents have been developed for Highways and Railways and published by the erstwhile Planning Commission. National Highways Authority of India (NHAI) has already adopted these documents and all construction contracts are currently being structured on this model. Ministry of Railways has also started using such documents. Model bidding documents and Model EPC contracts suitably revisited or modified wherever required to suit the requirements of particular sectors, may be adopted.
- x) The selected Procuring Entity's Engineer (Consultant) has to have good experience in design, project supervision and works management. The Procuring Entity organisation must have an experienced team with (works committee) to super check the quality of supervision exercised by the owner's engineer, including quality of design review, site supervision, quality audits, etc. Periodic audits of the Procuring Entity's Engineer functioning are desirable in ensuring that the Procuring Entity's Engineer carries out his tasks professionally.
- xi) In complex projects, a third party consultant be deployed for specific tasks like design audit, quality audits, safety audits, etc., to cross-check the Procuring Entity's Engineer's diligence in the process.
- xii) In EPC contracts, since primary responsibility to execute the work lies with the EPC contractor, success of the project also depends upon the quality of the tender document wherein enough clarity on the broad framework for execution of the work and the obligations of the contractor needs to be built in.
- xiii) Milestones for payment to the contractor should be fixed in a manner that facilitates smooth cash flow for the contractor as well as for progress of the work. Milestones fixed should avoid excessive front loading or back loading, i.e., amount of payment should be commensurate with stage-wise quantum of work/ cost incurred. Milestones for payment to the contractor should also be linked with the deliverables.
- xiv) In case of EPC contracts, only general arrangement drawings and architectural control parameters should be part of the PEC tender document. In case of EPC contracts, timelines for submission of drawings by the contractors and approval thereof by the competent authority should be clearly prescribed in the tender document, wherein, damages for non-adherence of such timelines in this regard may also be incorporated.
- xv) EPC contracts shall specify broad technical specification and key output parameters. Over-specification of design may lead to increase in cost. Technical specifications shall be

framed in such a manner to allow sufficient freedom to the contractor to optimize design. Provisions on the following should be included in commercial conditions :

- a) Limitation of liability for procuring entity as well as contractor.
 - b) Deviation limits and procedure for change of scope.
 - c) Contract closing timelines and procedure to ensure timely closing of contract.
 - d) Performance parameters and liquidated damages for shortfall in performance
 - e) Risk matrix and responsibilities of the contractor and the procuring entity.
- xvi) In addition, a latent defect period beyond the defect liability period may be included to protect the procuring entity and public authority interest in case of any design/ engineering defect after the defect liability period is over, wherever appropriate.
- xvii) To mitigate the risk involved in the methodology proposed by the contractor, the project executive authority shall either have an in-house engineering, quality assurance and project management expert or alternatively hire an experienced engineer to intensively examine the proposal submitted by the contractor. Project executing authorities are to ensure that optimal technological solutions are provided by the contractor.
- xviii) To ensure equality, regular inspection and quality checks must be carried out. The Project, executing authority shall carry out stage inspections in manufacturing of critical equipment/critical activities of the project.

Note: In para 3.2.5 instructions containing “shall” are mandatory; any deviation from these instructions shall require relaxation from Ministry of Finance (for Ministries/ Departments etc.) or from the Board of Directors (for Central Public Sector Enterprises).

3.2.6 Public Private Partnership (PPP)

PPP means an arrangement between a government/ statutory entity/ government owned entity on one side [Sponsoring (PPP) authority – or simply the Authority] and a private sector entity (a legal entity in which 51% or more of equity is with the private partner/s - concessionaire) on the other, for the creation and/ or management of public assets and/ or public services, through investments being made and/ or management being undertaken by the concessionaire, for a specified period of time (concession period) on commercial terms, where there is well defined allocation of risk between the concessionaire and the Authority; and the concessionaire (who is chosen on the basis of a transparent and open competitive bidding), receives performance linked payments that conform (or are benchmarked) to specified and pre-determined performance standards, measurable by the Authority or its representative. For further information, PPP instructions issue by Department of Economic Affairs (DEA), Ministry of Finance from time to time, may be referred.

3.3 Bidding Systems

Bidding systems are designed to achieve an appropriate balance between the countervailing needs for Right Quality, Right Source and the Right Price under different complexities/ criticality of Technical requirements and value of procurements. In certain critical and complex requirements, the technical and financial capability of Source of supply becomes an important determinant for value for money. Depending on the complexity and criticality Technical of requirement, Criticality of capability of Source and value of procurement, following types of bidding systems may be used.

3.3.1 Single Stage Bidding System

In single stage bidding, all bids are invited together in a single envelope or in multiple envelopes system. This bidding system is suitable where technical requirements are simple or moderate; capability of source of supply is not too crucial and the value of procurement is not too high;

3.3.2 Single Stage Single Bid/ Envelope System (1S1E)

Where it is feasible to work out the schedule of quantities and to formulate detailed specifications for Works and capability of contractor isn't critical and value of procurement is low or moderate, the single envelope system may be adopted, where eligibility, technical/ commercial and financial details are submitted together in the same envelope. This is the simplest and the quickest bidding system. The lowest responsive priced bid that meets the eligibility criteria, technical and commercial requirements laid down in the bid documents is declared as successful and awarded the contract.

3.3.3 Single Stage Two Envelope Systems (1S2E)

In technically complex requirements but where capability of source of supply is still not crucial and value of procurement is not low, a two envelope system may be followed:

- i) If required, Technical specification and techno-commercial conditions may be modified, after the pre-bid conference in the two envelopes. The pre-bid conference is to be organised before the bid submission date. It may be necessary to issue the pre-bid conference minutes to all participants/ upload to the web-portals and some revised RfQ/ RfP documents where necessary.
- ii) The tenderers should be asked to bifurcate their quotations in two envelopes. The first envelope, called the techno-commercial bid, contains the eligibility, technical quality and performance aspects, commercial terms and conditions and documents sought in the tender, except the price and relevant financial details. In the second envelope, called the financial bid, the price quotations along with other financial details are submitted. Both the envelope are to be submitted together in a sealed outer envelope, as it would not be desirable to invite financial bids after opening of techno-commercial bids;
- iii) The techno-commercial bids are to be opened in the first instance on the bid opening date and time, and scrutinised and evaluated by the tender committee (TC) with reference to parameters prescribed in the tender documents and responsive, eligible and technically compliant bidders are decided;
- iv) Thereafter, in the second instance, the financial bids of only the techno-commercially compliant offers (as decided in the first instance above) are to be opened on a pre-announced date and time for further scrutiny, evaluation, ranking and placement of contract. The financial bids of technically non-compliant bidders should be returned unopened to the respective bidders by registered acknowledgement due/ reliable courier or any other mode with proof of delivery. In e-Procurement, financial bids of technically non-compliant offers would not get opened;

3.3.4 Single Stage Multiple Envelope System (with post-qualification, 1S3E)

As discussed below, where the procurement is moderately complex and the time, effort and money required from the bidder to participate in a tender is not very high, instead of a separate stage of Pre-Qualification bidding (as described below), a clear-cut, fail-pass qualification criteria can be asked to be submitted as the first (additional) envelope in a three envelope

single stage bidding, so that a bidder's risk of having his bid rejected on grounds of qualifications is remote if due diligence is exercised him. Strictly speaking, this is not a pre-qualification but a Post-qualification of bidders (as in case of Single Envelope and Two Envelope Bidding). In the first instance on the bid opening date only the post-qualification envelope (also containing the EMD and other eligibility documents) is opened and evaluated to qualify the responsive bidders who pass the post-qualification. Rest of procedure is same as two envelope system for only qualified bidders. Rest two envelopes of unqualified bidders are returned unopened to the respective bidders by registered acknowledgement due/ reliable courier or any other mode with proof of delivery;

3.3.5 Two Stage Bidding with Expression of Interest (Eoi)

- i) There are instances where the Works to be procured are of complex nature and the procuring organization may not possess the full knowledge of either the various technical solutions available or the likely Contractors for such Works. To meet the desired objectives of a transparent procurement that ensures value for money simultaneously ensuring up gradation of technology & capacity building- it would be prudent to invite a two-stage Expression of Interest (Eoi) Bids and proceed to explore the market and to finalise specifications based on technical discussions/ presentations with the experienced Contractors in a transparent manner. Expression of Interest (Eoi) bids may be invited in following situations:
 - i) It is not feasible for the procuring entity to formulate detailed specifications or identify specific characteristics for the subject matter of procurement, without receiving inputs regarding its technical aspects from bidders;
 - ii) The character of the subject matter of procurement is subject to rapid technological advances or market fluctuations or both;
 - iii) The procuring entity seeks to enter into a contract for the purpose of research, experiment, study or development; or
 - iv) The bidder is expected to carry out a detailed survey or investigation and undertake a comprehensive assessment of risks, costs and obligations associated with the particular procurement.
- ii) The procedure for two stage bidding shall include the following, namely:
 - i) In the first stage of the bidding process, the procuring entity shall invite Eoi bids containing the broad objectives, technical and financial eligibility criteria, terms and conditions of the proposed procurement etc without a bid price. On receipt of the Expressions of Interest, technical discussions/ presentations may be held with the short-listed Contractors, which are prima facie considered technically and financially capable of executing the proposed work, giving equal opportunity to all such bidders to participate in the discussions. During these technical discussions stage the procurement agency may also add those other stake holders in the discussions who could add value to the decision making on the various technical aspects and evaluation criteria. Based on the discussions/ presentations so held, one or more acceptable technical solutions could be decided upon laying down detailed technical specifications for each acceptable technical solution, quality bench marks, warranty requirements, delivery milestones etc., in a manner that is consistent with the objectives of the transparent procurement. At the same time

care should be taken to make the specifications generic in nature so as to provide equitable opportunities to the prospective bidders. Proper record of discussions/ presentations and the process of decision making should be kept;

- ii) In revising the relevant terms and conditions of the procurement, if found necessary as a result of discussions with the shortlisted bidders, the procuring entity shall not modify the fundamental nature of the procurement itself;
 - iii) In the second stage of the bidding process, the procuring entity shall invite bids from all those bidders whose bids at the first stage were not rejected, to present final bid with bid prices in response to a revised set of terms and conditions of the procurement; and
 - iv) Any bidder, invited to bid, but not in a position to execute the work due to modification in the specifications or terms and conditions, may withdraw from the bidding proceedings without forfeiting any bid security that he may have been required to provide or being penalised in any way, by declaring his intention to withdraw from the procurement proceedings with adequate justification.
 - v) If the procuring entity is of the view that after EOI stage, there is likelihood of further participation by many more bidders and to avoid getting trapped into a legacy technology, the second stage bidding may not be restricted only to the shortlisted bidders of EOI stage and it may be so declared in the EOI document ab-initio. Thereafter in the second stage, normal OTE/ GTE bidding may be done. Such variant of EOI is called 'Non-committal' EOI.
- iii) **Invitation of Eol Tenders:** In Eol tenders, an advertisement inviting expression of interest should be published. The invitation to the Eol document should contain the following information:
- i) A copy of the advertisement;
 - ii) Objectives and scope of the requirement: This may include a brief description of objectives and broad scope of the requirement;
 - iii) Instructions to the bidders: This may include instructions regarding the nature of work, last date of submission, place of submission and any other related instructions;
 - iv) Formats for submission: This section should specify the format in which the bidders are expected to submit their Eol;
 - v) The Eol document should be made available to the interested bidder as a hard copy as well as on its website in a downloadable form; and

Pre-Notice Inviting Tender (NIT) Conference: In complex and innovative procurement cases or where the procuring entity may not have the required knowledge to formulate tender provisions, a pre-NIT conference may help the procuring entity in obtaining inputs from the industry. Such conferences should be widely publicised so that different potential suppliers can attend.

- iv) **Eligibility criteria:** The invitation to Eol should clearly lay down the eligibility criteria, which should be applied for short listing. Supporting documents required need to be clearly mentioned. An example of Eol eligibility criteria is shown in Table 1. However,

appropriate eligibility criteria have to be designed, keeping in mind the specific objectives of the Eol. Criteria used should be measurable and based on documents that are verifiable. Definitions and explanatory notes shall be provided for each criteria that are simple and unambiguous. It may also be advisable to cross-check and verify these documents, when in doubt.

Table 1: An example of Eol eligibility criteria

Criteria	Sub-criteria	Weightage*	Break-up of Weightages
Past experience of the firm with similar requirements		A*	
Technical capabilities		D*	
Financial strength of the bidder		B*	
	Turnover figures of the last three years		B1*
	Net profit figures of the last three years		B2*
Quality accreditations, licensing requirements		C*	

*Weightages (out of 100) should be pre-decided and declared in Eol documents by the CA based on assessment of the required profiles of the potential bidders. The marking/ grading scheme for allotting marks (out of 100) for various parameters should also be laid down.

- v) **Evaluation of Eol:** The bidders should be evaluated for short listing, inter-alia, based on their past experience of performance in a similar context, financial strength and technical capabilities, among others. Each bidder should be assigned scores based on the sum of marks obtained for each parameter multiplied by the weightages assigned to that parameter. All bidders who secure the minimum required marks [normally 60 (sixty) per cent] should be shortlisted. The minimum qualifying marks should be specified in the Eol document. Alternatively, instead of weighted evaluation, the Eol document may specify a 'fail-pass criteria' with the minimum qualifying requirement for each of the criteria, such as minimum years of experience, minimum number of Works executed and minimum financial turnover. Under such circumstances, all bidders who meet the minimum requirement, as specified, should be shortlisted. The short list should normally comprise at least four firms.

3.3.6 Pre-qualification Bidding (PQB)

- i) In high value contracts or complex technical requirements where capability of source of supply is crucial (for example in construction of complex bridges), for the successful performance of the contract, besides considering techno-commercial suitability, it is necessary to ensure that competition is only among bidders with requisite capabilities matching the challenges of the task. In case bidders with inadequate capability are allowed to compete, the better qualified bidders would be eliminated, since their bid price is likely to be higher commensurate with their higher capability and infrastructure. In such situations a separate stage of PQB bidding system may be considered (or single stage multiple envelope bidding – please refer para 3.3.4 above). In PQB stage, competent qualified tenderers are shortlisted prior to the issue of the bid document

exclusively to shortlisted bidders in the second stage by using a Pre-qualification Criterion (PQC).

ii) Pre-qualification Bids (PQBs) should meet the norms of transparency, fairness and maintenance of competition. *Since PQB system may strain the transparency principle and there is heightened risk of cartelization among shortlisted bidders, PQB should be done only as an exception under specified circumstances. It should not be a routine/ normal mode of procurement of works and an eligibility criteria clause (post-qualification) as part of single/ two envelope/ cover tendering should suffice in normal/ routine situations. PQB bidding as a separate stage is contra-indicated in the following circumstances:*

i) Where procurement can be done through limited tender enquiries;

ii) Where the requirement is technically and commercially simple enough that pre-qualification of the bidder is not crucial for the performance of the contract, for example, routine residential buildings; and

iii) *Where the procurement is of medium value (say less than Rs 100 crore) or moderately complex in nature and the time, effort and money required from the bidder to participate in a tender is not very high, a clear-cut, (preferably fail-pass) post-qualification criteria can be specified in a three envelope single stage bidding (instead of separate PQB bidding), so that a bidder's risk of having his bid rejected on grounds of qualifications is remote if due diligence is exercised him.*

iii) **Pre-qualification Criteria:** PQC should be unrestrictive enough so as not to leave out even one capable bidder/ contractor. Otherwise, it can lead to higher prices of procurement/ works/ services. However, on the other hand, these criteria should be restrictive enough so as not to allow even one incapable bidder/ contractor and thus vitiate fair competition for capable bidders/ contractors to the detriment of the Procuring Entity's objectives. A misjudgement in either direction may be detrimental. Certain guidelines²⁰ regarding the framing of PQC have been laid down. Due consideration should be given while framing PQC, to its effect on adequacy of competition. PQC should therefore be carefully decided for each procurement with the approval of competent authority (CA). It should be clarified in the PQB documents that bidders have to submit authenticated documents in support of eligibility criteria. Specific criteria of 'pass' for each attribute will be as specified in the standard pre-qualification document. A bidder may be awarded more than one contract in a Tender if he: (a) meets the PQC of each of them; (b) demonstrates having the resources in respect of financial, personnel and equipment capabilities to meet the aggregate of the specified capabilities for each contract; and (c) has bidding capacity at the time of bidding, as calculated by the above formula, more than the total estimated cost of these works. The attributes PQC should cover inter-alia:

a) **General Construction Experience: Annual Turnover**

The applicant should have achieved minimum annual value of general construction work (as certified by Chartered Accountant, and at least 50(fifty) percent of which is from Engineering (Civil/ Electrical/ Mechanical as relevant to the work being procured) construction works) carried out in any of the year over a stated period (normally five to

²⁰ <http://cvc.nic.in/six.pdf>

seven years, ending 31st March of previous year), calculated by applying an appropriate multiplier to the projected annual construction expenditure on the subject contract. The multiplier of 2 may be used, but for very large contracts should not be less than 1.5.

b) Particular Construction Experience and Key Production Rates

The applicant should have:

1. successfully completed or substantially completed similar works during last seven years ending last day of month previous to the one in which applications are invited should be either of the following: -
 - 1.1 Three similar completed works costing not less than the amount equal to 40(forty) percent of the estimated cost; or
 - 1.2 Two similar completed works costing not less than the amount equal to 50 (fifty) percent of the estimated cost; or
 - 1.3 One similar completed work costing not less than the amount equal to 80 (eighty) percent of the estimated cost; and
2. Definition of “similar work” should be clearly defined.
 - 2.1 The pre-qualification criteria specified in the tender document should neither be made very stringent nor very lax to restrict/ facilitate the entry of bidders. It is clarified that the guidelines issued are illustrative and the organizations may suitably modify these guidelines for specialized jobs/works, if considered necessary. However, it should be ensured that the PQ criteria are exhaustive, yet specific and there is fair competition. It should also be ensured that the PQ criteria are clearly stipulated in unambiguous terms in the bid documents.)
3. The applicant should also have achieved the minimum annual production value of the key construction activities (e.g. dredging, piling, or earthworks etc) stipulated.

The similarity of work shall be pre-defined based on the physical size, complexity, methods/ technology and/ or other characteristics described, and scope of works. Substantial completion shall be based on 80 (eighty) per cent (value wise) or more works completed under the contract (Note: Substantial completion should not be defined in terms of percentage completion, rather it should be based on functional consideration. For contracts under which the applicant participated as a joint venture member or sub-contractor, only the applicant’s share, by value, shall be considered to meet this requirement. For arriving at cost of similar work, the value of work executed shall be brought to current costing level by enhancing the actual value of work at simple rate of seven percent per annum, calculated from the date of completion to the date of Bid opening.

Certificate for ‘substantial completion’ of project/work/asset should contain two parts. Part -I shall contain ‘financial value of work done’ and part-II shall contain ‘certificate of functional completion of project/work/asset’.

c) Financial Capabilities

The applicant should have: (i) access to, or possess available liquid assets and other financial means (independent of any contractual advance payments) sufficient to meet the construction cash flow requirements for the subject contract, of the certain minimum amount specified; (ii) adequate sources of finance to meet the cash flow requirements of works currently in progress and for future contract commitments; and (iii) financial soundness as established by audited balance sheets and/ or financial statements. Average Annual Financial Turnover of the bidders during the last three years ending 31st March of the previous financial year should be at least 30% of the estimated cost.

d) **Personnel Capabilities**

The applicant's key personnel, as listed in the pre-qualification document, should meet the requirements of qualification and experience specified. The pre-qualification criteria should, refer to a limited number of such key personnel, for instance, the project or contract manager and those superintendents working under the project manager who will be responsible for major components (for example, superintendents specialised in dredging, piling, or earthworks, as required for each particular project). Criteria of acceptability should be based on:

1. A minimum qualification related to the work, if considered desirable;
2. A minimum number of years of experience in a similar position; and
3. A minimum number of years of experience and/ or number of comparable projects carried out in a specified number of preceding years.

e) **Equipment Capabilities**

The applicant should own, or have assured access (through hire, lease, purchase agreement, other commercial means) to the specified key items of equipment, in full working order, and satisfy that, based on known commitments; it will be available for timely use on the proposed contract. The pass–fail criteria adopted should be limited only to those bulky or specialised items that are critical for the type of project to be implemented (say heavy lift cranes and piling barges, dredgers, asphalt mixing plants), and so on. Contractors may not own the specialised items of equipment, and may rely on specialist sub-contractors or equipment–hire firms.

(e) **Available Bid Capacity**

The bidder should possess the bidding capacity as calculated by the specified formula. The formula generally used is:

Available bid capacity = A x M x N -B, where

A = Maximum value of engineering (Civil/ Electrical/ Mechanical as relevant to work being procured) works executed in any one year during the last five years (updated at the current price level), taking into account the completed as well as works in progress.

M = Multiplier Factor (usually 1.5)

N = Number of years prescribed for completion of the work in question.

B = Value (updated at the current price level) of the existing commitments and ongoing works to be completed in the next 'N' years.

(f) **Pre-qualification of JV**

JV members are “jointly and severally responsible and liable” in a contract. For pre-qualification, the JV should fulfil the criteria specified in the pre-qualification document. The attributes to be evaluated will be the same as for individual contractors; however, certain parameters up to the specified limits have to be essentially met by them collectively, some by the lead partner, and some by the other partner, as briefly described below:

1. Qualifying factors to be met collectively: (i) annual turnover from construction; (ii) particular construction experience and key production rates; (iii) construction cash flow for the subject contract; (iv) personnel capabilities; and (v) equipment capabilities;
2. Qualifying factors for lead partner: (i) Annual Turnover from Construction; (ii) particular construction experience; (iii) financial capability to meet cash flow requirement of subject contract –not less than of 50 (fifty) per cent of the respective limits prescribed in case of individual contractors may be accepted; (iv) adequate sources to meet financial commitments on other contracts; (v) financial soundness;
3. Qualifying factors for other partner: Same as for lead partner except that for the factors specified in (2) (iii) above, a lower limit of 25 (twenty-five) per cent may be accepted instead of 50 (fifty) per cent.

(g) **Disqualification**

Even if an applicant meets the eligibility criteria (Please refer Para 4.5 below) and PQC, he shall be subject to disqualification if he or any of the constituent partners is found to have:

1. made misleading or false representations in the forms, statements, affidavits and attachments submitted in proof of the qualification requirements; and/ or;
2. Records of poor performance during the last five years, as on the date of application, such as abandoning the work, rescission of the contract for reasons which are attributable to non-performance of the contractor, inordinate delays in completion, consistent history of litigation resulting in awards against the contractor or any of the constituents, or financial failure due to bankruptcy, and so on. The rescission of a contract of venture JV on account of reasons other than non-performance, such as the most experienced partner (major partner) of JV pulling out;
3. On account of currency of debarment by any Government agency.

(iv) **Advertisement and Notification:** The invitation for PQB shall be processed (advertised, bid document preparation, publicity and evaluation, and so on) in the same manner as a normal GTE or OTE (as the situation calls for) tender, ensuring the widest possible coverage. The PQC and evaluation criterion should be notified clearly in the PQB documents. A minimum period of 21 (twenty-one) days may be allowed for the submission of PQBs. In the case of urgency, duly approved by CA, the time limit may be reduced to 30 (thirty) days. The PQB documents should also indicate

- a) Scope of work (in physical as well monetary terms);
- b) Pre-qualification criteria for single contractors and joint ventures;

- c) Disqualification clause for misleading statements, or the applicant found to be ineligible on the basis of facts;
 - d) Various questionnaires and forms, required to be answered and filled by the prospective applicant, in support of pre-qualification;
 - e) Form of affidavit by the applicant in certification of the statements made and information given by him;
 - f) Indicative requirements of qualifications and experience of key personnel for the project;
 - g) Indicative requirements of annual production rates of key items of work;
 - h) Indicative requirements of major plant and equipment;
 - i) Indicative quantities of major items of work;
 - j) Description of the project area, its climate and language, site of work and means of access; and
 - k) Key plan of project area along with the site plan.
- v) **Empanelment of contractors:** Public authorities may empanel/ register contractors of those specific goods and services which are required by them regularly. Performance of such empanelled contractors should be reviewed periodically. The list of registered contractors shall be updated on a regular basis. The category/ class of contractors may be upgraded/ downgraded or contractors may be de-listed based on their performance. Empanelment of contractors shall be done in a fair and equitable manner, preferably online after giving due publicity. The practice of inviting bids for works tenders only from empanelled contractors may be confined to tenders up to certain threshold value, as decided by the project executing authorities.

(vi) **Evaluation**

At least in high value and critical procurements, the credentials regarding experience and past performance, submitted by the successful bidder, may be verified as per PQC criteria, as far as reasonably feasible, from the parties for whom work has been claimed to be done. The procuring entity shall evaluate the qualifications of bidders only in accordance with the PQC specified and shall give due publicity to the particulars of the bidders that are qualified on the relevant portals/ websites.

(vii) **Subsequent Procurement Tender**

The pre-qualification shall be valid for such period as may be specified in the pre-qualification document and for a single subsequent procurement within this period, except when it is determined that engaging in fresh pre-qualification shall not result in enhanced competition. During the period of such validity, the procuring entity shall invite bids for procurement (Request for Proposals – RfP) from pre-qualified bidders and all other bids may be treated as unsolicited offers which are normally rejected. In case bids are not invited within such a period, fresh pre-qualification shall be done. It is desirable that the time gap between the pre-qualification approval and floating of the linked main procurement tender is less than six months. EoI should clearly specify the duration for which the pre-qualification criteria(s) is

valid. After the expiry of such duration whenever a subsequent procurement shall be carried out, fresh pre-qualification criteria shall be incorporated in such tender documents.

3.3.7 Pre-Qualification Bidding – Risks and Mitigations:	
Risk	Mitigation
Pre-qualification criteria: PQB has the potential of getting misused or being applied without considering the restrictive nature of competition. PQC should be relevant to the quality requirements and neither is very stringent nor very lax to restrict/ facilitate the entry of bidders. These criteria should be clear, unambiguous, exhaustive and yet specific. Also, there should be fair competition.	Lay down criteria when prequalification in single stage or two stage bidding is warranted. Also lay down model PQC criteria for different types of procurements. There must also be an understanding of the size, capacity and competencies of contractors in India and in the Global marketplace.
Dangers of Anti-competitive bidding: Since in a two stage PQB, shortlisted bidders are announced, there is heightened possibility of these bidders forming a cartel and quoting anti-competitive prices in the second stage of bidding.	Two stage PQB should be done only in appropriately justified situations. Alternatively, Single Stage multiple envelope system may be used for prequalification, in which chances of anti-competitive behaviour and time-taken is significantly lesser.
Two Stage PQB is a time-consuming process.	
Contentious and Disputes: Both the successful and unsuccessful bidders tend to view PQB process as a means for creating rights/ privileges/ entitlement for them by way of hair-splitting, contentious or viciously legalistic interpretations of PQC criteria, disregarding the very rationale of the PQB and PQC.	In the PQC a caveat against such tendencies may be included, asserting the right of procuring agency to interpret the PQC on common usage of terminologies and phrases in public procurement instead of legalistic and hair-splitting judgements and that their decision in this regard would be final.

3.4 Electronic Procurement (e-Procurement)

Rule 160 of GFR 2017 makes it mandatory for Ministries/ Departments to receive all bids through e-procurement portals in respect of all procurements. Ministries/ Departments which do not have a large volume of procurement or carry out procurements required only for day-to-day running of offices and also have not initiated e-procurement through any other solution provided so far, may use e-procurement solution developed by NIC i.e. Central Public Procurement Portal (CPPP). Other Ministries/ Departments may either use CPPP or engage any other service provider following due process. There are other service providers in Public Sector (e.g. MSTC) and Private sector which can be utilized for e-Procurement. In individual case where national security and strategic considerations demands confidentiality, Ministries/ Departments may exempt such cases from e-procurement after seeking approval of concerned Secretary and with concurrence of Financial Advisers. In case of tenders floated by Indian Missions Abroad, Competent Authority to decide the tender may exempt such case

from e-procurement as the bidders may face problems in obtaining digital signatures which is pre-requisite for bidding. Details about the process of e-procurement are available from the service providers. *Appendix 3 also gives such generic details of the e-Procurement process.* The e-procurement solutions meet all the requirements notified by Department of Information Technology under the Guidelines for compliances to Quality requirements of e-procurement systems published on the e-Governance Standards Portal (<http://egovstandards.gov.in>)

3.5 Modes of Tendering

Offers from prospective bidders in public procurement must be invited according to a procedure that achieves a balance between the need for the widest competition, on one hand, and complexity of the procedure, on the other hand. Different modes of procurement and bidding systems are used to suit various procurement circumstances to achieve this balance. There are laid down procedures for delegation of powers of procurement to various competent authorities under different modes as shown in DFPR. Each procuring entity may also publish its own Schedule of Procurement Powers (SOPP) delegating such powers within the entity. The various modes of procurement that can be used in public procurement of works are:

- i) Open Tender Enquiry (OTE); and
- ii) Global Tender Enquiry (GTE);
- iii) Limited Tender Enquiry - LTE (up to Rs. five lakh); [Rule 139 (iii) of GFR, 2017]
- iv) Single Tender Enquiry (STE) or selection by nomination;
- v) Award of Work through Quotations.

3.5.1 ²¹Open Tender Enquiry (OTE)

- i) In OTE, an attempt is made to attract the widest possible competition by publishing the NIT simultaneously on the designated websites and in the press (newspapers and trade journals). This is the default mode of procurement and gives the best value for money but the procedure is relatively complex and prolonged. *The systemic cost of this procedure may be high enough to be unviable for smaller value procurements.* OTE procedures through e-procurement or through traditional tendering should be adopted for procurement values above Rs five lakh.

ii) Terms and Conditions

- a) Participation should not be restricted to only Bidders enlisted with the Procuring Entity. Bidders already enlisted are also free to participate. However, a requirement that successful un-enlisted Bidders may have to get enlisted with the Procuring Entity, before contract is placed on them.
- b) GFR 2017 (Rule 159) makes it mandatory for all Ministries/ Departments of the Central Government, their attached and Subordinate Offices and Autonomous /Statutory Bodies to publish their tender enquiries, corrigenda thereon and details of bid awards on the Central Public Procurement Portal (CPPP) and has dispensed with print-advertisements in Newspaper etc. An organisation having its own web site should also publish all its advertised tender enquiries on the web site. The procuring entity should also post the complete bidding document in its web site and on CPPP to enable prospective bidders to make use of the document by downloading from the web site. The advertisements for invitation of tenders

²¹Rule 161, GFR 2017

should give the complete web address from where the bidding documents can be downloaded (for details see para 4.3). In order to promote wider participation and ease of bidding, no cost of tender document may be charged for the tender documents downloaded by the bidders; and

- c) The tender documents should be prepared on the basis of the relevant approved SBD for the category of procurement. Further details on preparing tender documents are provided in Chapter 4.
- d) The sale/ availability for downloading of tender documents against NIT should not be restricted and should be available freely. Tender documents should be available for download free of cost up to the date of opening of tenders. The organization should also post the complete tender document in the web site and permit prospective tenderers to make use of the document downloaded from the web site. If the tender document is a priced one, there should be clear instructions for the tenderers in the document (which has been downloaded) to pay the amount by demand draft etc. along with the tender, prepared in the downloaded document.
- e) The procuring entity shall maintain proper records about the number of tender documents sold, list of parties to whom sold, details of the amount received through sale and, also, the number of unsold tender documents, which are to be cancelled after the opening of the tenders.

3.5.2 OTE - Risks and Mitigations	
Risk	Mitigation
<p>Since the crux of this mode of procurement is attracting bids from all possible prospective bidders. The risk is that this may not be achieved, even after incurring extra cost of open tendering. This could be due to</p> <ul style="list-style-type: none"> • Insufficient publicity; • Hindrances in availability of bid documents; • insufficient time for bid preparation; or • Due to onerous cost of bid-documents or EMD 	<p>It should be ensured that the NIT on the website is easily searchable and visible, not hidden under layers of clicks. The matter should not be left entirely to the website or media publicity alone. Due diligence should be done to locate likely bidders (including past bidders) and their attention should be drawn through SMS/ mail/ email. All enlisted vendors/ contractors (in particular past successful vendors/ contractors) should be given intimation about forthcoming tenders via SMS/ mail/ email.</p> <p>Further a limited or open tender which results in only one effective offer shall be treated as a single tender enquiry situation, with relevant powers of approval etc.</p> <p>It should be also ensured that there is no impediment to issue/ access of bid documents.</p> <p>The due date fixed for opening of the tender shall be minimum 21 (twenty-one) days from the date of advertisement which may vary, taking into account the nature of material called for and delivery requirements. The due date may be subsequently extended with the approval of the CA, only if it is felt necessary to have better competition.</p>

3.5.2 OTE - Risks and Mitigations	
Risk	Mitigation
	<p>The tender documents, shall be priced minimally (if at all priced, refer Para 4.4 Issue/ Availability and Cost of Tender Documents) keeping in view the value of the tender as also the cost of preparation and publicity of the tender documents.</p> <p>EMD should be sufficient to ensure that bidders honour their bids but at the same time should not be large enough to reduce competition.</p>
Lack of clarity in description/ specification of requirement or undue stringency in qualifying criteria or other conditions	Mitigations of such risks can be addressed at the time of need assessment and procurement planning, so as to attract adequate competition.

3.5.3 ²²Global Tender Enquiry (GTE)

- i) GTE is similar to OTE but, through appropriate advertising and provision for payment in Foreign Currencies through Letter of Credit, it is aimed at inviting the participation of inter-alia foreign firms. *The point of balance between VfM and cost/ complexity of procedure is further aggravated as compared to OTE. Development of local industry also needs to be kept in mind. Hence, it may be viable only in following situations:*
- a) Where required Technology/ specifications/ quality are not available within the country and alternatives available in the country are not suitable for the purpose;
 - b) Very high value contracts (procuring entities may adopt threshold limit e.g. above Rs 100 crore) or where absence of a sufficient number of competent domestic bidders likely to comply with the required technical specifications, and in case of suspected cartel formation among indigenous bidders where participation of International bidders would enhance value for money.
- ii) **Terms and Conditions**
- i) Publishing of tenders may be done as described in case of OTE above. In addition, in GTE tenders copies of NIT should be circulated to Indian Embassies in relevant countries and embassies of those countries in India; and; and
 - ii) The tender documents, shall be priced minimally (if at all priced, refer Para 4.4 below) keeping in view the value of the tender as also the cost of preparation and publicity of the tender documents;
 - iii) GTE tender documents must be in English and the price should be asked in Indian Rupees or US Dollars or Euros or Pound Sterling or Yen or in currencies under

²²Rule 161, GFR 2017

the Reserve Bank of India's notified basket of currencies or a mix of any of these currencies;

- iv) GTE tender documents must contain technical specifications which are in accordance with national requirements or else based on an international trade standard;
- v) The due date fixed for opening of the tender shall be usually about four to six weeks from the date of advertisement which may vary taking into account the nature of material called for as well as the time required to prepare the bids. The due date may be subsequently extended with the approval of the CA only to promote better competition and also considering account delivery requirement.

3.5.4 No Global Tender Enquiry (GTE) up to Rs. 200 crores²³ shall be invited or such limit as may be prescribed by the Department of Expenditure from time to time. In exceptional cases where the Ministry or Department feels that there are special reasons for inviting GTE, for tenders below such limit, it may record its detailed justification and seek prior approval for relaxation from the Competent Authority specified by the Department of Expenditure.

- a) The proposal for approval shall be submitted by Administrative Ministry with the concurrence of Financial Advisor and approval of Secretary concerned. The proposals submitted by individual offices/ organisation (e.g. autonomous bodies, Central Public Sector Undertakings and subordinate offices of Central Government etc.) will not be entertained.
- b) The proposals shall be submitted along with duly filled format²⁴ (placed at Annexure-11).

3.5.5 Before sending the proposals for approvals of the Global Tenders, following is to be ensured:-

- a) Domestic open tender must be floated to identify the domestic manufacturers/ service providers for the items/ services for which approval is being sought for issuance of Global Tenders. In case, if the Ministry/ Department has not floated a domestic open tender after 15.05.2020 for the items to be procured through GTE, such proposals will not be entertained. The proposal must contain the details of domestic open tenders, issued after 15.05.2020. These details shall cover tender number, date of opening, number of offers received, details of offers received, reasons why domestic suppliers were not considered etc.
- b) The proposal must contain the details of deliberations with DPIIT/ relevant industrial bodies for identification of domestic manufacturers/ service providers.
- c) The 3/5-year procurement plan as mandated by Public Procurement (Preference to Make in India) (PPP-MII) order issued by DPIIT must be published on website, before forwarding proposals for the purpose of procurement through GTE. Web-link of published procurement plan should be provided in proposal.

3.5.6 Exemptions/ Clarifications

- a) For procurement of specialised equipments required for research purposes, and spares and consumables, for such equipments up to Rs. 200 crore for the use of Educational and Research Institutes, Secretary of Ministry/ Department concerned

²³Rule 161 of GFR, 2017 Amended vide DoE OM No. F.12/17/2019-PPD dated 15.05.2020.

²⁴Issued by Cabinet Secretariat vide ID No. 213/2/1/2020-C.A.IV dated 06.10.2020

shall be the competent authority to approve issue of Global Tender Enquiries for such requirements subject to fulfilment of conditions as laid down in para 3.5.7 below. The equipment should be of specialized nature required for research purposes and not the routine equipment used in offices²⁵.

- b) On procurement of spare parts of the equipments/ Plants & Machinery etc. on nomination basis from Original Equipments Manufacturers (OEMs) or Original Equipment Suppliers (OES) or Original Part Manufacturers (OPMs) as no competitive tenders are invited in such cases²⁶.
- c) On procurement of services like Annual Maintenance Contract (AMC) and auxiliary/ add-on components for existing equipments/ Plant & Machinery etc. , which are procured from OEM/ OES/ OPM on nomination basis, as no competitive tenders are invited in such cases²⁷.
- d) Where procuring entities need to issue GTEs to fulfil contractual commitments/ obligations entered by them before 15.05.2020 i.e. bid has been submitted by them to their clients before 15.05.2020. similarly, where procuring entities need to issue GTEs in view of existing collaboration agreements entered by them with foreign suppliers before 15.05.2020²⁸.
- e) Based on the reference received from Ministry of Health & Family Welfare, GTE can be floated for 128 Medical Devices (placed at Annexure-12). The exemptions is provided for such items till 31.03.2023. MoHFW will review domestic availability of these items at the end of 2022, keeping in view the Production Linked Incentive (PLI) scheme etc. launched by Department of Pharmaceuticals in Medical Devices and other relevant factors, in consultation with Department of Expenditure²⁹.
- f) For projects funded by Multilateral Development Banks (MDBs like The World Bank, Asian Development Bank etc.)/ Bilateral Funding Agencies (BFAs), where the procurement is governed by the conditions negotiated in the loan agreement, and where the project executing agencies from time to time further award works to various Autonomous Bodies (ABs)/ Central Public Sector Enterprises (CPSEs) etc., the Secretary of the Ministry/ Department responsible for execution of such project shall be the Competent Authority for approval for issuance of GTEs by such Autonomous Bodies/ CPSEs etc³⁰.
- g) Exemption to semiconductor..

3.5.7 [Refer to para 3.5.6 (a) above]

3.5.7.1 Educational, Research institutions and other units will make full efforts towards reducing of imports in following manner. This will result in substantial effects both within the institutions and also through impact on the eco-system:-

- a) Identification of equipment being procured time and again from abroad, and help developing them in India by identifying potential manufacturers and providing them technical help and expertise for developing the equipment. This programme will be

²⁵Notified vide OM No. 4/1/2021-PPD issued by Department of Expenditure dated 11.06.2021)

²⁶Notified vide OM No. 12/17/2019-PPD issued by Department of Expenditure dated 29.10.2020

²⁷Notified vide OM No.F.4/1/2021-PPD issued by Department of Expenditure dated 01.09.2021

²⁸Notified vide OM No. 4/1/2021-PPD issued by Department of Expenditure dated 12.03.2021

²⁹Notified vide OM No. F.4/1/2021-PPD issued by Department of Expenditure dated 06.01.2022

³⁰Notified vide OM No. F.7/12/2021-PPD-I issued by Department of Expenditure dated 27.07.2021

coordinated by the Empowered Technology Group (constituted by Cabinet and chaired by the Principal Scientific Advisor (PSA)).

- b) Efforts to promote technology transfer through agreements or to encourage technological collaboration with foreign manufacturing in India at the Start-ups set up in Research Parks.
- c) Sharing and updating of information about the availability of research equipment across various Indian Institutes on a single portal (the I-STEM³¹ portal has been developed for this purpose) so that those can be utilized by the needy institutes.
- d) Without compromising quality, Institutes should indicate alternative/ equivalent technical specifications that could suit their requirement, so that there are more chances of local manufacturers participate in the tendering process.
- e) Regular interaction between academia and Indian industry organizations at the level of the institution about the requirement of equipment of foreign origin and for encouraging the domestic manufacturing.
- f) Regular requirement of proprietary/ non-proprietary research consumables may be assessed and domestic alternatives are explored for use.
- g) A national level programme for indigenous development of scientific equipment be initiated by the Office of PSA.
- h) Without compromising quality, institutes should be flexible with specifications so that domestic manufactures are encouraged to meet requirements.

3.5.7.2 Guidelines for resorting to GTE

- a) Market assessment should be done by the concerned institution, as certified by the Head of the Institution. Only after no Indian manufacturer is found, a GTE should be issued.
- b) In case no Indian manufacturer/ suppliers are found, procurement may be done, through GTE, subject to compliance of provisions of GFR and requirement of procurement through GeM.
- c) DEAN (R&D) or an appropriate authority within the institute will issue certificates as per para 3.5.7.3 below, before inviting GTE. As a reporting matter in the Board of Governors, such certificates should be tabled, and also shared with Office of the PSA, DPIIT and concerned Administrative Ministry.
- d) The information about the procurement of equipment should be shared across various Educational and Research Institutes, through the I-STEM portal, already established for this purpose by the PSA's office. This will allow the equipment to be used by other institutions too, for research purposes.
- e) Analyze the equipment being procured time and again from abroad, and help developing them in India by identifying potential manufacturers and providing them technical assistance and expertise for developing the equipment. Half yearly reports on this action to be shared by the Institutes with the Office of the PSA, DPIIT and concerned Administrative Ministry/ A national level scheme will also be initiated by the Office of PSA for indigenous development of scientific equipment.
- f) Preference to local suppliers over foreign supplier as per the existing Government of India guidelines, should be observed as applicable.

3.5.7.3 Certificates to be issued

³¹<https://www.istem.gov.in/>

- a) Confirmation of non-availability in India of particular equipment/ consumables of foreign origin through GeM and other sources.
- b) Certification that locally available alternatives with equivalent specifications are not suitable for research purposes.
- c) The non-availability of such equipment for research purposes with nearby research institutes or within the institute.
- d) Certification of the requirement of proprietary items of foreign origin for research purposes (where applicable).

3.5.8 GTE - Risks and Mitigations	
Risks	Mitigations
Risks are same as in OTE	Same mitigation as in case of OTE also applies here.
Moreover, publicity may not reach targeted foreign bidders	NIT should also be sent to commercial attachés in foreign embassies in India and to Indian embassies in relevant foreign countries for inviting the attention of likely foreign bidders. The selection of the embassies will depend on the possibility of availability of the required goods in such countries.
Escalation of costs due to forex rate variation during implementation.	Wherever required technical expertise is available, the possibility of floating open tender than GTE may be explored.
Involvement of agents of foreign bidders in GTE procurements is also a major risk area	Procurements should preferably be made directly from the manufacturers. Either the agent on behalf of the foreign principal or the foreign principal directly could bid in a tender, but not both. Further, in cases where agents participate in a tender on behalf of one manufacturer, they should not be allowed to quote on behalf of another manufacturer along with the first manufacturer. Commissions and scope of services to/ by the agents should be explicit and transparent in the bids/ contracts

3.5.9 ³²Limited Tender Enquiry (LTE)

- i) LTE is a restricted competition procurement, where a preselected list of bidders (enlisted with the Procuring Entity along with those enlisted with other Public Works Organisations/ Works PSUs) is directly approached for bidding; bids from uninvited bidders are treated as unsolicited and are normally not entertained, except in special circumstances. *This mode provides a short and simple procedure, but may not provide as good a VfM as in case of open tendering – still a good balance for procurements below a threshold.* LTE procedures should be default mode of procurement when the estimated value of procurement is less than Rs. five lakh or when limited numbers of

³²Rule 162, GFR 2017

tenderers are known to possess requisite skills, technology and resources, by reason of their high complex or specialized nature, or for works of a secret nature

ii) **Terms and Conditions**

- a) Copies of the bidding documents should be sent free of cost (except in case of priced specifications/ drawings) directly by speed post/ courier/ e-mail to firms which are enlisted bidders/ contractors. Further, Procuring Entity should also mandatorily publish its limited tender enquiries on Central Public Procurement Portal (CPPP). Apart from CPPP, the organisations should publish the tender enquiries on the Department's or Ministry's web site. The unsolicited bids, if any should not be accepted; however Ministries/ Departments should evolve a system by which interested firms can enlist and bid in next round of tendering. However, under the following exceptional circumstances, these may be considered for acceptance at the next higher level of competency:
 - 1) Inadequate Competition
 - 2) Non-availability of suitable quotations from enlisted bidders
 - 3) Urgent demand and capacity/ capability of the firm offering the unsolicited being known, etc.
- b) A simplified Bid Document should be used, instead of a detailed Bid Document. The minimum number of bidders to whom LTE should be sent is more than three. In case less than three approved bidders/ contractors are available, LTE may be sent to the available approved bidders/ contractors with approval of the CA, duly recording the reasons. The requirement should then be marked for development of more sources by the Bidder Enlistment section.

3.5.10 LTE - Risks and Mitigations	
Risk	Mitigation
Major risk in this mode is that the demand may be artificially split to avoid OTE or higher level approvals	The e-procurement portal may be programmed to raise an alert if the same item is attempted to be procured through LTE repeatedly. Audit should take up a larger percentage of cases in LTE for review.
There is a risk that LTE may not attract sufficient number of bids and sometimes there may be a single acceptable offer. This may be because of an insufficient database of enlisted/ known vendors. It could also be due to bid documents not reaching the targeted bidders – intentionally or otherwise. It could also be due to bidders not getting adequate time for submission of bids. On the other hand, unsolicited bidders may also	Maintenance of list of enlisted suppliers is a sine-qua-non for LTE. The List of enlisted vendors needs to be reviewed periodically to ensure adequate number of qualified suppliers To ensure sufficient response, in addition to mails/ emails to selected vendors, web-based publicity should be given for limited tenders, with suitable clarifications that unsolicited bids shall not be considered. Further a limited or open tender which results in only one effective offer shall be

<p>quote – causing a transparency dilemma about consideration of such offers.</p>	<p>treated as a single tender enquiry situation, with relevant powers of approval etc.</p> <p>Adequate time should be given for submission of quotes, which should not be less than three weeks. A longer period (six weeks) could be given in case of import of the materials and, in complex cases, if justifications are given and allowed.</p>
<p>There is also a risk that the selection of vendors may not be transparent. At the evaluation stage, some invited bidders may be passed over on grounds of being ineligible/ unreliable.</p>	<p>All major procuring departments must keep a list of enlisted bidders for use in restricted bidding. Suppliers or contractors should be selected in a non-discriminatory manner. All past successful vendors/ bidders should invariably be invited. In case it is proposed to exclude any enlisted/ approved vendor/ contractor from being shortlisted for inviting LTE, detailed reasons, such as failure in supply, should be duly recorded and approval of the CA be taken before exclusion. The selection of bidders should be with due diligence, to ensure that bidders who do not meet eligibility criteria do not get shortlisted. At the evaluation stage, in LTE, passing over of a duly shortlisted bidder on grounds of poor past performance or eligibility may raise questions about transparency.</p>

3.5.11 ³³**Single Tender Enquiry (STE) or Selection by Nomination**

- i) The selection by direct negotiation/ nomination is called a single tender. This mode may be shortest but since it may provide lesser VfM as compared to LTE/ OTE and may also strain the transparency principle, it should be resorted to only under following conditions:
 - a) There is an urgent need for the work and engaging in competitive tendering process would, therefore, be impractical, provided that the circumstances giving rise to the urgency were neither foreseeable by procuring entity nor the result of dilatory conduct on its part.
 - b) Works that represent a natural continuation of previous work carried out by the firm when considering the limited size of the additional work in relation to the original procurement and the reasonableness of the price it will be cost effective to resort to single source procurement. However, the incremental work should not be more than 25 (twenty-five) percent of the original contract value;

³³Rule 166, GFR 2017

- c) In case of an emergency situation, situations arising after natural disasters, situations where timely completion of the work is of utmost importance subject to the reason for such decision being recorded and approval of the competent authority obtained.
- d) Situations where execution of the work may involve use of proprietary techniques or only one contractor has requisite expertise.
- e) The procurement entity engages in procurement involving national defence or national security and determines that single source procurement is the most appropriate method of procurement.
- f) Under some special circumstances, it may become necessary to select a particular Agency where adequate justification is available for such single-source selection in the context of the overall interest of the Ministry or Department.

ii) Terms and Conditions

- a) The reasons for a STE and selection of a particular firm must be recorded and approved by the CA as per the delegation of powers laid down at in DFPR/ SoPP, prior to single tendering. Powers of procurement of STE are more restricted.
- b) The Procuring Entity shall ensure fairness and equity, and shall have a procedure in place to ensure that: the prices are reasonable and consistent with market rates for work of a similar nature; and the required work is not split into smaller sized procurements.
- c) All works/purchase/ consultancy contracts awarded on nomination basis should be brought to the notice of following authorities for information-
 1. The Secretary, in case of ministries/departments.
 2. The Board of directors or equivalent managing body, in case of Public Sector Undertakings, Public Sector Banks, Insurance companies, etc;
 3. The Chief Executive of the organisation where such a managing body is not in existence.

The report relating to such awards on nomination basis shall be submitted to the Secretary/Board/Chief Executive /equivalent managing body, every quarter. The audit committee or similar unit in the organisation may be required to check at least 10% of such cases.]

3.5.12 STE - Risks and Mitigations	
Risk	Mitigation
Risks as applicable in both LTE and OTE are also applicable here. In addition there is a risk that this mode may be used unjustifiably to avoid open tendering (OTE).	All mitigation strategies of LTE and OTE would apply here also. In addition the systems of checks and balances should be tighter by way of enhanced and severely restricted delegation of powers in this regard for certification of urgency and approval of this mode of procurement. A system of reports from the authority signing the

	urgency certificate and post facto review of utilisation of received goods/ works/ services to tackle the expressed urgency may be laid down. Audit should take up the bulk of such cases for review to judge the genuineness of urgency certification.
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3.5.13 Award of Work through Quotations

- i) Use of quotations up to Rs Five lakh in each instance shall be adopted for procurement of readily available goods that are not specially produced to the particular specifications and for which there is an established market.
- ii) Procurement entity shall not divide its procurement into separate contracts to bring the amount less than the amount set forth for such purpose.
- iii) Procurement entity shall request quotations from as many contractors as practicable but positively from at least three contractors. Each contractor from whom a quotation is requested, shall be informed whether any elements and other than the charges for the goods themselves, such as, transportation and insurance charges, duties and taxes are to be included in the price.
- iv) Each contractor or contractor is permitted to give only one price quotation and is not permitted to change its quotation.
- v) Award of work through quotations shall be resorted only in emergent cases and suitable reasons shall be recorded.

3.5.14 Award of works in stalled contracts: It is noted that in cases, where a contractor abandons or stops the work mid-way, either due to insolvency or a dispute or other reason, engagement of the new contractor takes considerable time and in the meanwhile public money is locked up in assets which cannot be utilized, apart from inconvenience and loss of amenities to the general public due to such half completed works.

Notwithstanding anything in the GFR or the Manual, procuring entities should devise methods (including limited/ single tenders) to deal with part completed contracts, wherever the work is abandoned by the contractor mid-way. However, for issuance of limited/single tenders in such cases, at least 20% of work should have been billed by the contractor who has abandoned the work. Procurement approval of such limited/single tender should be at the next higher level, or such level as may be prescribed.

3.5.15 Back to Back Tie Up by PSUs: Construction PSUs while awarding the work will take following points into consideration:

- a) PSUs (when bag the contract from the client Department) as a contractor, has to execute the work by functioning like a contractor instead of sub-letting the 100% work on back to back basis.
- b) Open tenders to be invited for selection of sub-contractors/pre-tender associate(s) as far as possible.
- c) In case, it is not possible to invite open tenders, selection should be carried out by inviting limited tenders from the panel approved in the following manner. Panel of contractors are to

be prepared for different categories monetary limits, regions, in a transparent manner clearly publishing the eligibility criteria etc. The above panel is to be updated every year.

d) Tenders to be opened confidentially by a high level committee to maintain the secrecy of rates, if required. Tender opening register should be maintained in this regard duly signed by the officers opening the tender and kept confidentially. This should be available for perusal when required by audit/ vigilance.

e) The terms and conditions of the contract of the client especially those pertaining to subletting of works should be strictly adhered to by the PSUs.

f) Adequate staff to be deployed by the PSUs to ensure quality in construction etc.

g) The record of enlistment/updation of contractor and tender opening register shall be produced to the CTEO as well as audit officials when demanded for scrutiny.

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Chapter 4: Preparing Bid Documents, Publication, Receipt and Opening of Bids

4.1 Bid Documents

4.1.1 The text of the bid document should be self-contained and comprehensive without any ambiguity. All essential information, which a bidder needs for sending responsive bid, should be clearly spelt out in the bidding document in simple language. This will also enable the prospective bidders to formulate and send their competitive bids with confidence. A carefully prepared tender document avoids delays and complaints. Hence, it is worth spending time and effort on this even in cases of urgency.

4.1.2 In case of a limited tender, instead of a full set of SBD, only a machine numbered simplified tender form is used as the tender document, after filling up the name of the bidder and details of requirements. It has the “terms and conditions of tender” printed on the obverse side. In any case, all enlisted bidders, who normally are invited to quote in such limited tenders, have already acknowledged acceptance of “general conditions of contract” as part of the enlistment application, which are applicable to such procurements, in additions to “terms and conditions of tender” on the obverse of tender form. If necessary, specifications and drawings or any other document may be enclosed with the limited tender form.

4.1.3 While SBDs would be complete in itself and may be slightly different for various categories of procurements, these must necessarily address the following essential aspects:

- i) Description of the subject matter of procurement, its specifications including the nature, quantity, time and location where the construction is to be effective, any incidental services to be performed.;
- ii) Limitation or preference for participation by bidders in terms of the government policies in accordance with Public Procurement (Preference to Make in India), Order 2017 dated 28.05.2018 issued by Department of Industrial Policy & Promotion etc.);
- iii) The criteria for eligibility and qualification to be met by the bidder (the eligibility criteria should take care of the contractor’s eligibility to receive such a government contract). The qualification criteria should take care of the contractor’s past performance, experience, technical competence, financial strength to handle the contract successfully, compliance with environmental protection regulations/ Environment Management System and so on;
- iv) Requirements as to documentary evidence, which must be submitted by contractors or contractors to demonstrate their qualifications.
- v) The procedure for preparation and submission of tenders by the bidders including date, time and place for obtaining, submitting and opening of the bids;
- vi) Suitable provisions for enabling a bidder to seek clarification/ question the bidding conditions, bidding process and/ or rejection of its bid. Names and contact details of IEM in case of Integrity Pact;
- vii) Criteria for determining the responsiveness of bids, criteria as well as factors to be taken into account for evaluating the bids on a common platform and the criteria for awarding

the contract to the responsive, most advantageous (lowest/ highest as the case may be) bidder should be clearly indicated in the bidding documents;

- viii) Suitable provision for settlement of disputes, if any, emanating from the resultant contract, should be kept in the bidding document; and
- ix) Essential terms of the procurement contract including a suitable clause mentioning that the resultant contract will be interpreted under Indian laws.
- x) The names, designations and addresses of one or more officers or employees of the procuring entity who are authorized to communicate directly with and to receive communications directly from contractors or contractors in connection with the procurement proceedings.
- xi) Any formalities that will be required once a tender has been accepted for procurement contract to enter into force.

xii) **Tender Documents**

- a. The tender document is the fundamental document in the public procurement process as after award of the contract it becomes part of the contract agreement. All necessary provisions governing the contract should be clearly provided in the tender document. Examples are technical specifications, drawings, commercial terms and conditions including payment terms, obligations of the procuring entity and the contractor timeframe/milestones for execution of the project, tax implications, compliance framework for statutory and other norms, reporting on progress/ quality of the work, dispute resolution. Provisions/ clauses in the tender document should be clear to avoid differences in interpretation and possible time overrun, cost overrun and quality compromises. Comprehensive survey & solid investigation report, area grading & mapping of underground facilities, where project is to be executed, may be made available and made part of tender document. Model Tender Documents issued by the DoE may be used, with due customisation.
- b. In tenders containing General Conditions of Contract (GCC), additional/ special conditions to be incorporated in the tender document, shall be need based and specific. The GCCs should not be altered and changes, if any, in conditions of contract should only be made through the Special Conditions of Contract.
- c. Identification of milestones may be done in an optimal and sequential manner and the same may be stipulated in the tender document along with enabling provisions.
- d. Payment terms prescribed in the tender document should be such that the payment made to contractors at every stage is commensurate to quantum of work done, subject to any requirements for initial mobilisation.
- e. Procuring entities may issue instructions regarding appropriate delegation of authority for approval of deviations, variations and changes in the scope of the contract.
- f. Provision of price variation, wherever considered appropriate, as well as methodology for calculation of the same shall be clearly stipulated in the tender document.

- g. Quality Assurance Plan (QAP) may be incorporated in the tender document/ contract. Schedule of visit by various levels of officials should also form part of the QAP.
- h. Technical and Financial eligibility Criteria for the bidders are important in the public procurement process. They shall be clear and fair, having regard to the specific circumstances of the procurement. Appropriate parameters should be prescribed in the eligibility criteria for bidders, to enable selection of the right type of bidders in public interest, balancing considerations of quality, time and cost.
- i. Open online tendering should be the default method to ensure efficiency of procurement. Public authorities should also keep the experience criteria broad based so that bidders with experience in similar nature of works in various sectors can participate.
- j. Pre-bid conference may be conducted for large value tenders by Procuring Entities. The Place and time of pre-bid conferences should be mentioned in the tender document and/ or publicized through the website of the procuring entity and/ or through newspaper publication.)

4.2 Preparation of Bid Documents by Procuring Entity

4.2.1 The bid documents must be based on relevant Standard Bidding Documents for the Type of Contract (Lump Sum, Item Rate Etc); Estimated Value range, Bidding System (Single Envelope/ Two Envelope/ PQB) etc. SBD for e-procurement would be slightly different from the traditional SBD. To ensure uniformity, the standard provisions in most sections of the SBD are to be used unaltered. Any modification to suit a unique requirement of the specific procurement in these documents is to be done through variable sections such as Appendix to Instructions to Bidders or Special Conditions of Contract (these variable sections may have different nomenclatures in some organisations). Normally, if the organisation does not have its own SBD, it may follow those of other Public Works Organisation like CPWD. Before floating the tender the Bid Document should be got approved by the competent authority. The contents of Bid Documents would therefore vary, but will generally comprise the following (some of these sections may be named or organised differently in some organisations):

Volume 1

- i) Notice Inviting Tenders (NIT)
- ii) Section I Instructions to Bidders (ITB) and Appendix to ITB (AITB)
- iii) Section II General Conditions of Contract (GCC)
- iv) Section III Special Conditions of Contract (SCC)

Volume 2

- i) Section IV Technical Specifications

Volume 3

- i) Section V Forms of Bid
- ii) Section VI Bill of Quantities
- iii) Section VII Standard Formats: Bid Security, Performance Security, Advance Payment Security, Form of Agreement

- iv) Section VIII Schedules for Supplementary Information
- v) Section IX Sample Forms for updating qualification information, and so on

Volume 4

- i) Section X Drawings

Volume 5

- i) Section XI Documents to be furnished by the bidder

4.2.2 Special Conditions of Contract (SCC):

Any additions, deletions, or variations to the GCC felt necessary for a particular project shall be done by an appropriate entry in the SCC. Conditions of a special nature and project-specific conditions shall be rationally incorporated. Special conditions shall be approved by the authority competent to accept the tender. While drafting SCC, the circumstances warranting them shall be duly considered, including but not limited to the following:

- a) Where the wording in GCC specifically requires that further information is to be included in SCC and the conditions would not be complete without that information;
- b) Where the wording in GCC indicates that supplementary information may be included in SCC, but the conditions would still be complete without that information;
- c) Where the type, circumstances or locality of the works requires additional clauses or sub-clauses; and
- d) Where the laws of the country, or exceptional circumstances, necessitate alterations in GCC. Such alterations are affected by stating in SCC that a particular clause, or part of a clause in GCC, is deleted and giving the substitute clause or part, as applicable.

4.2.3 Bid Validity

A bid shall remain valid for the period mentioned in the ITB/ AITB [normally 90 (ninety) days for OTE and 120 (one hundred and twenty) days for GTE]. In exceptional circumstances, the consent of the bidder may be requested in writing for an extension to the period of bid validity. Such requests should preferably be made much before the expiry of the bid validity. The bid security provided shall also be suitably extended. A bidder accepting the request and granting extension shall not be permitted to modify his bid.

Reasons for seeking extension of bid validity should be recorded by the procuring officers at the time of taking such decisions itself.

4.3 Publication of Bid Documents

It is mandatory for all Ministries/ Departments of the Central Government, their attached and Subordinate Offices and Autonomous /Statutory Bodies to publish their tender enquiries, corrigenda thereon and details of bid awards on the Central Public Procurement Portal (CPPP)³⁴. If the department has its own website/ e-Procurement Portal, it should also publish all its advertised tender enquiries on such website/ Portal also. GFR 2017 has dispensed with advertisements in Newspapers. However, in exceptional circumstances, procuring entities may issue the advertisement in newspapers as deemed fit. Such advertisement should also consist of the link of website from where the detailed advertisement and bidding document can be seen and downloaded. Individual cases where confidentiality is required, for reasons

³⁴Rule 159, GFR 2017

of national security, would be exempted from the mandatory e-publishing requirement. The decision to exempt any case on the said grounds should be approved by the Secretary of the Ministry/ Department with the concurrence of the concerned Financial Advisor. In the case of Autonomous Bodies and Statutory Bodies' approval of the Head of the Body with the concurrence of the Head of the Finance should be obtained in each such case. Statistical information on the number of cases in which exemption was granted and the value of the concerned contract should be intimated on a Quarterly basis to the Ministry of Finance, Department of Expenditure. In order to promote wider participation and ease of bidding, no cost of tender document may be charged for the tender documents downloaded by the bidders. To ensure competition, attention of all likely tenderers, for example, enlisted vendors, past contractors and other known potential contractors, should be invited to the NIT through email/ SMSs/ letters. In e-procurement, the website may be programmed to generate these alerts automatically. In case of procurement through a limited tender, the NIT may be uploaded on CPPP Portal and Procuring Entity's website with a note saying:

“This notice is being published for information only and is not an open invitation to quote in this limited tender. Participation in this tender is by invitation only and is limited to the selected Procuring Entity's enlisted contractors. Unsolicited offers are liable to be ignored. However, contractors who desire to participate in such tenders in future may apply for enlistment with Procuring Entity as per procedure.”

Printouts of the tenders published on the website should be collected and kept on record as a proof of publicity. The complete details of the dates, on which advertisements actually appeared on the website, should be indicated while sending cases to higher authorities.

In order to increase certainty in the procurement process, all Ministries/Departments shall fix days in every month for issuance of Notice Inviting Tender (NIT), and Tender Opening across various locations, divisions or levels. For example, the tenders may be released by the Ministries/Departments three times a month, i.e., on 10th, 20th and 30th of every month and the bid submission dates are so determined that bids are opened only on fixed scheduled dates, viz, 7th, 17th and 27th of every month. In case there are practical difficulties due to large volume of tenders in having fixed days across the whole organisation, the Ministries/Departments/CPSUs may decide to have region-wise, zone-wise, or division-wise fixed days for issuance of NIT and Opening of Tenders. For procurement of highly technological and complex works, tender submission dates may be extended by the Ministries/Departments/CPSUs in order to reply queries in the pre-bid meetings or any other justifiable reason. For example, CPWD, which is a large procurer of works have region-wise fixed days for issuance of NITs and opening of tenders as per the following table:

Example 1: Fixation of Days by CPWD

Region	Days for Issuance of NITs	Days for Tender Opening
Delhi	Monday	Monday
Northern	Tuesday	Tuesday
Southern	Wednesday	Wednesday
Eastern	Thursday	Thursday
Western	Friday	Friday

Note:

(i) One week in the case of works with estimated cost put to tender up to Rs.2 crore and two weeks in the case of works with estimated cost more than Rs.2 crore. If there is holiday on a particular day, the day of inviting/uploading NIT may be proposed to earlier day and opening of tender may be postponed to next day.

(ii) However, in case of exigencies of work, the Chief Engineer/Chief Project Manager or equivalent can allow to call and open tenders on another day instead of specific fixed days.

4.4 Issue/ Availability and Cost of tender documents

The sale/ availability for downloading of tender documents against NIT should not be restricted. Tender documents should preferably be sold/ available for download up to the date of opening of tenders. The organization should also post the complete tender document in its web site and on CPPP to enable prospective tenderers to make use of the document downloaded from the web site. The advertisement for invitation of tenders should give complete web-address from where bid documents can be downloaded. The procuring entity shall maintain proper records about the number of tender documents sold, list of parties to whom sold, details of the amount received through sale and, also, the number of unsold tender documents, which are to be cancelled after the opening of the tenders.

4.5 Eligibility and Qualifications of Bidders

4.5.1 Eligibility of Bidders

- i) All eligible bidders meeting the eligibility criteria as defined in ITB can participate in the tender. The applicant should be a private or government-owned legal entity.
- ii) Bidder should have valid registration with Employees Provident Fund organization under 'EPF and Miscellaneous Provisions Act, 1952'.
- iii) For package size exceeding certain values [say - Rs. 10 (ten) crore], Joint Ventures may be allowed. Maximum number of partners in JV shall be limited (say – three). In case of JV, all the partners shall be jointly and severally liable for the successful completion of the work.
- iv) A firm that has been engaged by Ministry/ Department to provide consultancy services for the preparation or implementation of a project, and any of its affiliates (associates, subsidiary, JV partner), shall not be eligible for subsequently providing goods or works (other than a continuation of the firm's earlier consultancy services) for the same project.
- v) A firm determined non-performing by the Procuring Entity shall not be eligible to bid during the period so determined.
- vi) The bidder must not have in his employment:
 - a) The near relations (defined as first blood relations, and their spouses, of the bidder or the bidder's spouse) of persons involved in decision making in the procurement as listed in the Appendix to ITB.
 - b) Without Government permission, any person who retired as gazetted officer within the last two years of the rank and from the departments listed in the Appendix to ITB.

4.5.2 Qualification of Bidders

Qualification of bidders is done on Pre-qualification Bidding basis (refer Para 3.3.6, PQB) or on post-qualification basis (refer Para 3.3.4, single stage multiple envelope system). In both cases Qualification criteria needs to be laid down in the Bid Document (refer para 3.3.6 iii). It is of utmost importance to develop new contractors and also to provide avenues to Sub-contractors, since they may not get opportunities to accumulate the required credentials to compete in normal tenders. To enable a window of entry for such Start-ups and sub-contractors, in small value contracts (e.g. repair contracts upto Rs. 30 lakh) the requirements regarding General Construction Experience, Particular Construction Experience and Available Bid Capacity may not be insisted upon provided the bidders fulfil other criteria regarding Financial/ Personnel/ Equipment capabilities [refer para 3.3.6 (iii)]. However to avoid overstretching of their resources, no such contractors may be allowed to hold more than 2 contracts under relaxed credentials, at any given time.

4.6 Clarification of Tender Documents

A prospective bidder requiring clarification on the tender documents may notify the Procuring Entity in writing, well before the due date of submission of bids, and a response must be sent in writing regarding the clarifications sought prior to the date of opening of the tenders. Copies of the query of any bidder and clarification issued must be sent to all prospective bidders who have received the tender documents. There shall be no asymmetry of information as regard to any bidder.

4.7 Amendment of Tender Documents

At any time prior to the date of submission of bids, the Procuring Entity may, whether at his own initiative or in response to a clarification sought by a prospective bidder, amend bid documents by issuing a corrigendum. The corrigendum shall be notified in writing by registered post/ speed post/ courier/ email to all known prospective bidders and shall be published on CPPP. Copies of such amendments are also to be prominently attached in the unsold sets of the tender documents (which are available for sale, if any), including the tender documents uploaded on the website. When the amendment/ modification changes the requirement significantly and/ or when there is not much time left for the tenderers to respond to such amendments, it is better to prepare a revised tender and the time and date of submission of tenders are also to be extended suitably. Depending on the situation, such an amendment may also need fresh publication adopting the same procedure as for publication of the original tender enquiry. This is very critical as the amendment may lead to any new bidder meeting the qualifying criteria and publicity is required to ensure a level playing field.

4.8 Pre-bid Conference

In case of turnkey contract(s) or contract(s) of special nature for procurement of sophisticated and costly work/ services/ equipment or wherever felt necessary, a suitable provision is to be kept in the bidding documents for inviting the bidders or their official representatives to attend one or more pre-bid conference at a specified place and time, for clarifying issues and clearing doubts, if any, about the specifications/ Terms of Reference and other allied technical/ commercial details of the work, services, plant, equipment and machinery etc.

Bidders should be asked to submit written queries in advance of the conference. After the conference, Minutes of the pre-bid meeting including all the questions and replies shall be prepared and approved by the competent authority. In order to bring clarity to replies, all questions/ answers and needed amendments should be merged in the sequence of clauses in the bidding document. It is a good practice to consolidate all queries received either as part of pre-bid meeting or just after issuing bidding documents and deal with in a comprehensive

way. Minutes of the meeting, including the text of the questions raised and the responses given, shall be transmitted without delay to all purchasers of the bidding documents. The techno-commercial requirements may be revised if considered necessary by way of issue of a formal corrigendum (mere minutes of the meeting of pre-bid conference would not suffice) and shared with all the bidders who purchase or have purchased the bid documents. These pre-bid minutes shall be published along with the bid documents on the appropriate website including CPPP. After the issue of clarifications/ modifications consequent to the pre-bid meeting, at least two clear weeks should be given for submission of bids.

4.9 Submission of Bids by Bidders

4.9.1 The procuring entity shall fix a place and a specific date and time as the deadline for the submission of tenders. The bid shall be submitted by the bidder well before the deadline (original or extended as the case may be) for submission (to avoid rush in internet traffic). The use of offline mode of tendering shall be done only under the circumstances where exemptions for e-Procurement are provided as per extant instructions.

Part 1 Technical Bid: The technical bid shall be hardbound (in other than e-Procurement) and all pages serially numbered. Hardbound implies such binding between two covers through stitching or otherwise whereby it may not be possible to replace any paper without disturbing the document. In e-Procurement, the submission would be online.

- i) Bid security for an amount and in form as specified in ITB;
- ii) Power of attorney;
- iii) Qualification information and supporting documents (if prequalification has been done, original qualification will be updated);
- iv) Evidence of access to a revolving line of credit;
- v) Undertaking for making available the required key equipment as specified;
- vi) Undertaking for making available the required key personnel as specified;
- vii) Annual audited turnover;
- viii) Current contract commitments/ works in progress;
- ix) Financial data;
- x) Additional information regarding litigation, debarment, arbitration, and so on;
- xi) Joint Venture (JV) agreement (or a letter of intent to create a JV in case of award of Contract) in case the bidder is a JV;
- xii) Proposed methodology and programme for execution of work duly supported by equipment planning and QA procedures proposed to be adopted by the bidder; and
- xiii) Affidavit concerning Submission of Bid and abiding by Bid Conditions.

Part II Financial Bid

- i) Form of bid – duly filled in and signed on each page; and
- ii) Priced BOQ – duly filled in and signed on each page. Each part will be separately sealed and marked as per instructions. In other than e-Procurement tenders, all the quoted rates and the amount in the BOQ shall be laminated.

4.9.1A. Quality-cum-cost based Selection (QCBS) for works and Non-Consultancy Services:

- i) Procuring entities are hereby allowed to use QCBS for procurement of works and non-consultancy services in the following cases:
 - a. Where the procurement has been declared to be a Quality Oriented Procurement (QOP) by the competent authority or
 - b. For procurement of Non-Consulting Services, where estimated value of procurement (including all taxes and option clause does not exceed Rs. 10 crore.

Note: In cases where estimated value was less than Rs. 10 crore but, on tendering, following QCBS process, it is proposed to place contract for more than Rs. 10 crores, the following procedure shall be adopted:

- 1. In case the difference between estimated value (including taxes etc as above) and value of the proposed contract (including taxes etc) is less than 10% of the estimated value, there will be no bar on placement of contract.
- 2. In all other cases, the procurement process is to be scrapped and restarted either as QOP or on n on QCBS basis.
- ii) The principles of QCBS shall be as provided in Rule 192(i), (ii) and (iii) of the GFR. However, the maximum weight of the non-financial parameters shall in no case exceed 30%. The Competent Authority for allowing QCBS shall be as follows:-
 - a. For declaring a procurement as QOP:
 - 1. Where the procuring entity/project executing authority is covered by Rule 1 of GFR, the secretary of the Ministry/Department, to which the procuring entity belongs.
 - 2. Where the procuring entity is a CPSE, the Board of Directors of the CPSE.
 - b. For Non-consulting Services not exceeding Rs. 10 crore in value:
 - 1. Where the procuring entity is covered by Rule 1 of GFR, by the officer or authority two levels above the officer/authority competent to finalize the particular procurement, or the Secretary of the Ministry/Department whichever is lower.
 - 2. Where the procuring entity is a CPSE, the authority or officer two levels above the officer competent to finalize the particular procurement, or the Board of Directors of the CPSE whichever is lower.
- iii) In all cases of QOP, a Special Technical Committee (STC) shall be constituted with the following composition:-
 - a. Two or more persons who have expert knowledge and /o9r long experience relevant to the procurement in question;
 - b. One or more persons with extensive experience in handling public projects and/or public finance in the Government or State/Central Public Sector;
 - c. One or more persons with experience in financial management/financial administration/audit/accountancy;
 - d. Note more than one member representing the procuring entity who may *inter alia* provide administrative support to the Committee.
 - e. The persons referred to in sub paras (i) to (iii) shall be persons not working under the Competent Authority specified in para 2 (15.2.2) and shall not belong

to any organization under the control of, or receiving funding from, the procuring entity or the Ministry/Department to which such procuring entity belongs.

- iv) The names of members of the Special Technical Committee shall be decided either by the Competent Authority specified in para 2(15.2.2) above or by any other authority to whom such power is delegated by the competent authority; however, powers shall not be delegated to the officer or authority competent to finalize the particular procurement. Sitting fee may be paid to the members of the STC. Incidental costs including travel be paid by the procuring entity.

The STC shall make specific recommendations on the following matters:-

- a. The weight to be given to non-financial parameters (not exceeding 30%).
 - b. The specific quality/technical parameters, their weights, their scoring methodology, the minimum qualification score etc. and other relevant criteria necessary for enduring fair and transparent quality/technical evaluation of the bids.
- v) The recommendations of the STC shall be followed except where there are special grounds in public interest for deviating from them. However, every case of deviation from the recommendations of the STC shall require approval of the Competent Authority specified in para 2(15.2.2)(i) above who approved the declaration of the procurement as QOP.
 - vi) In respect of QCBS for Non-Consultancy Services not exceeding Rs. 10 crore, a Technical Committee shall be constituted to carry out functions mentioned in para 5(15.2.5) in lieu of the STC. The composition of the Technical Committee shall follow the provisions of para 3(15.2.3)(vi) shall however not be applicable in such cases.
 - vii) Grounds for Declaring a Procurement to be Quality Oriented Procurement: A procurement should be declared as a QOP only if there is enough justification in terms of value addition or enhancement of delivery or paramount importance of quality. Reasons for not adopting two cover/prequalification-based/least cost system shall be documented.
 - viii) Tender Documents-Fixing/Selection of the Evaluation/Qualification Criteria
 - a. To ensure quality, some of the criteria used in marking may be made mandatory and if a bidder does not meet those, then bids shall not be evaluated further.
 - b. Weightage may also be given for timely completion of past projects of similar nature by the bidder.
 - c. In all cases of QOP, a pre-bid meeting shall be held in which the technical criteria including the marking scheme shall be discussed with the potential bidders. If any changes in the criteria are necessitated by such consultation such changes shall require the recommendation of the STC. In Non-Consultancy Services, pre-bid meetings may be held at the discretion of the public authority.
 - ix) Fixing of Scoring/Marketing Criteria:
 - a. The coring should not be a variable that relies on the subjective opinion of the evaluating panel. The marking scheme should enable achievement of almost similar cores irrespective of the persons/experts being involved in the evaluation process. When the outcome are consistent for the available information, the QCBS parameters are more reliable. Unambiguous description and criteria help to avoid grey areas so as to endure that there is only one possible score for the item. As far as possible, the criteria should be so specific and clear that bidders can self-mark their own bids.

- b. It is better to specify minimum marks for meeting the qualifying criteria specified.
 - c. Examples of fixed quality parameters that ought not to be considered for relative scoring including organizations' ISO/standards accreditation, etc. These are required to establish the credentials of the service provider but cannot be used for relative comparison between the various bidders.
 - d. Bidders should be asked to produce certificates for the past performance. A format may be given in the tender itself outlining the contract details, completion, sustainability of service, etc. and bidders may be asked to fill it and give evidence to that effect.
 - e. Bidders may be asked to submit a detailed presentation on their proposals in the form of soft copy along with the bid so as to facilitate better understanding of their proposal and to ensure commitment.
 - f. Besides the Bill of Quantity (BOQ) output criteria for payment, Key Performance Indicators (KPI) may be specified with minimum achievement levels for payment so as to ensure quality compliance.
- x) Evaluation of QCBS Bids: For evaluation, a suitable committee shall be constituted. However, members of the STC shall not be involved.
- xi) Joint Ventures in QCBS
- a. In conventional tenders, some bidders adopt 'name borrowing' and Joint Ventures (JV) often do not function in letter and spirit. This results in lack of quality and accountability. JVs often end in one-sided participation, diluting the essence of the tender evaluation during its performance. Since quality is given weightage in the evaluation itself, in QCBS procurement, it is even more important to guard against such tendencies. Therefore, Joint Ventures may be avoided in QCBS procurements as far as possible. Joint Ventures could, however, become necessary in high technology or innovative projects where a single entity may not be able to execute the work alone.
 - b. If JVs are allowed, adequate safeguards should be provided. Since weightage for quality/ experience influences the award itself, measure should be taken to ensure that all the JV partners are present and deliver services all through the contract period. An Implementation Board with participation of all JV partners may be provided for wherein the Project Manager from the procuring entity shall also be allowed audience when required. Meeting of JV partners with the project executing authority for quarterly progress review may be made as a criterion linked to achievement of key dates or even payment.

Note: In para 4.9.1A instructions containing "shall" are mandatory; any deviation from these instructions shall require relaxation from Ministry of Finance (for Ministries/ Departments etc.) or from the Board of Directors (for Central Public Sector Enterprises).

4.9.2 Sealing and Marking of Tenders

The tender document is to indicate the total number of tender sets (e.g., in duplicate or in triplicate etc) required to be submitted. In case bids are asked in a number of copies, the

tenderer is to seal the original and each copy of the tender in separate envelopes, duly marking the same as "original", "duplicate" and so on and also marking these as mentioned above. In case of two envelope bidding system, the techno-commercial bid and financial bid should be sealed by the tenderer in separate inner covers duly marking these as 'Techno-commercial Bid' and 'Financial Bid' and marked with the address of the purchase office and the tender reference number on the envelopes. Further, the sentence "NOT TO BE OPENED" before..... (due date & time of tender opening) are also to be put on these envelopes and these sealed inner covers are to be put in a bigger outer cover which should also be sealed and duly super scribed in a similar manner. If the outer envelope is not sealed and marked properly as above, the Procuring Entity will not assume any responsibility for its misplacement, premature opening, late opening etc. These details regarding the submission of bids should also form a part of the ITB and AITB in the tender documents; all the above instructions are to be suitably incorporated in the tender documents.

4.9.3 Withdrawal, Substitution and Modification of Tenders

The tenderer, after submitting the tender, is permitted to withdraw, substitute or modify the tenders in writing without forfeiture of Bid Security/ EMD, provided these are received duly sealed and marked like the original tender, up to the date and time of receipt of the tender. Any such request received after the prescribed date and time of receipt of tenders will not be considered. No bid may be withdrawn in the interval between the deadline for submission of bids and expiration of the period of bid validity. Withdrawal of a bid during this period will result in forfeiture of the bidder's bid security (EMD) and other sanctions.

4.10 Receipt and Opening of Bids

The tender received by the procuring entity after the deadline for the submission of tender, shall not be opened and shall be returned to the contractors or contractors that submitted it. No submission is allowed in e-Procurement after the submission deadline.

On the due date and appointed time, as mentioned in the bid document, the Bid Opening Committee (BOC - comprising one officer each from the procuring entity and Associated/ integrated Finance) will open the bids in the presence of the intending bidders or their representative. The bidder's name, the bid prices and conditional and unconditional discount, if any will be announced by the procuring entity during opening of bids. A record of opening of bids will be maintained, including signatures of bidders present.

In e-procurement, all tenders uploaded by tenderers are received, safeguarded and opened online on the portal as detailed in Appendix 3. In offline tenders, receipt and custody of bids shall be done in a transparent manner to maintain the credibility of the process. The following guidelines should be adhered to for receipt and custody of bids:

- i) The procuring entity shall maintain tender boxes for receiving the bids at suitable locations which would facilitate security and easy access to bidders. If required, Tender boxes should be separate for each day of the week of tender opening and should be sealed by the Bid Opening Committee (BOC) of the day. The tender box shall have two locks. Key of one lock will be with the head of the office and the other key with the official nominated by him;
- ii) Bids received by courier shall be deposited in the tender box by the Dispatch Section till the date and time of bid opening. Bids sent by telex, cable or facsimile are to be ignored and rejected.; and

- iii) For bulky/ oversized bids which cannot be dropped into tender boxes, the officials authorised to receive such bids shall maintain proper records and provide a signed receipt with date and time to the bearer of the bid. He will also sign on the cover, duly indicating the date and time of receipt of the tender(s). Names and designations of at least two such authorised officers should be mentioned in the bid documents
- iv) The authorised representatives of bidders, who intend to attend the tender opening in OTE/ GTE, are to bring with them letters of authority from the corresponding bidder. The prescribed format for the letter of authority for attending the bid opening should be given in the bidding document. All bid-opening activities should be carried out demonstrably before such a gathering. The prescribed format for the bid opening attendance sheet and report are given at Annexure 2;
- v) At a prescheduled date and time, the BOC of the day should get the particular tender box opened, after ensuring and demonstrating that the seal on the box has not been tampered with. All bids should be collected from the tender box. Bids for tenders not opening on that day should be put back into the box and the box resealed. Sometimes, there would be tenders dropped wrongly into this tender box. Such wrongly dropped tenders with appropriate endorsement should be put into the appropriate box or sent to the Tender Committee (TC) concerned, if the date of opening is over. The bids for different tenders opening on the day (including oversized bids, which were submitted to designated officers) should be sorted, and a count for each tender should be announced and recorded, particularly noting any modifying/ altering/ withdrawal of bids. BOC should ensure and demonstrate that bid envelopes are duly sealed and un-tampered. Late bids should be separately counted but kept aside and not opened. In the case of an advertised tender enquiry or limited tender enquiry, late bids (that is, bids received after the specified date and time for receipt of bids) should not be considered;
- vi) After opening, every tender shall be numbered serially (say 3/ 14 – if it is the third bid out of 14 total), initialled, and dated on the first page by the BOC. Each page of the price schedule or letter attached to it shall also be similarly initialled, particularly the prices, delivery period, and so on, which shall also be circled and initialled along with the date. Any other page containing significant information should also be dealt with similarly. Blank tenders, if any, should be marked accordingly by the BOC. The original (and duplicate, if any) copies in a tender set are to be marked accordingly by the BOC. As the bids are to be submitted in hardbound form, signing of covering letters and index page by all the committee members is sufficient;
- vii) Erasure/ cutting/ overwriting/ use of whitener/ columns left unfilled in tenders, if any, shall be initialled along with date and time and numbered by the officials opening the tenders and total number of such noticed alterations (or the absence of any alteration) should be explicitly marked on the first page of the bid. Wherever quantity/ amount is written only in figures, the BOC should write them in words. All rebates/ discounts should be similarly circled, numbered and signed. In the absence of any alteration/ overwriting/ whitener/ blanks, the remark “no corrections noted” should be written. Similarly, the absence of discounts should be marked with “no discounts noted;”

- viii) The BOC is to announce the salient features of the tenders such as description and specification of the goods, quoted price, terms of delivery, delivery period, discount, if any, whether EMD furnished or not, and any other special feature of the tender for the information of the representatives attending the tender opening. No clarifications by tenderers should be entertained or allowed to be recorded during the bid opening. It should be understood that BOC has no authority to reject any tender at the tender opening stage;
- ix) A bid opening report containing the names of the tenderers (serial number wise), salient features of the tenders, as read out during the public opening of tenders, will be prepared by the tender opening officers, and duly signed by them along with the date and time. The tenders that have been opened, list of the representatives attending the tender opening, and bid opening report are to be handed over to the nominated purchase officer and an acknowledgement obtained for him.

4.11 Bid Security/ Earnest Money Deposit (EMD)

To safe guard against a bidder's with drawing or altering its bid during the bid validity period in the case of OTE and GTE tenders, bid security [also known as Earnest Money Deposit (EMD)] is to be obtained from the bidders along with their bids. Any bid not accompanied by the requisite bid security shall be rejected as non-responsive in accordance with provisions of the bidding document. The amount of bid security should generally be between two to five per cent of the estimated value of the goods to be procured. The amount of bid security, rounded off to the nearest thousands of Rupees, as determined by the Procuring Entity, is to be indicated in the bidding documents.

The Bid Security may be obtained in the form of Insurance Surety Bonds³⁵, account payee demand draft, fixed deposit receipt, banker's cheque or Bank Guarantee from any of the Commercial Banks or payment online in an acceptable form, safeguarding the purchaser's interest in all respects. The bid security is normally to remain valid for a period of 45 (forty-five) days beyond the final bid validity period.

In appropriate cases, in place of a Bid security, Procuring Entities may consider asking Bidders to sign a Bid securing declaration accepting that if they withdraw or modify their Bids during the period of validity, or if they are awarded the contract and they fail to sign the contract, or to submit a performance security before the deadline defined in the request for bids/ request for proposals document, they will be suspended for the period of time specified in the request for bids/ request for proposals document from being eligible to submit Bids/ Proposals for contracts with the procuring entity.

In appropriate cases, Submission of the bid security may be waived with the Competent Authority's (CA's) approval in the case of indigenisation/ development tenders, limited tenders and Single Tender.

Bid securities of the unsuccessful bidders should be returned at the earliest after expiry of the final bid validity period and latest by the 30th day after the award of the contract. Bid security should be refunded to the successful bidder on receipt of a performance security. However, in case of two packet or two stage bidding, Bid securities of unsuccessful bidders during first

³⁵Notified vide OM No. F.1/1/2022-PPD issued by Department of Expenditure dated 02.02.2022

stage i.e. technical evaluation etc. should be returned within 30 days of declaration of result of first stage i.e. technical evaluation etc.³⁶

A bidder's bid security will be forfeited if the bidder

- i) withdraws or amends its/ his tender;
- ii) impairs or derogates from the tender in any respect within the period of validity of the tender;
- iii) If the bidder does not accept the correction of his bid price during evaluation; and
- iv) If the successful bidder fails to sign the contract or furnish the required performance security within the specified period.

4.12 Performance Guarantee

- i) To ensure due performance of the contract, performance security [or Performance Bank Guarantee (PBG)] is to be obtained from the successful bidder awarded the contract. Performance security should be for an amount of five (5) to ten (10) per cent of the value of the contract. [The value has been reduced to three (3) percent till 31.03.2023. Refer to para 4.12 (iv) below]. In works contract it is usual to take five percent of contract value Performance Security. Performance security may be furnished in the form of Insurance Surety Bond³⁷, account payee demand draft, fixed deposit receipt from a commercial bank, bank guarantee issued/ confirmed from any of the commercial bank in India or online payment in an acceptable form, safeguarding the Procuring Entity's interest in all respects. In case of a JV, the BG towards performance security shall be provided by all partners in proportion to their participation in the project. In case of GTE tenders, the performance security should be in the same currency as the contract and must conform to Uniform Rules for Demand Guarantees (URDG 758) – an international convention regulating international securities³⁸. Submission of Performance Security is not necessary for a contract value upto Rs. one lakh.
- ii) Performance Security is to be furnished by a specified date [generally 21 (twenty-one) days after notification of the award] and it should remain valid for a period of 60 (sixty) days beyond the date of completion of all contractual obligations of the contractor, including Defect Liability Period (DLP).
- iii) The performance security will be forfeited and credited to the procuring entity's account in the event of a breach of contract by the contractor. It should be refunded to the contractor without interest, after he duly performs and completes all obligations under the contract but not later than 365 days of completion of the Defect Liability Period (DLP). Return of Bid/ Performance Securities should be monitored and delays should be avoided. If feasible, the details of these securities may be listed in the e-Procurement Portal, so as to make the process transparent and visible.

³⁶Notified vide OM No. F.1/2/2022-PPD issued by Department of Expenditure dated 01.04.2022

³⁷Notified vide OM No. F.1/1/2022-PPD issued by Department of Expenditure dated 02.02.2022

³⁸ A set of rules developed by the International Chamber of Commerce first adopted in 1992. The latest version URDG 758 provides a framework for harmonising international trading practices and establishes agreed-upon rules for independent guarantees and counter-guarantees among trading partners for securing payment and performance in worldwide commercial contracts.

- iv) On account of the COVID-19 pandemic, that caused slowdown in economy, it is decided to reduce Performance Security from existing five to ten percent to three (3) percent of the value of the contract for all existing contracts till 31.03.2023. However, the benefit of the reduced Performance Security will not be given in the contracts under dispute wherein arbitration/ court proceedings have been already started or are contemplated. All tenders/ contracts issued/ concluded till 31.03.2023 should also have the provision of reduced Performance Security. In all contracts, where Performance Security has been reduced to three percent, the reduced percentage shall continue for the entire duration of the contract and there should be no subsequent increase of Performance Security even beyond 31.03.2023. Similarly, in all contracts entered into with the reduced percentage of Performance Security of three percent, there will be no subsequent increase in Performance Security even beyond 31.03.2023. Where, there is compelling circumstances to ask for Performance Security in excess of three percent as stipulated above, the same should be done only with the approval of the next higher authority to the authority competent to finalise the particular tender, or the Secretary of the Ministry/ Department, whichever is lower. Specific reasons justifying the exception shall be recorded³⁹.

4.13 Security Deposit/ Retention Money

In addition to Performance Security (usually five percent), Contracts for works usually provide for a percentage (usually five percent) of each running bill (periodic/ interim payment) to be withheld as Security Deposit/ retention money until final acceptance. The earnest money instead of being released may form part of the security deposit. The contractor may, at his option, replace the retention amount with an unconditional BG from a bank acceptable to the Procuring Entity at the following stages:

- i) After the amount reaches half the value of the limit of retention money; and
- ii) After the amount reaches the maximum limit of retention money. One-half of the retention money (or BG, which replaced retention money) shall be released on the issue of the taking-over certificate; if the Taking Over Certificates (TOCs) are issued in parts, then in such proportions as the engineer may determine, having regard to the value of such part or section. The other half of the retention money (or BG, which replaced the retention money) shall be released upon expiration of 365 days after the DLP of the works or final payment, whichever is earlier, on certification by the engineer. In the event of different defect liability periods being applicable to different sections or parts, the expiration of defect liability period shall be the latest of such periods.

4.14 Sources and Verification of Bank Guarantees

Bank Guarantee for Bid Security (EMD) or Performance Guarantee (Security Deposit) should be irrevocable and operative Bank Guarantee (BG) as per format enclosed in the Bid Document and should be issued by a Scheduled Commercial (i.e. Indian or Foreign Banks included in the Second Schedule of Reserve Bank of India Act, 1934 excluding Co-operative banks or Regional Rural Banks). In case of foreign bidders or in case of GTE, if Bank Guarantee is from a foreign bank branch situated outside India, the Bank Guarantee must be issued through any of the Scheduled Commercial Bank. In case BG is issued directly by a bank outside India, it should be executed on Letter Head of the Bank and should be advised and made payable through their Indian Branch/Corresponding Bank in India. The Issuing Bank

³⁹Notified vide OM No.F.9/4/2020-PPD issued by Department of Expenditure dated 30.12.2021

should also state the name and designation of the next Higher Authority of the Officials who have issued the Bank Guarantee.

Bank guarantees submitted by the tenderers/ contractors as EMD/ performance securities need to be immediately verified from the issuing bank before acceptance. There may not be any need to get the Bank Guarantee vetted from legal/ finance authority if it is in the specified format. Guidelines for verification of BGs submitted by the bidders/ contractors against EMD/ performance security/ advance payments and for various other purposes are as follows:

- i) BG shall be as per the prescribed formats
- ii) The BG contains the name, designation and code number of the Bank officer(s) signing the guarantee(s);
- iii) The address and other details (including telephone no.) of the controlling officer of the bank are obtained from the branch of the bank issuing the BG (this should be included in all BGs);

The confirmation from the issuing branch of the bank is obtained in writing through registered post/ speed post/ courier. The bank should be advised to confirm the issuance of the BGs specifically quoting the letter of Procurement Entity on the printed official letterhead of the bank indicating address and other details (including telephone nos.) of the bank and the name, designation and code number of the officer(s) confirming the issuance of the BG;

Pending receipt of confirmation as above, confirmation can also be obtained with the help of responsible officer at the field office, which is close to the issuing branch of the bank, who should personally obtain the confirmation from issuing branch of the bank and forward the confirmation report to the concerned procurement entity.

As far as possible organizations should follow e-verification of bank guarantees as per the procedure prescribed by Reserve Bank of India.

Bank guarantees, either received in physical form or electronic form, should be verified for its genuineness following prescribed method for the same and the Organisations should do due diligence on genuineness of the Bank Guarantees before acceptance of the same.

4.15 Safe Custody and Monitoring of Securities

A suitable mechanism for safe custody and monitoring of EMDs and performance securities and other instruments should be evolved and implemented by each ministry/ department. The ministries/ departments shall also make institutional arrangements for taking all necessary actions on time for extension or encashment or refund of EMDs and performance securities, as the case may be. Monitoring should also include a monthly review of all bank guarantees and other instruments expiring in next three months, along with a review of the progress of the corresponding contracts. Extension of bank guarantees and other instruments, where warranted, should be sought immediately and implemented within their validity period. Bank Guarantee should never be handed over to the contractor for propose of extension of validity. Such a system of monitoring of securities and other instruments may be considered to be computerised with automatic alerts about lapse of validity etc. For release of BGs, the proposal shall be forwarded by the executing agency with its recommendations in accordance with the contract conditions, for approval by the CA with the concurrence of the Finance Division.

4.16 Goods and Services Tax (GST)

- i) A detailed clause regarding GST may be included in the bid documents, in consultation with the Financial Advisor, stipulating inter-alia that all the bidders/ tenders should ensure that they are GST compliant and their quoted tax structure /rates are as per GST Law. While before enactment of GST, the bid prices were normally inclusive of applicable taxes, now after its enactment, as per the GST Act the bid and contract must show the GST Tax Rates and GST Amount explicitly and separate from the bid/ contract price (exclusive of GST). Asking for a bid-price inclusive of taxes/ GST would be a violation of the GST Act. Bid format may be suitably modified accordingly. In the transition period, any variation in tax structure/rate due to introduction of GST shall be dealt with under Statutory Variation Clause.

Ministries/ Departments may follow the procedure as mentioned below while dealing with contractor's payment, post GST promulgation:

- a) **Works is treated as a 'Service'**. (- GST rate would vary depending on type of work). All works contracts are to be provided with Harmonized System of Nomenclature - HNS Code (actually Service Accounting Code SAC, being a service). The HNS code can be downloaded from the website www.cbec.gov.in. Works Contracts in general come under Chapter 99, Section 5, Heading 9954(Construction Services)as 'Composite supply of Works contract as defined in clause⁴⁰ 119 of section 2 of CGST Act'. GST rate would be based on the type of contract. In case contract consists of both goods & service, then interpretation regarding nature of contract should be done as per clause⁴¹ 8, Chapter III of CGST Act, 2017.
- b) The 'on account/ final contract certificate' shall be prepared by the Ministry/ Department on the basis of quantity of work executed at the contracted rates, duly segregating the GST component as detailed in para (iii) below.
- c) Since before promulgation of GST, the contracted rates normally used to be inclusive of all taxes, the calculation of 'Gross amount of work executed', 'Amount of work executed excluding GST amount' and 'GST amount' in the 'on account / final contract certificate' may be done as under:

Let Z = Gross amount of work executed on the basis of quantum of work executed at the contracted rates.

R = Percentage rate of GST for that HSN code

Y = GST amount as per applicable GST rate for that HSN code.

X - Amount of work executed excluding GST amount.

Then, Z = X + Y;

⁴⁰ (119) "works contract" means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract;

⁴¹8. The tax liability on a composite or a mixed supply shall be determined in the following manner, namely:—

(a) a composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply; and

(b) a mixed supply comprising two or more supplies shall be treated as a supply of that particular supply which attracts the highest rate of tax.

Where $Y = X \cdot R / 100$

Thus from the known amount of Z, amounts of X and Y can be worked out.

- d) Once the 'on account / final contract certificate' is prepared by Ministry/ Department and communicated to contractor, the contractor shall submit invoice (bill) in a GST compliant format duly segregating the 'Amount of work executed excluding GST amount' and 'GST amount' (i.e. "X" & "Y" as mentioned in para (iii) above) along with Invoice No. (Bill No.) and all other details required under GST act. In case any need arises to modify the Invoice (Bill) due to any reason, contractor shall submit amended fresh invoice for processing the payment.
- e) In case contractor is liable to be registered under GST Act, Ministry/ Department shall pay to the Contractor 'Gross amount of work executed' (i.e. "Z" as mentioned in para (iii) above) duly deducting all other leviable taxes like I/Tax, labour cess, royalty etc. as applicable. Contractor shall be liable to pay 'GST amount' to respective authority himself. Whereas, Ministry/ Department shall deposit all other taxes deducted to concerned authority as is being done presently.
- f) In case contractor is not liable to be registered under GST Act, contractor shall be paid "Amount of work executed excluding GST amount" (i.e. "X" as mentioned in para (iii) above) duly deducting all other leviable taxes like I/Tax, labour cess, royalty etc. as applicable. Ministry/ Department shall deposit 'GST amount' as well as all other taxes deducted to concerned authority.
- ii) Pre-GST contracts need to be viewed in the light of the clauses of the contracts already signed and provision for change in law.

4.17 Risks and Mitigations- Preparing Bid Documents, Publication, Receipt and Opening of Bids	
Risk	Mitigation
Exceptions to an open bidding process are abused, leading to single source processes.	Rigorously follow the conditions under which open tendering can be dispensed with.
When short lists are used , the process of preparation of short lists may be non-transparent and all eligible firms may not be included and some ineligible firms may get included.	Enlistment of bidders/contractors: All major procuring departments must keep a list of enlisted bidders for use in restricted bidding. Publicise even restricted bids on your website. Bidders for LTE may be transparently selected with the approval of CA.
Pre-qualification criteria: PQB has the potential of getting misused or being applied without considering the restrictive nature of competition. PQC should be relevant to the quality requirements and neither be very stringent nor very lax to restrict/facilitate the entry of bidders. These criteria should be clear, unambiguous,	Lay down criteria when two stage bidding is warranted. Also lay down model PQC criteria for different types of procurements.

exhaustive and yet specific. Also, there should be fair competition.	
Invitation to tender (an open bid) is not well publicised or gives insufficient time, thereby restricting the number of bidders that participate.	Publicity and adequate time for bid submission must be ensured. Require a higher level approval for short bid submission period.
Evaluation criteria are not set from the beginning or are not objective or not clearly stated in the bid documents, thereby making them prone to being abused.	Objective, relevant and clearly stated evaluation criteria must be specified in the bid document.

Chapter 5: Evaluation of Bids and Award of Work

5.1 Evaluation of Bids

5.1.1 The evaluation of Bids is one of the most significant areas of purchase management and the process must be transparent. All tenders are to be evaluated strictly on the basis of the terms and conditions incorporated in the tender document and those stipulated by the tenderers in their tenders. The Contracting Authority may include quality, price, technical merit, aesthetic and functional characteristics, environmental characteristics, running costs, cost-effectiveness, after-sales service and technical assistance, delivery date and delivery period or period of completion etc. No criteria shall be used for evaluation of tenders that cannot be verified or not stated in the contract, with the exception of provisions of laws in force. No hearsay information or hitherto undeclared condition should be brought in while evaluating the tenders. Similarly, no tender enquiry condition (especially the significant/ essential ones) should be overlooked/ relaxed while evaluating the tenders. The aim should be to ensure that no tenderer gets undue advantage at the cost of other tenderers and/ or at the cost of Procuring Entity. Information relating to evaluation of tenders and the Tender Committee's (TC's) deliberations should be confidential and not be shared with persons not officially connected with the process. The process of tender evaluation proceeds is described in the subsequent paras.

5.2 Schedule of Procurement Powers (SoPP)

5.2.1 There are delegations up to a low threshold value below which the evaluation of the bids and decision for award of contract may be entrusted directly (instead on a recommendation of a Tender Committee) to individual competent authority. He would himself carry out all the steps in evaluation described below, instead of the TC and directly record reasons and decision on the file itself. He may ask for a Technical Suitability report from User Departments, if so needed. In procurements above such a threshold, evaluation is carried out by Tender Committee consisting of three or more members with requisite experience and competence. Members include a Financial Adviser or his representative and a representative of the user as per SoPP. Procuring Entity should lay down a SoPP specifying such thresholds. Experts may also be called in to assist the TC. TC should not be very large as it may slow down the evaluation process. There is no need to constitute any other committee for technical evaluation, preliminary evaluation etc. The representative of user Department will work as a convener of the TC. No member of the tender committee should be reporting directly to any other member of such committee in case estimated value of the procurement exceeds Rs. 25 lakh⁴². Though the GFR stipulates this provision only when the estimated value of the procurement exceeds Rs. 25 lakh, it is desirable that the same provision should be followed in the constitution of all purchase committees irrespective of the value of procurement. Every Procuring Entity is expected to clearly lay down the powers, jurisdiction and composition of different levels of Tender Committee and corresponding Accepting Authority for different categories of procurement and different threshold values of procurements. Such an arrangement ensures checks & balances in the Tender Evaluation Process. Competent authority, in direct acceptance case; and member secretary of the Tender Committee will receive the bids opened along with other documents from the tender opening officials and are

⁴² Rule 173 (xxii), GFR 2017

responsible for safe-custody of the documents and for processing involved at all steps in finalising the Procurement. A model SoPP is attached in Appendix-4 for guidance.

5.3 Preparation of Comparative Statement and Briefing Note

5.3.1 Except in cases of LTE, the Procuring Entity should prepare a comparative statement of quotations received in the order in which tenders were opened. In case of Techno-Commercial bid comparative statement will have information about deciding responsiveness and eligibility of bids and evaluation of Technical suitability of offers. In case of Financial bid it would have information about rates quoted (including taxes or otherwise), discount, if any, and any other information having implications on ranking of bids etc The comparative statement so prepared should be signed by the concerned officers. It may also be vetted by the associated/ integrated Finance for veracity of information. It is also a good practice, to prepare a briefing note by the member secretary of TC for guidance of other TC members, before first TC meeting is held. In some organisations, the briefing note is also vetted by Finance. TC cannot have tender accepting authority as a TC member.

5.4 Preliminary Examination

5.4.1 Confidentiality of Process

- i) Information relating to the examination, clarification, evaluation and comparison of bids, and recommendations for the award of a contract, shall not be disclosed to bidders or any other person not officially concerned with such a process until the award to the successful bidder has been announced.
- ii) From the time of bid opening to the time of contract award, no bidder shall contact the Procuring Entity on any matter related to the bid, except on request and prior written permission.
- iii) Any effort by the bidder to influence the Procuring Entity in bid evaluation, bid comparison or contract award decisions will vitiate the process and will result in the rejection of the bidder's bid. Such conditions, incurring in (i) & (ii) above shall be embedded in the Instructions to Bidders (ITB).

5.4.2 Unresponsive Tenders

Tenders that do not meet the basic requirements specified in the bid documents are to be treated as unresponsive (both during Techno-commercial evaluation and Financial Evaluation in case of Two Envelope bidding) and ignored. All tenders received will first be scrutinised by the TC to see whether the tenders meet the basic requirements as incorporated in the Bid document and to identify unresponsive tenders, if any. Unresponsive offers may not subsequently be made responsive by correction or withdrawal of the non- conforming stipulation. Some important points on the basis of which a tender may be declared as unresponsive and be ignored during the initial scrutiny are:

- i) The tender is not in the prescribed format or is unsigned or not signed as per the stipulations in the bid document;
- ii) The required EMD has not been provided or exemption from EMD is claimed without acceptable proof of exemption;
- iii) The bidder is not eligible to participate in the bid as per laid down eligibility criteria (example: the tender enquiry condition says that the bidder has to be an enlisted contractor but the tenderer is not an enlisted contractor);

- iv) The bid departs from the essential requirements specified in the bidding document (for example, the tenderer has not agreed to give the required performance security); or
- v) Against a schedule in the list of requirements in the tender enquiry, the tenderer has not quoted for the entire requirement as specified in that schedule (example: in a schedule, it has been stipulated that the tenderer will supply the equipment, install and commission it and also train the Procuring Entity's operators for operating the equipment. The tenderer has, however, quoted only for supply of the equipment).

5.4.3 Discrepancies between Original and Additional/ Scanned Copies of a Tender

Discrepancies can be observed in responsive tenders between the original copy and other copies of the same tender set. In such a case, the text, and so on, of the original copy will prevail. Such a discrepancy in an offer should be conveyed to the tenderer asking him to respond by a target date and if the tenderer does not agree to Procuring Entity's observation, the tender is liable to be rejected. In e-Procurement there could be discrepancies between the uploaded scanned copies and the Originals submitted by the bidder. However normally no submission of original documents in physical format (other than Cost of Bid Documents, Bid Security and statutory certificates if any) should be asked for in e-Procurement

5.4.4 Minor Infirmary/ Irregularity/ Non-conformity

During the preliminary examination, some minor infirmity and/ or irregularity and/ or non-conformity may also be found in some tenders. Such minor issues could be a missing pages/ attachment or illegibility in a submitted document; non-submission of requisite number of copies of a document. There have been also cases where the bidder submitted the amendment Bank Guarantee, but omitted to submit the main portion of Bid Document. The court ruled that this is a minor irregularity. Such minor issues may be waived provided they do not constitute any material deviation (please refer to Para 5.5.1 (iv) below) and financial impact and, also, do not prejudice or affect the ranking order of the tenderers. Wherever necessary, observations on such 'minor' issues (as mentioned above) may be conveyed to the tenderer by registered letter/ speed post, and so on, asking him to respond by a specified date also mentioning therein that, if the tenderer does not conform Procuring Entity's view or respond by that specified date, his tender will be liable to be rejected. Depending on the outcome, such tenders are to be ignored or considered further.

5.4.5 Clarification of Bids/ Shortfall Documents

During evaluation and comparison of bids, the Procuring Entity may, at his discretion, ask the bidder for clarifications on the bid. The request for clarification shall be given in writing by registered/ speed post, asking the tenderer to respond by a specified date, and also mentioning therein that, if the tenderer does not comply or respond by the date, his tender will be liable to be rejected. Depending on the outcome, such tenders are to be ignored or considered further. No change in prices or substance of the bid including specifications, shall be sought, offered or permitted. No post-bid clarification at the initiative of the bidder shall be entertained. The shortfall information/ documents should be sought only in case of historical documents which pre-existed at the time of the tender opening and which have not undergone change since then. These should be called only on basis of the recommendations of the TC. (Example: if the Permanent Account Number, GSTN number has been asked to be submitted and the tenderer has not provided them, these documents may be asked for with a target date as above). So far as the submission of documents is concerned with regard to qualification criteria, after submission of the tender, only related shortfall documents should be asked for

and considered. For example, if the bidder has submitted a contract without its completion/ performance certificate, the certificate can be asked for and considered. However, no new contract should be asked for so as to qualify the bidder.

5.5 Evaluation of Responsive Bids

In case of single stage single envelope bidding, the evaluation of qualification of bidders, technical, commercial and financial aspect is done simultaneously. In single stage multiple envelopes, initially only the techno-commercial bids would be opened and evaluated for bids which successfully meet the qualification criteria and techno-commercial aspects. Financial bids of such successful bidders only would be opened for selecting the L1 bidder (the lowest evaluated, substantially responsive, technically-suitable bid from eligible and qualified bidder) among these and in case of manual tenders, financial bids of unsuccessful bidders would be returned unopened to them. In two stage bids, the PQB/ EOI stage would have already been evaluated as detailed in Chapter 3 and this second stage is for evaluation of responses to the Second Stage multiple envelopes from the shortlisted qualified bidders. Evaluation of techno-commercial and financial aspects are, however, discussed separately below.

5.5.1 Evaluation of Techno-commercial Bid

In evaluation of the techno-commercial bid, conformity of the eligibility/ qualification, technical and commercial conditions to those in the bid document is ascertained. Additional factors, if any, incorporated in the tender documents may also be considered in the manner indicated therein. Evaluation has to be based only on the conditions included in the tender document and any other condition should not form the basis of this evaluation. It is of utmost importance that the authenticity, integrity and sanctity of unopened Financial Bids must be ensured, before their opening. All the financial bids may preferably be put in a large envelope, which may be dated, sealed and signed (including by some of the bidders present), to show that none of the bids were accessed during the custody.

- i) **Evaluation of eligibility/ qualification Criteria:** Procuring Entity will determine, to its satisfaction, whether the tenderers are eligible, qualified and capable in all respects to perform the contract satisfactorily. Tenders that do not meet the required eligibility/ qualification criteria prescribed will be treated as unresponsive and not considered further. This determination will, inter-alia, take into account the tenderer's financial, technical and production capabilities for satisfying all of Procuring Entity's requirements as incorporated in the tender document. Such determination will be based upon scrutiny and examination of all relevant data and details submitted by the tenderer in its/ his tender as well as such other allied information as deemed appropriate by Procuring Entity.
- ii) **Evaluation of Technical Suitability:** The description, specifications, drawings and other technical terms and conditions are examined by TC in general and technical member(s) of the TC in particular. Nobody outside the TC should be allowed to determine this evaluation. Even if an external expert's advice and report is obtained, it is still the responsibility of the technical member(s) in particular and the TC in general to accept/ reject or modify the evaluation contained in such a report/ evaluation. The tender document should clearly state whether alternative offers/ makes/ models would be considered or not and, in the absence of an express statement to the effect, these should not be allowed. An important document is the exceptions/ deviation form submitted by the tenderer. It is important to judge whether an exception/ deviation is minor or major. Minor exceptions/ deviations may be waived provided they do not

constitute any material deviation and do not have significant financial impact and, also, would not prejudice or affect the ranking order of the price bid. Exceptions/ deviations should not grant the tenderer any undue advantage vis-à-vis other tenders and Procuring Entity.

- iii) **Evaluation of Commercial Conditions:** The TC will also evaluate the commercial conditions quoted by the tenderer to confirm that all terms and conditions specified in the GCC/ SCC have been accepted without reservations by the tenderer. Only minor deviations may be accepted/ allowed, provided these do not constitute material deviations without financial impact and do not grant the tenderer any undue advantage vis-à-vis other tenders and Procuring Entity.
- iv) **Considering Minor Deviations: Bids which are not materially deviated, may be considered substantially responsive.** Court has consistently taken a view that procuring entity is entitled to consider and allow minor deviations, which do not amount to material deviations. A material deviation, reservation, or omission which should not be waived are those that:
 - i) Affects, in any substantial way, the scope, quality or performance of the goods and related services specified in the contract;
 - ii) Limits, in any substantial way, inconsistent with the tendering documents, the procuring entity's rights or the tenderer's obligations under the contract; or
 - iii) If rectified, would unfairly affect the competitive position of other tenderers quoting substantially responsive tenders.
- v) **Declaration of Technically Compliant Bidders:** If it is a multiple envelope tender, then the TC prepares a recommendation of techno-commercial bid (Annexure 3) to declare successful bidders. In such cases, after the approval of CA, the results of the Techno-commercial bid evaluation are to be announced (including informing the failed Bidders). Price bids are opened in the presence of technically suitable bidders, who are willing to attend the bid opening, at a pre-publicised date, time and place or on the portal in case of e-procurement. In single envelope/ cover tender, TC proceeds to evaluate the price aspects without a reference to CA at this stage.

5.5.2 **Right of Bidder to question rejection at Techno-commercial Stage**

A tenderer shall have the right to be heard in case he feels that a proper procurement process is not being followed and/ or his Techno-commercial bid has been rejected wrongly. The tenderer is to be permitted to send his representation in writing. On receipt of representation it may be decided whether to withhold opening of the financial bids and bidder may be expeditiously replied. Certain decisions of the procuring entity in accordance with the provision of internal guidelines shall not be subject to review as mentioned in para 5.7.3 below.

5.5.3 **Evaluation of Financial Bids and Ranking of Tenders**

- i) **Unresponsive Tenders:** Unresponsive tenders may again be identified after Financial Bid opening, as in case of Technical Bid opening. If the price bid is ambiguous so that it may very well lead to two equally valid total price amounts, then the bid should be treated as unresponsive.
- ii) **Non-conformities between Figures and Words:** Sometimes, non-conformities/ errors are also observed in responsive tenders between the quoted prices in figures and in words. This situation normally does not arise in case of e-Procurement. This

should be taken care by defining the treatment of bids in the tender documents in the manner indicated below:

- i) If, in the price structure quoted for the requirements, there is discrepancy between the unit price and total price (which is obtained by multiplying the unit price by the quantity, or the total price is not worked out by bidder), the unit price shall prevail and the total price corrected accordingly;
 - ii) If there is an error in a total corresponding to the addition or subtraction of sub-totals, the sub-totals shall prevail and the total shall be corrected; and
 - iii) If there is a discrepancy between words and figures, the amount in words shall prevail.
 - iv) Such a discrepancy in an offer should be conveyed to the tenderer asking him to respond by a target date and if the tenderer does not agree to Procuring Entity's observation, the tender is liable to be rejected.
- iii) **Correction of Bids:** Tender document should indicate that the evaluated bid prices will be adjusted after taking into account: (a) correction for errors; (b) adjustments for any acceptable variations, deviations; and (c) adjustments to reflect any discounts or other modifications offered. Unless announced beforehand explicitly in the tender documents, the quoted price should not be loaded on the basis of deviations in the commercial conditions. If it is decided to incorporate such clauses, these should be unambiguous and clear – and thereafter there should be no relaxation during evaluation. Variations, deviations, or alternative offers and other factors which are in excess of the bidding documents or otherwise result in unsolicited benefits for the contractor should not be taken into account in bid evaluation. All duties, taxes and other levies payable by the bidder under the contract or for any other cause shall be included in the rates, prices and total bid prices, and considered in evaluation of bids. Bids should be checked for any arithmetical errors. These corrections shall be done in accordance with the provisions of the bidding document. In cases other than e-Procurement, the quoted rates in the bids shall be protected with lamination by the committee, if not done by the bidders. In accordance with the corrections as approved by the TC, the amount stated in the bid will be adjusted with the concurrence of the bidder, and shall be binding on him. If the bidder does not accept the corrected amount, the bid will be rejected and the bid security forfeited. The arithmetical corrections will be done by the representatives of the Finance Division and the concerned (technical) division in the committee.
- iv) **Financial Evaluation:** All responsive bids are evaluated by the TC with a view to select the lowest (L1) bidder - the lowest evaluated, substantially responsive, bid which meets the eligibility/ qualification criteria and techno-commercial aspects.

5.6 Deliberations by the Tender Committee

5.6.1 Timely Processing of Tenders

- i) Delays in finalising procurement deprive the public of the intended benefits and results in lost revenues and cost over-run. Currently, the Ministries/Departments are generally awarding the contracts in 90 days from the date of tender opening for which the Ministries/Departments are asking for a validity of offer by the contractors for 90 days. In order to further shorten the period for award of contract, the Ministries/Departments

should try to shorten the procurement decision period to 60 days from the date of opening of the tenders in most of the cases. Only in exceptional cases, like two packet/ two stage bidding the period may be extended. *However, in no case this time period should exceed 75 days.* The Ministries/ Departments may draw guidance from the arrangements made by CPWD, where the validity of tenders has been fixed in the following manner:-

Example 2: Maximum days for award of contract by CPWD

Procuring Officer	Limit of procurement (in Rs. crore)	Maximum days for decision for award of contract
Assistant Engineer	0.06	10 days
Executive Engineer	1.00	15 days
Superintending Engineer	10.00	30 days
Chief Engineer	30.00	45 days
Additional Director General and above	More than 30.00	60 days

Complete Time schedule of finalising the Tender process from the date of issuing the tender to date of issuing the contract, should be published in the Bid Documents. Every official in the chain of the procurement operation is accountable for taking action in a specified time so that the tender is finalised on time. Any deviation from the schedule may be monitored and explained, by way of system of Management Reporting (Appendix 4 and 5). As a check, the proposed schedule of tender process may be printed on the inside cover of the Procurement File, where actual date of completion of various stages may be recorded.

- ii) It has been also noted that delay in decision making after opening of certain tenders is taking place because the Tender Committee (TC), wherever in place, are not meeting frequently. In order to ensure that most of the tenders are decided as per the new timelines as indicated in para above, (to be formally fixed individually by the concerned Ministries/Departments), it has been decided that the Ministries/Departments may notify at least one day of every week for the meeting of TC. Instructions may be issued by concerned organisation that on such pre-fixed days, no member of the TC shall normally take leave or proceed on tour etc.
- iii) After the decision has been taken by the competent authority (TC or individual procuring officer) on the tender, such decision and the minutes of the TC (wherever applicable), except the portion that may divulge third party technical/ commercial confidential information, should be uploaded on the Central Public Procurement portal (CPPP) within three working days for greater transparency. These details shall also be uploaded on e-procurement portal or the website of the concerned Ministry/ Department/ CPSU within three working days.

5.6.2 Extension of Tender Validity Period

The entire process of scrutiny and evaluation of tenders, preparation of ranking statement and notification of award must be done expeditiously and within the original tender validity period. The validity period should not be unreasonably long as keeping the tender unconditionally

valid for acceptance for a longer period entails the risk of getting higher prices from the tenderers.

If, however, due to some exceptional and unforeseen reasons, the purchase organisation is unable to decide on the placement of the contract within the original validity period, it may preferably request, before expiry of the original validity period, all the responsive tenderers to extend their tenders up to a specified period. While asking for such extension, the tenderers are also to be asked to extend their offers as it is, without any changes therein. They may also be told to extend the validity of the EMD for the corresponding additional period (which is to be specified in the request). A tenderer may not agree to such a request and this will not lead to forfeiture of its EMD. But the tenderers, who agree to extend the validity, are to do so without changing any terms, conditions, and so on, of their original tenders.

Reasons for seeking extension of bid validity should be recorded by the procuring officers.

5.6.3 Reasonableness of Prices

In every recommendation of the TC for award of contract, it must be declared that the rates recommended are reasonable. The comparison maybe made with the similar contracts awarded elsewhere. The Last Purchase Price (LPP) maybe updated taking into consideration inflation during the interim period and geographical conditions etc.

5.6.4 Consideration of Abnormally Low Bids

An Abnormally Low Bid is one in which the Bid price, in combination with other elements of the Bid, appears so low that it raises material concerns as to the capability of the Bidder to perform the contract at the offered price. Procuring Entity may in such cases seek written clarifications from the Bidder, including detailed price analyses of its Bid price in relation to scope, schedule, resource mobilization, allocation of risks and responsibilities, and any other requirements of the bids document. If, after evaluating the price analyses, procuring entity determines that the Bidder has *substantially failed* to demonstrate its capability to deliver the contract at the offered price, the Procuring Entity may reject the Bid/ Proposal. However it would not be advisable to fix a normative percentage below the estimated cost, which would automatically be considered as an abnormally low bid.

As a safeguard, it should be closely monitored that final payments in such cases do not abnormally increases due to extra items. Further, there is no abnormal increase in quantities of the item for which contractors have initially quoted very high rates.

5.6.5 Cartel Formation/ Pool Rates

It is possible that sometimes a group of bidders quote the same rate against a tender. Such pool/ cartel formation is against the basic principle of competitive bidding and defeats the very purpose of an open and competitive tendering system. Such and similar tactics to avoid/ control true competition in a tender leading to "appreciable adverse effect on competition" have been declared as an offence under the Competition Act, 2002, as amended by the Competition (Amendment) Act, 2007. Such practices should be severely discouraged with strong measures. In case of evidence of cartel formation, detailed cost analysis may be done by associating experts if necessary. Besides, suitable administrative actions can be resorted to, such as rejecting the offers, reporting the matter to trade associations, the Competition Commission etc., and requesting them, inter-alia, to take suitable strong actions against such firms. New firms may also be encouraged to get themselves enlisted for the subject goods to break the monopolistic attitude of the firms forming a cartel. Changes in the mode of procurement (post qualification instead of pre-qualification) and packaging/ slicing of the work

may also be tried. A warning clause may also be included in the bid documents to discourage the bidders from indulging in such practices.

5.6.6 **Negotiations**

- i) Normally, there should be no negotiation. Negotiations should be a rare exception rather than the rule and may be resorted to only in exceptional circumstances. If it is decided to hold negotiations for reduction of prices, they should be held only with the lowest acceptable bidder (L1), who is techno-commercially responsive for the supply of a bulk quantity and on whom the contract would have been placed but for the decision to negotiate. In no case, including where a cartel/ pool rates are suspected, should negotiations be extended to those who had either not tendered originally or whose tender was rejected because of unresponsiveness of bid, unsatisfactory credentials, inadequacy of capacity or unworkable rates. The circumstances where negotiations may be considered could be:
 - a) Where the procurement is done on nomination basis;
 - b) Procurement is from single or limited sources;
 - c) Procurements where there is suspicion of cartel formation which should be recorded; and
 - d) Where the requirements are urgent and the delay in re-tendering for the entire requirement due to the unreasonableness of the quoted rates would jeopardise essential operations, maintenance and safety, negotiations with L1 bidder(s) may be done for bare minimum quantum of requirements. The balance bulk requirement should, however, be procured through a re-tender, following the normal tendering process.
- ii) The decision whether to invite fresh tenders or to negotiate and with whom, should be made by the tender accepting authority based on the recommendations of the TC. Convincing reasons must be recorded by the authority recommending negotiations. The CA should exercise due diligence while accepting a tender or ordering negotiations or calling for a re-tender and a definite timeframe should be indicated.
- iii) Normally all counter offers are considered negotiations by other means and the principles of negotiations should apply to such counter offers. For example, a counter offer to L1, in order to arrive at an acceptable rate, shall amount to a negotiation. However, any counter offer to L2, L3, and so on (at the rates accepted by L1) in case of splitting of quantities shall not be deemed to be a negotiation.
- iv) After the CA or TC has decided to call a specific bidder for negotiation, the following procedure should be adopted:
 - a) Negotiations must be carried out by the CA or TC only;
 - b) It must be understood that, if the period of validity of the original offer expires before the close of negotiations, the original offer will not be available for acceptance. The period of validity of the original offer must, therefore, be extended, wherever necessary, before negotiations;
 - c) The tenderer to be called in for negotiations should be addressed as per the format of letter laid down in Annexure 4, so that the rates originally quoted by him shall remain open for acceptance in the event of failure of the contemplated negotiation;

- d) A negotiations meeting should be started only after obtaining a signed declaration from the negotiating contractor as per Annexure 4; and
- e) Revised bids should be obtained in writing from the selected tenderers at the end of the negotiations in the format of letter laid down in Annexure 5. The revised bids so obtained should be read out to the tenderers or their representatives present, immediately after completing the negotiations. If necessary, the negotiating party may be given some time to submit its revised offer. In case, however, the selected bidder prefers to send a revised bid instead of being present at the negotiation, the offer should be taken into account. In case a bidder does not submit the revised bid, its original bid shall be considered.

5.6.7 Consideration of Lack of Competition

Sometimes, against advertised/ limited tender cases, the procuring entity may not receive a sufficient number of bids and/ or after analysing the bids, ends up with only one responsive bid – a situation referred to as ‘Single Offer’. As per Rule 21 of DFPR (explanation sub-para), such situation of ‘Single Offer’ is to be treated as Single Tender. The contract may be placed on the ‘Single Offer’ bidder provided the quoted price is reasonable. However restricted powers of Single tender mode of procurement would apply. Before retendering, the procuring entity is first to check whether, while floating/ issuing the enquiry, all necessary requirements and formalities such as standard conditions, industry friendly specification, wide publicity, sufficient time for bidding, and so on, were fulfilled. If not, a fresh enquiry is to be issued after rectifying the deficiencies. It has become a practice among some procuring entities to routinely assume that open tenders which result in single bids are not acceptable and to go for retender as a safe course of action. This is not correct. Re-bidding has costs: firstly the actual costs of retendering; secondly the delay in execution of the work with consequent delay in the attainment of the purpose for which the procurement is being done; and thirdly the possibility that the re-bid may result in a higher bid. Lack of competition shall not be determined solely on the basis of the number of bidders. Even when only one bid is submitted, the process may be considered valid provided following conditions are satisfied:

- i) The procurement was satisfactorily advertised and sufficient time was given for submission of bids;
- ii) The qualification criteria were not unduly restrictive; and
- iii) Prices are reasonable in comparison to market values

However restricted powers of Single tender mode of procurement would apply. In case of price not being reasonable, negotiations (being L1) or retender may be considered as justifiable. Unsolicited offers against LTEs should be ignored, however Ministries/ Departments should evolve a system by which interested firms can enlist and bid in next round of tendering.

5.6.8 Rejection of All Bids/ Re-tender

- i) The Procuring Entity may cancel the process of procurement or rejecting all bids at any time before intimating acceptance of successful bid under circumstances mentioned below. In case where responsive bids are available, the aim should be to finalise the tender by taking mitigating measures even in the conditions described below. If it is decided to rebid the tender, the justification should balance the perceived risks in finalisation of tender (marginally higher rates) against the certainty of resultant delays, cost escalations, loss of transparency in re-invited tender. After such decision,

all participating bidders would be informed and bids if not opened would not be opened and in case of manual tenders be returned unopened:

- a. If the quantity and quality of requirements have changed substantially or there is an un-rectifiable infirmity in the bidding process;
 - b. when none of the tenders is substantially responsive to the requirements of the Procurement Documents;
 - c. none of the technical Proposals meets the minimum technical qualifying score;
 - d. If effective competition is lacking. However, lack of competition shall not be determined solely on the basis of the number of Bidders. (Please refer to para above also regarding receipt of a single offer).
 - e. the Bids'/ Proposals' prices are substantially higher than the updated cost estimate or available budget;
 - f. In case, the bidder, whose bid has been found to be the lowest evaluated bid withdraws or whose bid has been accepted, fails to sign the procurement contract as may be required or fails to provide the security as may be required for the performance of the contract or otherwise withdraws from the procurement process, the Procuring Entity shall re-tender the case.
- ii) Approval for re-tendering should be accorded by the CA after recording the reasons/ proper justification in writing. The Procuring Entity should review the qualification criteria, and technical and commercial terms of the tender before re-tendering and also consider wider publicity to attract an adequate number of responses. The decision of the procuring entity to cancel the procurement and reasons for such a decision shall be immediately communicated to all bidders that participated in the procurement process. Before retendering, the procuring entity is first to analyse the reasons leading to retender and check whether, while floating/ issuing the enquiry, all necessary requirements and formalities such as standard conditions, industry friendly qualification criteria, and technical and commercial terms, wide publicity, sufficient time for bidding, and so on, were fulfilled. If not, a fresh enquiry is to be issued after rectifying the deficiencies.

5.6.9 Handling Dissent among Tender Committee

Tender Committee duties are to be discharged personally by the nominated officers. They may take help of their subordinate officers by way of reports/ evaluations, but they would still be answerable for such decisions. TC members cannot co-opt or nominate others to attend deliberations on their behalf. TC deliberations are best held across the table and not through circulation of notes.

All members of the TC should resolve their differences through personal discussions instead of making to and fro references in writing. In cases where it is not possible to come to a consensus and differences persist amongst TC members, the reasons for dissent of a member should be recorded in a balanced manner along with the majority's views on the dissent note. The final recommendations should be that of the majority view. However, such situations should be rare. CA can overrule such dissent notes after recording reasons for doing so clearly. His decision would be final.

In cases where the CA does not agree with the majority or unanimous recommendations of the TC, he should record his views and, if possible, firstly send it back to TC to reconsider along the lines of the tender accepting authority's views. However, if the TC, after considering

the views of the CA, sticks to its own earlier recommendations, the tender accepting authority can finally decide as deemed fit, duly recording detailed reasons. He will be responsible for such decisions. However, such situations should be rare.

5.6.10 Independence, Impartiality, Confidentiality and 'No Conflict of Interest' at all Stages of Evaluation of Bids

All technical, commercial and finance officials who have contributed to the techno-commercial or financial evaluation of bids, even though they may not be part of the TC should deal with the procurement in an independent, impartial manner and should have no conflict of interest in the form of any liaison or relationship with any of the bidder involved in the procurement. They should also maintain confidentiality of the information processed during the evaluation process and not allow it to reach any unauthorised person. All TC members should sign a declaration at the end of their reports/ noting stating that, "I declare that I have no conflict of interest with any of the bidder in this tender". TC members may make such a declaration at the end of their reports. GFR 2017 [Rule 173 (xxii)] mandates that In case a Tender Committee is constituted to purchase or recommend the procurement, no member of the purchase Committee should be reporting directly to any other member of such Committee, to ensure independent expression of views.

5.6.11 Tender Committee Recommendations/ Report

The TC has to make formal recommendations (Annexure 3) for the award of the contract to the bidder whose bid has been determined to be substantially responsive and the lowest evaluated bid, provided further that the bidder is determined to be qualified to perform the contract satisfactorily and his credentials have been verified. It is a good practice that TC should spell out salient terms and conditions of the offer(s) recommended for acceptance. It should also be ensured by the TC that any deviation/ variation quoted by the contractor in his bid are not left un-deliberated and ruled upon in the TC; otherwise there may be delay in acceptance of the contract by the contractor. These recommendations are submitted for approval to the tender accepting authority. Since a nominee of Financial Adviser of the Department is usually a member of the Tender Committee, there is no need for the CA to consult the FA of the Department before accepting the TC recommendations. In any purchase decision, the responsibility of the CA is not discharged merely by selecting the cheapest offer or accepting TC recommendations but ensuring whether:

- i) Offers have been invited in accordance with this manual and after following fair and reasonable procedures in prevailing circumstances;
- ii) He is satisfied that the selected offer will adequately meet the requirement for which it is being procured;
- iii) The price of the offer is reasonable and consistent with the quality required; and
- iv) The accepted offer is the most appropriate taking all relevant factors into account in keeping with the standards of financial propriety.

After the acceptance of these recommendations by the tender accepting authority, the Letter (Notification) of Award (LOA) can be issued.

5.7 Award of Work

5.7.1 LOA to Successful Bidder

Prior to the expiry of the period of bid validity, the successful bidder will be notified (briefly indicating therein relevant details such as quantity, specification of the goods ordered, prices, and so on) in writing by a registered letter or any other acknowledgeable and foolproof method that his bid has been accepted. Legally communication of acceptance of offer is considered complete as soon as it is submitted to Postal authorities (please refer to Para 2.8 of Appendix 2). A template for the Letter of Acceptance (or Notice of Award, or Acceptance of Tender) is given in Annexure 6. In the same communication, the successful tenderer is to be instructed to furnish the required performance security within a specified period [generally 14 (fourteen) days].

In respect of contracts upto Rupees ten lakh, where tender documents include the General Conditions of Contract (GCC), Special Conditions of Contract (SCC) and scope of work, the letter of acceptance will result in a binding contract.

In respect of contracts with estimated value more than Rupees ten lakh, a contract document should be executed, with all necessary clauses to make it a self contained contract. If, however, these are preceded by Invitation to Tender, accompanied by GCC and SCC, with full details of scope and specifications a simple one page contract can be entered into by attaching copies of the GCC and SCC, and details of scope and specifications, offer of the tenderer and letter of acceptance.

Contract document should be invariably executed in cases of turnkey works or agreements for maintenance of equipment, provision of services etc.

5.7.2 Publication of Tender Results and Return of EMD of Unsuccessful Bidders

GFR 2017 (Rule 159) makes it mandatory to publish details of Bid award on the CPPP and also in the notice board/ bulletin/ website of the concerned ministry or department/ e-Procurement Portal. In case publication of such information is sensitive from commercial or security aspects, dispensation may be sought from publishing of such results by obtaining sanction from the Secretary of the Department with the concurrence of the concerned Financial Advisor. In the case of Autonomous Bodies and Statutory Bodies' approval of the Head of the Body with the concurrence of the Head of the Finance should be obtained in each such case. Statistical information on the number of cases in which exemption was granted and the value of the concerned contract should be intimated on a quarterly basis to the Ministry of Finance, Department of Expenditure. Upon the successful bidder furnishing the signed agreement and performance security, each unsuccessful bidder will be promptly notified and their bid security be returned without interest within 30 (thirty) days of notice of award of contract. The successful contractor's bid security shall be adjusted against the SD or returned as per the terms of the tender documents.

In cases, where PSUs compete with private firms in public tenders, publication of details of contracts awarded by the PSU concerned to various sub-vendors, suppliers, technology providers and other associates before firming up their offer, may hurt the interest of the PSU as the competitors may get to know the details of sub-vendors, suppliers, technology providers and other associates as well as the price at which the contracts are placed. Therefore, in such cases, publication of details of contracts awarded may be dispensed with.

5.7.3 Bidder's right to question rejection

A tenderer shall have the right to be heard in case he feels that a proper procurement process is not being followed and/ or his tender has been rejected wrongly. The tenderer is to be

permitted to send his representation in writing. Bidding documents should explicitly mention the name, designation and contact details of officers nominated to receive representations in this regard. The procuring entity should ensure a decision within 15 (fifteen) days of the receipt of the representation. Only a directly affected bidder can represent in this regard:

- i) Only a bidder who has participated in the concerned procurement process i.e. pre-qualification, bidder enlistment or bidding, as the case may be, can make such representation
- ii) In case pre-qualification bid has been evaluated before the bidding of technical/ financial bids, an application for review in relation to the technical/ financial bid may be filed only by a bidder has qualified in pre-qualification bid;
- iii) In case technical bid has been evaluated before the opening of the financial bid, an application for review in relation to the financial bid may be filed only by a bidder whose technical bid is found to be acceptable

Following decisions of the procuring entity in accordance with the provision of internal guidelines shall not be subject to review:

- a) Determination of the need for procurement;
- b) Selection of the mode of procurement or bidding system;
- c) Choice of selection procedure;
- d) Provisions limiting participation of bidders in the procurement process;
- e) The decision to enter into negotiations with the L1 bidder;
- f) Cancellation of the procurement process except where it is intended to subsequently re-tender the same requirements;
- g) Issues related to ambiguity in contract terms may not be taken up after a contract has been signed, all such issues should be highlighted before consummation of the contract by the vendor/ contractor; and
- h) Complaints against specifications except under the premise that they are either vague or too specific so as to limit competition may be permissible.

5.7.4 Performance Security

The contractor receiving the LOA is required to furnish the required performance security, if it is part of tender conditions, in the prescribed form by the specified date; failing this necessary action including forfeiture of EMD will be taken against the contractor.

5.7.5 Acknowledgement of Contract by Successful Bidder and Execution

After the successful bidder is notified that his bid has been accepted, he will be sent an agreement for signature and return, incorporating all agreements between the parties. The contractor should acknowledge and unconditionally accept, sign, date and return the agreement within 14 (fourteen) days from the date of issue of the contract in case of OTE and 21 (twenty-one) days in case of GTE. Such acknowledgements may not be required in low value contracts, below Rs one lakh or when the bidders offer has been accepted in entirety, without any modifications. If both parties (Procuring Entity and the contractor) simultaneously sign the contract across the table, further acknowledgement from the contractor is not required. It should also be made known to the successful tenderer that in case he does not

furnish the required performance security or does not accept the contract within the stipulated target dates, such non-compliance will constitute sufficient ground for forfeiture of its EMD and processing the case for further action against it (the successful tenderer).

All contracts shall be signed and entered into after receipt and verification of the requisite performance security, by an authority empowered to do so by or under the orders of the President of India in terms of Article 299 (1) of the Constitution of India. The words “for and on behalf of the President of India” should follow the designation appended below the signature of the officer authorised on this behalf. The various classes of contracts and assurances of property, which may be executed by different authorities, are specified in the DFPR. No contract on behalf of an organisation of Procuring Entity should be entered into by any authority which has not been empowered to do so under the orders of the state government.

5.7.6 Framing of Contract

The following general principles should be observed while entering into contracts:

- i) Any agreement shall be issued strictly as per approved TC recommendations, be vetted by the Associated/ integrated Finance and approved by CA. The terms of contract must be complete, precise, definite and without any ambiguities. The terms should not involve an uncertain or indefinite liability, except in the case of a cost plus contract or where there is price variation in the contract. In other words, 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 Associated/ integrated Finance.
- ii) All contracts shall contain a provision for
 - a) Recovery of liquidated damages (LD) for delay in performance of the contract on the part of the contractor;
 - b) A warranty clause/ defect liability clause should be incorporated in contracts for plant and machinery and works, above a threshold value, requiring the contractor to, without charge, replace, repair or rectify defective goods/ works/ services;
 - c) All contracts for supply of goods should reserve the right of the government to reject goods which do not conform to the specifications;
 - d) Payment of all applicable taxes by the contractor; and
 - e) When a contract is likely to endure for a period of more than two years, it should, wherever feasible, include a provision for an unconditional power of revocation or cancellation by the government at any time on the expiry of six months' notice to that effect.
 - f) How the appointed day or day of starting of the work shall be determined.
- iii) Standard forms of contracts should be invariably adopted, except in following cases:
 - a) ⁴³A Ministry or Department may, at its discretion, make purchases of value up to Rupees two lakh and fifty thousand by issuing purchase orders containing basic terms and conditions

⁴³Rule 255 (iv) (a), GFR 2017

- b) In cases where standard forms of contracts are not used or where modifications in standard forms are considered necessary in respect of individual contracts, legal and financial advice should be taken in drafting the clauses in the contract and approval of CAs is to be obtained; and
- c) Copies of all contracts and agreements for purchases of the value of Rs. 25 (twenty-five) lakh and above, and of all rate and running contracts entered into by civil departments of the government should be sent to the Accountant General.

5.7.7 Procurement Records

The Procurement file should start with the indent and related documents. All subsequent documents relating to procurement planning; Copy of Bid Document and documents relating to its and formulation, publishing and issue/ uploading; Bid Opening; Bids received; correspondence and documents (including Technical Evaluation and TC report) relating to pre-qualification, evaluation, Award of Contract; and finally the contract copy, should be kept on the file. In case of bulky bids received, all bids received may be kept in a separate volume, with a copy of accepted bids later being put on the main volume. To maintain integrity of the records relating to procurement, these files should be kept secure and for contract management a new volume of file may be opened to obviate frequent exposure of sensitive procurement file. In contract management volume, copies of successful bid, Tender Committee Report & Contract may also be kept for ready reference, besides correspondence and documents relating to Contract Management and its closure. These documents can be very valuable at the time of arbitration, dispute, court proceedings, claims etc. and hence needs to be safeguarded.

5.8 Evaluation of Bids and Award of Contract - Risks and Mitigations	
<i>Risk</i>	<i>Mitigation</i>
Evaluation of bids is subjective or leaves room for manipulation and biased assessments. Some TC members may not be independent or neutral or may have conflict of interest.	TC should give an undertaking at the appropriate time that none of the members has any personal interest in the companies/ agencies participating in the tender process. Any member having an interest in any company should refrain from participating in the TC. Some members of a TC may be subordinate to or related others in a strictly hierarchical organisation, so that they are not free to express independent views – such a situation must be avoided when constituting the TC.
Discriminating against a Best Value Bid: In case a bidder's bid (not in the good books of the procuring entity) becomes the best value bid as per the evaluation criteria, some of the following actions may have risks of misuse. There is also a reverse risk in these actions if a favourite becomes best value bid:	Mitigation for each type of risk is mentioned below.
Unwarranted rebidding: Rejecting all bids and calling for rebidding on the pretext of	In case a procurement is rebid more than once , approval of one level above the CA

5.8 Evaluation of Bids and Award of Contract - Risks and Mitigations	
<i>Risk</i>	<i>Mitigation</i>
prices being high, change of specifications, budget not being available, and so on.	may be taken. Please also see the complaint mechanism.
Sudden quantity reduction/ increase or splitting of quantity work at the time of award: Many organisations have provisions for change/ splitting in the bid quantity at the time of award. Some organisations vary quantity even without such provisions	Bid conditions must specify a limit beyond which originally announced quantity/ scope cannot be reduced/ increased. If parallel contracts are envisaged, clear criteria for the splitting may be specified in the bid documents beforehand.
Unwarranted negotiations: negotiations are called without justification. Sometimes a counter-offer is made to discourage lowest acceptable bidder.	Normally, there should be no post-tender negotiations. In certain exceptional situations, for example, procurement of proprietary items, items with limited sources of supply, and items where there is suspicion of a cartel formation, negotiations may be held with L-1. In case of L-1 backing out, there should be re-tendering.
Unwarranted delays in finalizing or varying the terms of preannounce contract agreement: even after the TC recommendations are accepted, signing of the contract is delayed on one pretext or the other. Although there is a standard contract form in the bid documents, the contract may be drafted in a fashion to favour or discourage the successful bidder.	A target timeline of finalisation of procurement should be laid down. Delays and reasons thereof should be brought out before the CA on the file at the time of TC's acceptance or contract signing. The contract should be strictly as per the bid conditions and accepted offer.

5.8 Evaluation of Bids and Award of Contract - Risks and Mitigations	
<i>Risk</i>	<i>Mitigation</i>
<p>Anti-competitive practices: Bidders, that would otherwise be expected to compete, secretly conspire to frustrate the Procuring Entity's attempts to get VfM in a bidding process. Anti-competitive conspiracies can take many forms. Sometimes the officers involved in procurement may be part of such collusion.</p> <p>Bid coordination: The bidders collude to the quote same or similar rates that are much higher than the reasonable price to force the Procuring Entity to settle the procurement at exorbitant prices.</p> <p>Cover bidding: Cover bidding is designed to give the appearance of genuine competition by way of supporting bids for the leading bid-rigger.</p> <p>Bid suppression: Bid suppression means that a company does not submit a bid for final consideration in support of the leading bid-rigger.</p> <p>Bid rotation: In bid-rotation schemes, conspiring firms continue to bid but they agree to take turns being the winning (i.e., lowest qualifying) bidder in a group of tenders of a similar nature.</p> <p>Market allocation: Competitors carve up the market and agree not to give competitive bids for certain customers or in certain geographic areas.</p>	<p>These strategies, in turn, may result in patterns that procurement officials can detect and steps can be taken to thwart such attempts. Such anti-competitive activities come under the purview of the competition law, where there is provision of stringent penalties. Regular training should be held for officers involved in procurement to detect and mitigate such practices and also use of the competition law against such bidders.</p>

Chapter 6: Execution and Monitoring of Works and Quality Assurance

6.1 Execution and Monitoring of Work

No work shall be commenced unless the conditions precedent as laid down in Para 1.10 (xi) have been fulfilled.

6.1.1 A competent Project Management Team shall be set up including training on Project Management to the team, if required.

6.1.2 **Monitoring System:** A system of project monitoring for each work shall be prepared before start of the work and same shall be available at site of work. 'Deadlines' or 'contractual milestones' should be set up and tabulated to facilitate monitoring of the progress of work. The work shall be monitored quarterly/ monthly basis by the Works Committee and a status report should be submitted to the Secretary in charge of the concerned Ministry/ Department.

All complex assignments require the use of proper project management tools that enable the contract management team (procuring entity, engineer, project manager, etc.) to collaboratively monitor the actual; physical and financial progress of the contract against the planned physical and financial schedule. The contract may also specify that the contractor engage certified project management professionals to train and monitor project progress (e.g.: PMI certified engineers). There are many project management tools and software programmes that are extremely useful for the contract management team. Some of the common software programmes are (no endorsements are intended, there are many more such software available): Microsoft Project and Portfolio Management (MS PPM) and Oracle Primavera P6 Professional Project Management (P6 PPM).

6.1.3 **Fulfilling the Conditions Precedent to Land Acquisition and Other Clearances and Permits:** The process of land acquisition shall be started by the Procuring Entity, well ahead and completed entirely, or at least substantially, by the time the contract is awarded. The Procuring Entity shall also seek requisite Statutory Approvals/ Permission/ Clearances/ Certificates from the concerned Local Bodies & Statutory Authorities like District Authorities, Municipal Corporation, Panchayati Raj Institutions, Town Planning Board, Electricity Board/ Fire Department, State/ Central Pollution Control Boards, State/ Central Environmental Authorities, Forest and Wild-life authorities etc (for e.g. removal of trees, re-locating utilities; conversion of railway level crossings, laying of railway sidings needed by the project; rehabilitation and resettlement of persons affected by the project; traffic control; mining of earth and stone; interfering protected monuments; blasting permission, environmental/ forest/ wild-life clearances; and shifting of religious shrines etc), so that the progress of work is not impeded and incidence of delay claims by the contractor avoided. The Procuring Entity has to be aware that any delay in fulfilling the conditions precedent stipulated in the contract will attract delay claims from the contractor, besides causing time and cost overruns. Hence, all or most conditions precedent shall be fulfilled before award of the LoA. The contractor shall give all notices and obtain all other necessary permits and approvals as may be required for the construction of the contract works and shall pay for all such permits and approvals.

6.1.4 **Commencement of Work:** After signing the contract and issue of LoA, the engineer should instruct the contractor to 'commence the works', only after all the above mentioned land availability, clearances and permits have been obtained. The contractor, within the

stipulated time, should submit to the engineer for his consent: (i) the work programme in such form and detail as the engineer reasonably prescribes; (ii) methods statement which the contractor proposes to adopt for execution of the works; and (iii) the quality assurance plan. The Procuring Entity should on being satisfied with Contractor's submission provide to the contractor total or partial possession of the site.

6.1.5 Approval of Quarries and Borrow Areas and Materials: The contractor will obtain approval of the engineer for each quarry and borrow area to be used in the project, prior to commencement of quarrying and/ or borrow area excavation activities. All materials (whether natural, processed, manufactured, or designed) proposed by the contractor to be used on the works shall be first approved by the engineer to comply with the requirements of specifications.

6.1.6 Sub-contracting: The works contract may provide for the contractor to get specified works executed from sub-contractors included in the pre-qualification application or later agreed to by the Procuring Entity, with a caveat that the responsibility for all sub-contract work rests with the prime contractor. Sub-contracting will generally be for specialized items of work, such as reinforced earth retaining walls, pre-stressing works, and so on. Procurement of material, hire of equipment or engagement of labour will not mean sub-contracting. The total value of sub-contracting work will not exceed the per cent of the contract price as specified in the contract (say 25 (twenty-five) percent). Sub-contracting by the contractor without the approval of the Procuring Entity shall be a breach of contract, unless explicitly permitted in the contract.

6.1.7 Safety at Work Site: The Contractor must ensure safety of workmen as well as safety for the general public during construction in and around work-site. He must follow the laws, codes and standards laid down in this regard. The work-men must be trained and provided protective gear, life-saving equipment and appropriate tools for their jobs. Special precautions must be used if hazardous chemicals are used or stored at workplace (lead, silica, asbestos and wood/stone that will be cut and generate dust, construction materials containing zinc, cadmium, beryllium and mercury). Besides protection from noise and environmental pollution, public must also be safeguarded from falling through dug-up area, electrocution, flooding, falling objects, bridge-span dropping/ failures, crane falling/ overturning and damage to building from vibrations/ cave-ins from construction activities. Engineer must ensure that contractor does not adopt any short-cut in this regard. Most large contracts have a well defined Safety Health & Environment (SHE) guidelines embedded in the agreement. Appointment of site safety engineer by the contractor is a mandatory requirement in such cases. The engineer shall engage safety experts to carry out frequent SHE audits and mandate correct measures.

6.1.8 Progress Reporting & Review: There should be a stipulation in the contract for large value works (magnitude to be specified), for the contractor to submit project specific monthly progress report of the work in a computerized form (Management Information System Reports– MIS reports). The progress report shall contain the following apart from whatever else may be required to be specified:

- i) Project information, giving the broad features of the contract.
- ii) Introduction, giving a brief scope of the work under the contract and the broad structural or other details.
- iii) Construction schedule of the various components of the work, through a bar chart for the next three quarters for as may be specified, showing the milestones, targeted tasks and up to date progress.

- iv) Progress chart of the various components of the work that are planned and achieved, for the month as well as cumulative up to the month, with reasons for deviations, if any, in a tabular format.
- v) Plant and machinery statement, indicating those deployed in the work, and their working status.
- vi) Man-power statement, indicating individually the names of all the staff deployed in the work along with their designations.
- vii) Financial statement, indicating the broad details of all the running account payments received up to date, such as gross value of work done, advances taken, recoveries effected, amounts withheld, net payments, details of cheque payments received, etc.
- viii) A statement showing the extra and substituted items submitted by the contractor, and the payments received against them, broad details of the bank Guarantees, indicating clearly their validity periods, broad details of the insurance policies taken by the contractor, if any, the advances received and adjusted from the department, etc.
- ix) Progress photographs, in colour, of the various items/ components of the work done up to date, to indicate visually the actual progress of the work.
- x) Quality assurance and quality control tests conducted during the month, with the results thereof.
- xi) Any hold-up shall be specified.
- xii) Dispute, if any, shall also be highlighted.
- xiii) Monthly or fortnightly progress review by engineer and Procuring Entity with contractor may be necessary to ensure that contractor deploys sufficient resources to meet the deadlines.

6.2 Quality Assurance

6.2.1 In order to control the quality of work, a Quality Assurance Cell shall be formed in every work centre comprising of multi- disciplinary professionals/ engineers to cover all types of works, such as civil, mechanical, electrical etc.

6.2.2 In case of non-availability of qualified professionals/ engineers in house for the purpose of quality assurance cell, then the approval of competent authority shall have to be taken for deploying professionals from outside agencies. The provision for third party quality check may also be considered for a work beyond a specified amount.

6.3 Design Approvals

In case of EPC contracts approval of the designs should be taken from the appropriate authority, as defined in the tender document, to ensure that the performance level are met by the design.

6.4 Time Monitoring

6.4.1 Time At Large

When the Procuring Entity does not explicitly express and reserve its rights and remedies under the contract for delays in execution, it legally forfeits his right to such remedies. Under such circumstances Time is said to become at large and the contractor gets freed from his obligation to complete within the specified time. To avoid such a situation, before the expiry of

originally stipulated date of completion, the Procuring Entity should extend the currency of the agreement and set a new time limit for completion and make the extended time as essence of the contract, stipulating that this is being done without prejudice to his right to recover damages and other remedies as per the contract.

6.4.2 Force Majeure (FM) Clause

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. Works under the contract shall be resumed as soon as practicable after such event has come to an end or ceased to exist. However if such event continue for a period exceeding 120 days, either party may at its option terminate the contract by giving notice to the other party.

6.4.3 Delays in Execution

- i) A work may be completed ahead of schedule or delayed due to unforeseen fortuitous circumstances, extra effort or developments beyond the control of the procuring entity or the tenderer and it is sometimes difficult to apportion credit or responsibility. The contractor may experience delay or disruption due to his own actions or inaction, those of his sub-contractor or other contractors, those of the procuring entity or the engineer, or other causes. Such delays expose the non-performing party to various sanctions under the contract. These sanctions include extension of time, damages or default termination of the contract. While examining the request of the contractor for extension of time, the engineer shall consider all circumstances and categorise the delays as follows:
 - a) **Excusable delays** - Force Majeure (FM), that is, acts of God, abnormal weather, floods, and so on, applies;
 - b) **Compensable delays** – or Compensation Events, which put full burden of responsibility on the Procuring Entity as covered in the GCC; and
 - c) **Inexcusable delay (contractor's own faults)**, which puts the full burden of responsibility on the contractor.
 - d) **Concurrent delays** - when two or more events responsible for delay overlap each other. The delays may be attributable to the Procuring Entity or the contractor or none, and fall in above categories. The eligibility for extension of time (EOT) should be determined by plotting each contributing concurrent delay on the critical path. The Procuring Entity should see that the concurrent delays do not result in unnecessary extra extension of time.
- ii) Once the delay is categorised, it should then be determined not only whether the contractor is eligible for time extension and/ or monetary relief but also whether sanctions, such as Liquidated Damage (LD) or default termination, can be imposed on the contractor.

6.4.4 Liquidated Damages and Incentives/ Bonus

Normally, tenders shall be invited with reference to a pre-determined period of completion of works. Provision of incentives for completion of work before schedule should be sparingly made after careful assessment of tangible benefits there from and disclosed in the tender documents in clear monetary terms.

Incentives/ Bonus (e.g. one percent of the contract value per month subject to a maximum of five percent of contract value) for early completion and penalties for delay should, therefore, be built into the contract very judiciously. To avail of the incentive clause, it shall be mandatory on the part of the contractor to report the actual date of completion to the concerned Engineer (Engineer herein refers to PWO/ PSU/ Organisation to which work has been entrusted under Rule 133 of GFR 2017). The Engineer shall report the actual date of completion of the works as soon as possible through fax or email so that the report is received within seven days of such completion by the concerned CA.

In case of delay in completion of the contract, liquidated damages (for repair works costing up to Rs. Ten lakh - one percent of the contract value per week and for all other works half percent of the contract value per week of delay subject to a maximum of ten percent of contract value) should be levied. The penalties proposed for identified lapses of omission or commission must be disclosed in the tender documents in clear monetary terms.

6.4.5 Extension of Time (EOT)

- i) Extension of Time (EOT) must not be left to the end; it should be dealt with promptly during the progress of the contract and for ongoing critical delay interim EOT may be awarded. The engineer shall, after due consultation with the procuring entity and the contractor, determine the length of such extension and notify the contractor accordingly, with a copy to the procuring entity. After the final stage of completion is reached (final taking-over certificate issued), EOT and LD may be reviewed, if required.
- ii) If a compensation event occurs during the execution of the contract, the same shall be dealt with in terms of the GCC. The Engineer will assess whether and by how much the intended completion date shall be extended.
- iii) Organisations may put in place a graded authority structure whereby extension of time for completion of contract, beyond a specified threshold value of contract, may be granted by the next higher authority.

6.5 Financial Monitoring

Besides administering the contract with regard to its quality and completion, the engineer will regularly assess the financial position and exercise financial control. He will update, on a quarterly basis, cash flow projections, cost estimates and yearly/ quarterly milestones, and submit them to the Procuring Entity. Variations should take place with a view to achieving economical completion of the work, and not to result in avoidable higher rates or costs. In case of a significant number of variation orders or unexpectedly rapid cost escalation, updation may be done more frequently. The financial statements should bring out comparisons of the initial estimated/ tendered cost with the actual cost -- component- and activity --wise -- both with respect of quantities and value. The Procuring Entity should examine these statements critically. If costs are likely to be exceeded, this should be anticipated, and a revised estimate of cost prepared, with complete explanations, for approval by the CA.

6.5.1 Variations/ Extra/ Substituted Items

- i) **Variation means:** (a) increase or decrease in the quantity of any work included in the BOQ of the contract; (b) omission of any such work (but not if the omitted work is to be carried out by the procuring entity by another contractor); (c) change in the character or quality or kind of any such work; (d) change in the levels, lines, position and dimensions of any part of the works; (e) additional work of any kind necessary for the completion of the works; and (f) change of the specified sequence or timing of construction of any part of the works. The variation or additional work must be a necessary part within the scope of the original works and should not completely change the scope/ character and purpose of the original contract. The variation may result in additional or reduced payments to the contractor or there may be no price change at all. It is important to have a written procedure as part of the contract, for the issuing of a variation instruction. Once it is decided that a variation is required, the instruction should be issued promptly to minimise any adverse effect on the overall works. Before a variation can be instructed by the Engineer to the contractor, prior approval from the Procuring Entity is needed, except for certain situations as may be specified in SCC. The rate/ price/ valuation do not have to be agreed with the contractor, although this is preferable. Any change in 'approval for construction' drawings should be evaluated properly and their full financial implications worked out at that very stage for submission to the appropriate authority for approval. In case there are changes in ground levels from those shown in the approved drawings, they shall be agreed in writing, jointly by the contractor and engineer and reported to the Procuring Entity for considering whether any action lies against the design consultant for non-conformity of the levels as shown by him in the drawings and those actually obtaining.
- ii) **Keeping Track of Variations/ Extra/ Substituted Items:** The variations register shall be used to administer and keep track of the status of a variation. Normally, the contractor has a tendency to report and claim positive variations (variations causing higher payments) and may not report negative variations. However, the engineer and Procuring Entity must keep track of such negative variations and issue timely letters. This shall cover the following important steps:
- a) The Procuring Entity's prior approval of the issue of the variation instruction;
 - b) The engineer's instruction to the contractor (this letter creates the variation). Particular details of a variation are not entered into the variations register until the day the instruction is issued. Prior to that it is only a 'proposed variation' and is tracked/ administered in a separate register;
 - c) The variation instruction letter must be given a unique variation number and details entered into the variation register;
 - d) The register is updated at the end of each month and summarised on one sheet as 'variation status', so that the involved agencies are aware as to what work needing action is held up with each of them; and
 - e) The financial implications are kept up to date.
- iii) **Valuation of Variations:** While taking decision with regards to variations a balance should be maintained between the perceived risks in quick finalisation of variations against the opportunity costs of delayed decision making e.g. project delays, cost escalations, loss of transparency etc. Variation instructions for modified, new or

additional work involving extra cost shall be valued as per the procedure set out in the relevant clauses of the contract. The following are the steps to be taken by the Engineer:

- a) To form an opinion as to the applicability of the rates in BOQ and if considered applicable, to use BOQ rates;
- b) If not considered applicable, to use BOQ rates as the basis for valuation;
- c) In the event of a disagreement, to consult with procuring entity and contractor to try and agree on suitable rates; this means developing new rates from first principles;
- d) If there is disagreement, to fix the appropriate rate; and
- e) To determine provisional rates to allow monthly certification.

In making his recommendations, the engineer should give the contractor the opportunity to state his case and, if he considers the BOQ rate to be inappropriate, to present his proposals as to how the rate should be adjusted or what basis should be used to assess a new price. For his part, the contractor must support his submission with full particulars including, where applicable, a detailed cost breakdown of any rate in BOQ. The Procuring Entity must also be consulted with. The Procuring Entity should ensure that the above procedure has been duly followed and appropriately explained by the engineer in his recommendations, before he approves the variation. Where it is reasonable to value at the BOQ rate or some modification of it, any stance by the contractor that the tendered price may be 'wrong' or deliberately set low is irrelevant. The threshold level of the value/ quantity of a varied item below which a variation will not merit re-fixation of rate or price should be specified in the SBD.

In case the engineer, while doing valuation of variations, notices significant cost and time over-runs due to deviations between actual ground situation and the situation recorded in DPR, he must bring to Procuring Entity's notice the reach-wise differences and the Ministry/ Department may consider stringent action against the consultant who has prepared such DPRs as per para 2.4.2.

6.5.2 Measurement and Payment

- i) Measurements of all items having financial value shall be recorded in Measurement books (MB) and/ or level field books so that a complete record is obtained of all works performed under the contract. Measurements and levels shall be taken jointly by the official designated for the purpose and the contractor. Electronic Management Books (e-MBs) : Organisations as early as possible implement e- MBs and same should be integrated with IT based project monitoring system.
- ii) Interim Payments: At a prearranged date each month, the contractor will submit a statement in such a form as the engineer from time to time prescribes showing the amounts to which the contractor considers himself entitled up to the end of the month. The engineer's would issue an Interim Payment Certificate (IPC) after following checks:
 - a) Quantity of work actually completed as of an agreed 'cut-off' date;
 - b) Reconciliation with Field measurements of quantities of work completed or claimed;

- c) Inventory of equipment and materials delivered to the site but not yet used in the work (materials on site);
 - d) Review of claims for extra work;
 - e) Checking of retention amount and other recoveries;
 - f) Review of variations - whether these have been approved by Procuring Entity. If not, provisional rates are to be used until final valuation sanctioned by Procuring Entity; and
 - g) Price adjustments;
 - h) Following the bills filed by the contractor, Interim monthly payments (net of: (i) retentions and recovery of advances; and (ii) statutory deductions (works tax, income tax, others) would be made based on IPC. The engineer will not be bound to certify any payment if the net amount thereof, after all retentions and deductions, is less than the minimum amount of IPC, if any, specified in the contract.
- iii) As cash flow is a critical requirement in a project, payments delays impact the speed of construction and also the future bid value as this is factored into the bid by way of an increase in interest carry cost. Expenditure Management Committee constituted by Government of India (headed by Dr. Bimal Jalan, eminent economist and public policy experts) in its report has endorsed (recommendation no. 76⁴⁴) the practice of releasing a specified proportion (say Seventy-five percent - 75%) of the running milestone payments, within a week of the bill being submitted, pending a detailed check on the claim, in large projects. The balance is to be released after the claims are scrutinised in detail as per procedure. If required an enabling provision may be incorporated in the Conditions of Contract, possibly with stringent penalties in case of misuse of this provision. In this regards the committee had reported that Delhi Metro Rail Corporation (DMRC) has instituted such a system and it is stated to have helped in getting both a speedier execution and more competitive bids.
- iv) ⁴⁵Final bill shall be submitted by the contractor in same manner as that in interim bills within a specified time of physical completion of work and of final certificate of completion furnished by the Department/ Ministry. Payment shall then be made after verification of the bill on the personal certificate of the officer-in-charge of execution of the work in the format given below:
- "I Executing Officer of (Name of the Work), am personally satisfied that the work has been executed as per the specifications laid down in the Contract Agreement and the workmanship is up to the standards followed in the Industry."*
- v) **Delay in payment to the contractors**
- a) Delay in eligible payments to contractors leads to delay in execution of projects, cost overruns and disputes. Hence, ad-hoc payments of not less than 75% of eligible running account bill/ due stage payment, shall be made within 10 working days of the submission of the bill. This period of 10 days is for completion of all processes including prima facie scrutiny and certification by the engineer in-charge (as declared by procuring entities). The remaining payment is also to be made after final checking of the bill within 28 working

⁴⁴DoE OM No. 16/1/2016-PPD dated 24th August, 2016

⁴⁵ Rule 139(vii), GFR, 2017

days of submission of bill by the contractor. In case the payment has not been released within 10 working days as prescribed above, it shall be made as soon as possible, and after payment a written explanation for the delay shall be submitted to the next higher authority within three working days.

- b) Public authorities may put in place a provision for payment of interest in case of delayed payment of bills by more than 30 working days after submission of bill by the contractor. Where interest is to be paid, the rate of interest should be the rate of interest of General Provident Fund.
- c) In case of unwarranted discretionary delays in payments, including failure to authorise/ make ad hoc payment as prescribed in para 12.1 above, responsibility shall be fixed on the concerned officers. Project executing authorities should have a system to monitor delays in payments and to identify such unwarranted delays.
- d) The final bill should also be paid to the contractor within three months after completion of work.
- e) All project executing authorities implementing works contracts involving aggregate payments of more than Rs.100 crore per annum shall have an online system for monitoring of the bills submitted by contractors. Such system shall have the facility for contractors to track the status of their bills. It shall be mandatory for all contractors bills to be entered into the system with date of submission and date of payment. Such system shall be put in place within one year of issue of these instructions.)

Note: In para 6.5.2 (v) instructions containing “shall” are mandatory; any deviation from these instructions shall require relaxation from Ministry of Finance (for Ministries/ Departments etc.) or from the Board of Directors (for Central Public Sector Enterprises).

6.5.3 Mobilisation Advance

- i) If considered justified in certain specialized and capital intensive works, Contract may provide for an interest-bearing mobilisation advance to be paid to the contractor exclusively for the costs of mobilisation at 10 (ten) per cent of the contract price on the provision by the contractor of an unconditional BG. Such BGs shall remain effective until the advance payment has been fully repaid, but the amount thereof shall be progressively reduced by the amount repaid by the contractor, as indicated in the interim payment certificates.
- ii) The aforesaid advance of 10 (ten) per cent may be paid in two instalments, each of five per cent. The first one may be paid on commencement of the work and provision by the contractor of the unconditional BG in respect of the advance. The second instalment may be paid on certification by the engineer of the contractor's having achieved a financial progress of 10 (ten) per cent of the contract price, as also provision of a BG by the contractor for this part of the advance. Mobilisation expenditure mentioned herein shall not include the margin money and bank commission, and so on, paid by the contractor for procurement of BGs against performance security and mobilisation advance.

- iii) Provision of mobilization advance should essentially be need-based. Suitable delegation of authority may be done in the Organisation to take decision for grant of the mobilisation advance, whether interest free or interest bearing.
- iv) Though the Commission does not encourage interest free mobilization advance, but, if the Management feels it necessity in specific cases then it should be clearly stipulated in the tender document and its recovery should be time based not linked with progress of work. This would ensure that even if the contractor is not executing the work or executing it at a slow pace, recovery of advance could commence and scope for misuse of such advance could be reduced.
- v) Part 'Bank Guarantees' (BGs) against the mobilization advance should be taken in as many numbers as the proposed recovery instalments and should be equivalent to the amount of each instalment. This would ensure that at any point of time even if the contractor's money on account of work done is not available with the organization, recovery of such advance could be ensured by encashing the BG for the work supposed to be completed within a particular period of time.
- vi) There should be a clear stipulation of interest to be charged on delayed recoveries either due to the late submission of bill by the contractor or any other reason besides the reason giving rise to the encashment of BG, as stated above.
- vii) The amount of mobilization advance, interest to be charged, if any; its recovery schedule and any other relevant detail should be explicitly stipulated in the tendered document upfront.
- viii) Relevant format for BG should be provided in the tender document, which should be enforced strictly and authenticity of such BGs should also be invariably verified from the issuing bank, confidentially and independently by the organization.
- ix) In case of 'Machinery and Equipment advance', insurance and hypothecation to the employer should be ensured.
- x) Utilization certificate from the contractor for the mob advance should be obtained. Preferably, mob adv should be given in instalments and subsequent instalments should be released after getting satisfactory utilization certificate from the contractor for the earlier instalment.

6.5.4 Plant, Machinery and shuttering Material Advance

Another interest-bearing advance of five per cent of the contract price, depending on the merits of the case, may be paid against the new key construction equipment purchased for the work and brought to the site, if so provided in the Bid Documents and so requested by the contractor. The advance should normally not be more than 50 (fifty) percent of the depreciated cost of such plants and machinery should be hypothecated to the Govt., before the payment of advance is released. This advance shall be subject to the following conditions: (i) the contractor shall produce satisfactory proof of payment; (ii) such equipment is considered necessary by the engineer for the works; (iii) the equipment has been verified to have been brought to site; (iv) the contractor gives an undertaking on stamp paper that the equipment will work only on that job and will not be removed from the site without obtaining written approval from the engineer; and (v) the contractor furnishes a BG to cover the advance. No advance shall be admissible on equipment purchased under a hire purchase scheme/ financing arrangement or on hired equipment.

The rate of interest shall be stipulated in the bid documents (say 10 (ten) per cent per annum) or as may be notified by the Procuring Agency from time to time.

The repayment of advances shall be done through proportionate percentage deductions from running bill (periodic/ interim payment). The time of commencement of repayment, rate of deductions from interim payments, and time by which the advance should be fully repaid will be as specified in the contract.

All advances shall be used by the contractor exclusively for mobilisation expenditure, including the acquisition of construction-related plant and equipment. Should the contractor misappropriate any portion of the advance, it shall become due and payable immediately, and no further advance will be made to the contractor thereafter. In such cases, the contractor shall also be liable for appropriate action under the contract.

6.5.5 Secured Advance against Material brought to Site

Secured advance on the security of materials (which are not combustible, fragile or perishable in nature) brought to the site but not yet incorporated in the works will be made up to 75 (seventy-five) per cent of invoice value, or the 75 (seventy-five) per cent of the corresponding value of the materials determined on the basis of BOQ rates, whichever is less, subject to the condition that their quantities are not excessive and shall be used within a period of 90 (ninety) days and subject to other stipulations in the contract. The contractor will be required to sign an indenture bond, hypothecating the goods to the procuring entity, and also be responsible for their safe custody. Before the advance is released, the procuring entity may inspect the site to ensure that the Contractor has safeguarded the materials against pilferage and deterioration. It may be ensured that the contractor has not taken any loan/ limit from banks against hypothecation of the materials against which the secured advance is claimed. An undertaking in this regard may also be taken from the contractor.

Generally, as per the provisions of the contracts, the contractors are required to submit proof of cost of materials and the delivery of material at site while claiming such advances. The stock register should be maintained from the commencement of the contract and, unless otherwise prescribed in the contracts, the stock, so considered for advance, should generally be only paid stock (and not brought on credit). Where the materials are supplied from a captive source of the contractor, the reasonableness of the valuation of such materials may be ensured.

The advance will be repaid from each succeeding running bill (periodic/ interim payment) to the extent materials for which advance has been previously paid have been incorporated into the works. In all cases, the repayment of the advance will be affected after expiry of a period of 120 days since payment of advance, whether the material is consumed in the work or not.

6.5.6 Price Variation

This will deal with rise and fall of the prices in construction materials/ labour and other key inputs. However, this shall not be applicable in the contracts where period of completion is eighteen months or less. The provision of price variation clauses enables contractors to factor this reduced risk and quote more competitive prices.

The amount payable to the contractor shall be adjusted in respect of the rise or fall in the cost of labour, Petroleum, Oils and Lubricants (POL) and materials to the work for which appropriate formulae shall be prescribed in the contract and shall form part of the tender document.

To the extent that full compensation for any rise or fall in costs to the contractor is not covered by the provisions of the contract, the unit rates and prices included in the contract shall be deemed to include amounts to cover the contingencies of such uncovered portion of rise or fall of costs.

The formulae may be based on weightages of the material/ labour/ POL and cost indices/ base prices. Indices shall be appropriate for their purpose and shall relate to the contractor's proposed source of supply of inputs on the basis of which his contract price shall have been computed.

If any statutory regulations or bye-laws come into force after submission of the bids, which cause additional or reduced cost to the contractor in the execution of the contract, such statutory additional or reduced cost (except which are covered in cost indices) shall be added or deducted from the contract price.

Short-term contracts where the delivery period does not extend beyond 18 (eighteen) months should normally be concluded with a firm and price fixed by inviting tenders accordingly. However, even for shorter deliveries, the price adjustment [or Price Variation Clause (PVC)] may be stipulated for items with inputs (raw material, man power, etc.), prone to short-term price volatility - especially for critical or high value works – otherwise there is a possibility of the contract failing or the purchaser having to pay a higher price if prices fall.

Where it is decided to conclude the contract with a variable price, an appropriate clause incorporating, inter-alia, a suitable price variation formula should also be provided in the tender documents, to calculate the price variation between the base level and scheduled delivery date. It is best to proactively provide our own PVC in the tender document to discourage different bidders quoting different formulae and different base dates, which may lead to problems on bringing their prices on a common comparable footing.

The variations are to be calculated periodically by using indices published by Governments/ chambers of commerce/London Metal Exchange / any other neutral and fair source of indices. Suitable weights are to be assigned to the applicable elements, that is, fixed overheads and profits, material and labour in the price variation formula. If the production of goods needs more than one raw material, the input cost of material may be further sub-divided for different categories of material, for which cost indices are published.

The following are important elements of PVC:

- a) The price agreed upon should specify the base date, that is, the month and year to which the price is linked to enable variations being calculated with reference to the price indices prevailing in that month and year;
- b) The price variation formula must also stipulate a minimum percentage of variation of the contract price, only above which the price variation will be admissible (for example, where the resultant increase is lower than, say, two per cent of the contract price, no price adjustment will be made in favour of the supplier);
- c) The price variation clause should provide for a ceiling on price variations, particularly where escalations are involved. It could be a percentage per annum or an overall ceiling or both;

- d) Where advance or stage payments are made there should be a further stipulation that no price variations will be admissible on such portions of the price, after the dates of such payment;
- e) Where deliveries are accepted beyond the scheduled delivery date subject to levy of liquidated damages as provided in the contract. The LD (if a percentage of the price) will be applicable on the price as varied by the operation of the PVC;
- f) No upward price variation will be admissible beyond the original scheduled delivery date for defaults on the part of the supplier. However, a downward price variation would be availed by the purchaser as per the denial clause in the letter of extension of the delivery period;
- g) Price variation may be allowed beyond the original scheduled delivery date, by specific alteration of that date through an amendment to the contract in cases of force majeure or defaults by Government;
- h) Where contract execution depends on imported (subject to customs duty and foreign exchange fluctuations) and/or locally sourced goods/ works/ services (subject to customs duty and foreign exchange fluctuations) and/or locally manufactured (subject to excise duty and other duties and taxes), the percentage and element of duties and taxes included in the price should be specifically stated, along with the selling rate of foreign exchange element taken into account in the calculation of the price of the imported item;
- i) The clause should also contain the mode and terms of payment of the price variation admissible; and
- j) The buyer should ensure a provision in the contract for the benefit of any reduction in the price in terms of the PVC being passed on to him.
- k) An illustrative PVC clause is available in Annexure 14.
- l) Care should be exercised in contracts providing for price variation to finalise the price before final payment is made, after obtaining data and documents in support of claims for escalation, if any. Where no such claims are submitted by the suppliers, an examination of whether there has been a downward trend in the cost, which the contractor may not bring out, is required. At any rate, an undertaking should be obtained from the contractor to the following effect in case it becomes necessary to make the final payment before he has submitted the required data/documents related to the PVC:

“It is certified that there has been no decrease in the price of price variation indices and, in the event of any decrease of such indices during the currency of this contract, we shall promptly notify this to the purchaser and offer the requisite reduction in the contract rate.”
- m) Notwithstanding the above formalities, it should be appreciated that it is in the interest of the purchaser to be vigilant about downward variation and it is, therefore, the basic responsibility of the purchase officers to make sure that the benefits of downward variation, wherever it occurs, are fully availed of.

6.6 Commissioning and Documentation

6.6.1 When the work has been executed, the assets created shall be commissioned. Reasonable advance information of completion of work should be given to the concerned Ministry/ Department to enable them to make arrangements for taking over. The Ministry/ Department may carry out detailed inspection of the commissioned project to ensure that no deficiencies are there before taking over. "As built" drawings of the work shall be got prepared through the contractor or otherwise to facilitate proper maintenance of the assets, additions to the assets at subsequent dates etc. and to form part of the records of the Ministry/ Department.

6.6.2 The Contractor/ PWO/ PSU would be responsible for obtaining Completion/ Occupancy Certificates/ Clearances and No-Objection-Certificates (NOCs), if applicable, from the local civic authorities. For completed Work and Facilities before handing over the same to 'Procuring Entity' for putting them to functional use.

6.6.3 Before the completed work is taken over by the Ministry/ Department, it must ensure that the Contractor restores to original status - the auxiliary services/ facilities (Roads, Sewerage, utilities, including removal of garbage and debris) affected during the construction process.

6.6.4. The Contractor/ PWO/ PSU shall hand over to Ministry/ Department concerned or its Authorized Representative completed Work including all Services and Facilities constructed in accordance with the Approved Plans, Specifications fulfilling all agreed techno-functional requirements along with Inventory, As built - Drawings, Maintenance Manual/ Standard Operating Procedure (SOP) for Equipments and Plants, all clearances /Certificates from Statutory Authorities, Local Bodies etc.

6.6.5. On completion of the work, a Project Completion Report (PCR) shall be submitted by The Contractor/ PWO/ PSU duly bringing out the Final Project Completion Cost, Total Time period taken to complete the work and also completed Project Components as against the approved Cost, Time and Project Components. The PCR shall be submitted along with Final Project Accounts including return of unspent balance amount to the Ministry/ Department within one month of settlement of final bills of the contractors/ other agencies deployed on the work.

6.6.6. Record keeping should be created at every work centre to facilitate proper stacking of records pertaining to the completed works. The records should be preserved in such a manner that the same can be retrieved whenever required.

6.7 Closure of Contract

6.7.1 Completion of Contract

The contract is not to be treated as completed until a Defects Liability Certificate (DLC) has been issued. There will be only one DLC. It will be issued when the contractor has completed all his obligations under the contract. While making the final payment to the contractor and before releasing the PBG, it should be ensured that there is nothing outstanding from the contractor, because it would be difficult to retrieve such amounts after releasing the bank guarantee/ final payment. Before the bank guarantee is released a "no claim certificate" may be taken from the contractor as per the format given in Annexure 7. At least in large contracts (above Rs. 25 (twenty-five) lakh), it should be ensured that before the release of the bank guarantee (final payment, if there is no bank guarantee), the following reconciliations should be done across departments involved in the execution of the contract:

6.7.2 Material and Works Reconciliation

The Ministry/ Department should confirm that all Works ordered in the contract and paid for have been taken over in good condition and there is no shortcoming. Full reconciliation of all materials, machinery and assets provided to the contractor should be done including wastages and return of scrap/ off-cuts.

6.7.3 Reconciliation with the User Department

Besides Works reconciliation, the user department should certify in writing that the following activities (wherever applicable) have been completed by the contractor, to the department's satisfaction, as per the contract:

- i) Achievement of performance standards of Work;
- ii) Installation and commissioning, if any;
- iii) Support service during the Defect Liability Period which has ended on _____;
- iv) As Made Drawings;
- v) Return of all ID cards, gate passes, documents, drawings, protective gear, material, equipment, facilities and assets loaned to contractor.

6.7.4 Payment Reconciliation

The Ministries/ Departments may reconcile payments made to the contractor to ensure that there is no liability outstanding against the contractor on account of:

- i) LD;
- ii) Price reduction enforced on account of shortfall in standards of Work;
- iii) Variations/ deviations from the scope of the contract;
- iv) Overpayments/ duplicate payments, if any;
- v) Services availed from Procuring Entity and vacation thereof such as accommodation, electricity, water, security, transport, cranes and other machinery, and so on;
- vi) Demurrage, insurance premiums or claims, and so on;
- vii) Works reconciliation;
- viii) Price variations;
- ix) Statutory duties paid on behalf of the contractor by Procuring Entity; and

On satisfactory reconciliation and against a "no claim certificate" from the contractor, the bank guarantee may be released and its acknowledgement taken from the contractor.

6.8 Dispute Resolution Mechanism

6.8.1 Normally, there should not be any scope for dispute between the Procuring Entity and contractor after entering into a mutually agreed valid contract. However, due to various unforeseen reasons, problems may arise during the progress of the contract leading to a disagreement between the procuring entity and contractor. When a dispute/ difference arise, both the procuring entity and contractor should first try to resolve it amicably by mutual consultation failing which Dispute Resolution process should be invoked. The dispute resolution method shall be specified clearly in the bidding document. It may be through a Disputes Resolution Board. Dispute Resolution Mechanism for PPP projects is to be specifically provided in the Concession Agreement whereby if mediation does not succeed then Arbitration under the Arbitration and Reconciliation Act is to be provided for.

6.8.2 If a dispute of any kind, whatsoever, arises between the procuring entity and contractor in connection with or arising out of the contract or the execution of the works, whether during

the execution of the works or after their completion and whether before or after the repudiation or termination of the contract, including any disagreement by either party with any action, in action, opinion, instruction, determination, certificate or valuation of the Engineer; the matter in dispute shall, in the first place, be referred to the Dispute Resolution Board.

6.8.3 The Works Committee may act as Dispute Resolution Board. The board may co-opt any other officer, if required for dispute resolution.

6.9 Conciliation

The party initiating conciliation shall send a written invitation to the other party to conciliate and proceedings shall commence when the other party accepts the initiations to conciliation. The parties may agree on the name of a sole conciliator or each party may appoint one conciliator. The conciliation shall assist the parties to reach an amicable settlement of their dispute. When the parties sign the settlement agreement, it shall be final and binding on the parties. The conciliator shall authenticate the settlement agreement and furnish a copy thereof to each party.

6.10 Arbitration

If an amicable settlement is not forthcoming, recourse may be taken to the settlement of disputes through arbitration as per the Arbitration and Conciliation Act 1996 as amended by Arbitration and Conciliation (Amendment) Act, 2015. For this purpose, when the contract is with a domestic contractor, a standard arbitration clause may be included in the SBD indicating the arbitration procedure to be followed. All questions and disputes relating to the meaning of the specifications, design, drawings and instructions here-in and as to the quality of workmanship or materials used on the work or as to any other question, claim, right, matter or thing whatsoever in any way arising out of or relating to the contract, designs, drawings, specifications, estimates, instructions, orders or these conditions or otherwise concerning the works or the execution or failure to execute the same whether arising during the progress of the work or after the cancellation, termination, completion or abandonment thereof shall be referred to adjudication through arbitration. Please refer to Appendix 3 for further details of the Arbitration Act.

It is therefore essential that the Project Organisation of the Procuring Entity and Engineer be aware of potential arbitration clauses and ensure that crucial documentation including site records, quantity records, handover of site etc. are recorded and secured properly for future use.

6.10.1 Arbitration and dispute resolution

- i) During operation of the contracts, issues and disputes arising due to lack of clarity in the contract become the root cause of litigation. Litigation has adverse implications on the timelines and overall cost of the project. Before resorting to arbitration/litigation, the parties may opt for mutual discussion, mediation, and Conciliation for the resolution of disputes.
- ii) Arbitration /court awards should be critically reviewed. In cases where there is a decision against government / public sector enterprise (PSE), the decision to appeal should not be taken in a routine manner, but only when the case genuinely merits going for the appeal and there are high chances of winning in the court/ higher court. There is a perception that such appeals etc. are sometimes resorted to postpone the problem and defer personal accountability. Casual appealing in arbitration / court cases has resulted in payment of heavy damages / compensation / additional interest cost,

thereby causing more harm to the exchequer, in addition to tarnishing the image of the Government.

- (iii) The Organisation should monitor the success rate of appealing against arbitration awards. There should be a clear delegation to empower officials to accept arbitration / court orders. A special board / committee may be set up to review the case before an appeal is filed against an order. Arbitration / court awards should not be routinely appealed without due application of mind on all facts and circumstances including realistic probability of success. The board / committee or other authority deciding on the matter shall clarify that it has considered both legal merits and the practical chances of success and after considering the cost of, and rising through, litigation / appeal / further litigation as the case may be, it is satisfied that such litigation / appeal / further litigation cost is likely to be financially beneficial compared to accepting the arbitration / court award.
- iv) Statistics have shown that in cases where the arbitration award is challenged, a large majority of cases are decided in favour of the contractor. In such cases, the amount becomes payable with the interest, at a rate which is often far higher than the government's cost of funds. This results in huge financial losses to the government. Hence, in aggregate, it is in public interest to take the risk of paying a substantial part of the award amount subject to the result of the litigation, even if in some rare cases of insolvency etc. recovery of the amount in case of success may become difficult. Instructions have been issued in this matter in the past, but have not been fully complied with.
- (v) The only circumstances in which such payment need not be made is where the contractor declines, or is unable, to provide the requisite bank guarantee and/or fails to open an escrow account as required. Persons responsible for not adhering to are liable to be held personally accountable for the additional interest arising, in the event of the final court order going against the procuring entity.

6.10.2 Arbitration Awards

i) In cases where the Ministry/ Department has challenged an arbitral award and, as a result, the amount of the arbitral award has not been paid, 75% of the arbitral award (which may include interest up to date of the award) shall be paid by the Ministry/ Department to the contractor/ concessionaire against a Bank Guarantee (BG). The BG shall only be for the said 75% of the arbitral award as above and not for the interest which may become payable to the Ministry/ Department should the subsequent court order require refund of the said amount.

Note: In para 6.10.2 (i) instructions containing "shall" are mandatory; any deviation from these instructions shall require relaxation from Ministry of Finance (for Ministries/ Departments etc.) or from the Board of Directors (for Central Public Sector Enterprises).

- ii) The payment may be made into a designated Escrow Account with the stipulation that the proceeds will be used first, for payment of lenders' dues, second, for completion of the project and then for completion of other projects of the same Ministry/ Department as mutually agreed/ decided. Any balance remaining in the escrow account subsequent to settlement of lenders' dues and completion of projects of the Ministry/

Department may be allowed to be used by the contractor/ concessionaire with the prior approval of the lead banker and the Ministry/ Department. If otherwise eligible and subject to contractual provisions, retention money and other amounts withheld may also be released against BG.]⁴⁶

6.11 Breach of Contract, Remedies and Termination

6.11.1 Breach of Contract

In case the contractor is unable to honour important stipulations of the contract, or gives notice of his intention of not honouring or his inability to honour such a stipulation, a breach of contract is said to have occurred. Mostly, such breaches occur in relation to the performance of the contract in terms of inability to complete the Work within stipulated time. It could also be due to breach of ethical standards or any other stipulation that affects Procuring Entity seriously. As soon as a breach of contract is noticed, a show cause notice should be issued to the contractor, giving two weeks' notice, reserving the right to implement contractual remedies. If there is an unsatisfactory resolution, remedial action may be taken immediately.

If termination takes place because of a fundamental breach/ insolvency on the part of the contractor, the engineer shall issue a certificate for the value of work done, deducting from the amounts in respect of: (i) advance payments; (ii) any recoveries; (iii) taxes as due; and (iv) percentage to apply to the work not completed as indicated in the contract data. If the total amount due to the procuring entity exceeds that due to the contractor, the difference will be a debt payable to the procuring entity. The CA may terminate a contract in the following cases. The Procuring Entity is then free to take over the site and complete the works himself or with another contractor and use the contractor's materials, equipment, temporary works as he/ they think proper.

6.11.2 Cancellation of Contract for Default

Without prejudice to any other remedy for breach of contract, such as removal from the list of enlisted contractor, by written notice of default sent to the Contractor, the contract may be terminated in whole or in part, if the contractor has:

- i) has seriously or repeatedly breached the contract, including
 - a) failure to complete the work within the time period(s) specified in the contract, or any extension thereof granted;
 - b) failure to obey instructions in relation to his progress or defective work, material or plant;
 - c) breach of the prohibition against sub-contracting
 - d) Failure to supply sufficient and suitable constructional plant, temporary works, labour and material as proposed in the work programme;
 - e) Substantial suspension of work for more than the specified days without authority from the engineer and failure to proceed with the work within the specified days of receipt of notice from the engineer
 - f) Failure to comply with the requirements regarding JVs
- ii) committed fraud
- iii) If the contractor fails to perform any other obligation under the contract within the period specified in the contract or any extension thereof granted.

⁴⁶New rule 227A of GFR, 2017 notified vide OM No. F./1/9/2021-PPD issued by Department of Expenditure dated 29.10.2021.

- iv) If the contract is terminated in whole or in part, recourse may be taken to any one or more of the following actions:
 - a) Forfeiture of the performance security;
 - b) Upon such terms and in such manner as it deems appropriate, taking over the site and to complete the works himself or with another contractor (risk Purchase) and use the contractor's materials, equipment, temporary works as he/ they think proper. In small value contracts, instead of Risk Purchase, a fixed percentage recovery may be provided in the SBD; and
 - c) However, the contractor shall continue to fulfil the contract to the extent not terminated.

Before cancelling the contract and taking further action, it may be desirable to obtain legal advice.

6.11.3 Termination of Contract for Insolvency

If the contractor becomes bankrupt or becomes otherwise insolvent or undergoes liquidation or loses substantially the technical or financial capability (based on which he was selected for award of contract), at any time, the contract may be terminated, by giving a written notice to the contractor, without compensation to the contractor, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to Procuring Entity.

6.11.4 Termination of Contract for Procuring Entity's Failure or Convenience

After placement of the contract, there may be an unforeseen situation compelling Procuring Entity to cancel the contract. In such a case, a suitable notice has to be sent to the contractor for cancellation of the contract, in whole or in part, for its (Procuring Entity's) convenience, inter alia, indicating the date with effect from which the termination will become effective. This is not Procuring Entity's legal right— the contractor has to be persuaded to acquiesce. Depending on the merits of the case, the contractor may have to be suitably compensated on mutually agreed terms for terminating the contract. Suitable provisions to this effect should be to be incorporated in the tender document as well as in the resultant contract. If termination occurs because of Procuring Entity's convenience or a fundamental breach on his part, the engineer will certify the value of works executed, value of any materials lying at site, reasonable cost of removal of equipment, repatriation of project staff, cost of protecting and securing the works and deducting from it: (i) pending advances; (ii) other recoveries; and (iii) taxes as due.

6.12 Preparation of Revised Project Report

As per GFR, 2017, Rule 141, for project costing Rs. 100 crore or above the Administrative Ministry or Department will set up a Review Committee consisting of a representative each from the Administrative Ministry, Finance (Internal Finance Wing) and the Executing Agency to review the progress of the work. The Review Committee shall have the powers to accept variation within 10% of the approved estimates. For works costing less than Rs. 100 crore, it will be at the discretion of the Administrative Ministry/Department to set up a suitable mechanism for review and acceptance of variation within 10% of the approved estimates.

On the lines of provisions in Ministry of Finance (DoE)'s instructions vide OM No. 24(35)/PF-II/2012 dated 05/08/2016 regarding appraisal and approval of Public Funded projects/ schemes, any increase in costs due to statutory levies, exchange rate variation, price escalation within the approved time cycle and/ or increase in costs upto 20 percent due to any

other reason, are covered by the approval of the original cost estimates. Any increase in this regard would be approved by the Secretary of the Administrative Department concerned with the concurrence of the Financial Adviser.

Any increase in costs beyond 20 percent of the firmed-up cost estimates due to time overrun, change in scope, under-estimation, etc. (excluding increase in costs due to statutory levies, exchange rate variation and price escalation within the approved time cycle) should first be placed before a Revised Cost Committee chaired by the Financial Adviser (consisting of the Joint Secretary in-charge of the program division and representative of the Chief Adviser Cost as members) to identify the specific reasons behind such increase, identify lapses, if any, and suggest remedial measures for the same. The recommendations of the Revised Cost Committee should be placed for fresh appraisal and approval before the authority as per the extant delegation of powers (It may be noted that a firmed-up cost estimate here means a cost estimate which has been through the full appraisal and approval procedure as per the extant delegation of powers).

When the variation/ excess occurs at such an advanced period in the construction of a work⁴⁷ as to render the submission of a revised estimate purposeless, the completion report may explain the excess and an Officer of status not lower than that of Superintending Engineer (of PWO/ PSU) may pass the completion report, if the total expenditure in question is not greater than that which he is empowered to sanction in the case of a revised estimate.

⁴⁷ Rule 78, 104 & 106 of CPWD Departmental Code

Chapter 7: Registration/ Enlistment of Contractors and Governance Issues

7.1 Contractor Relationship Management

Contractor Relationship Management comprises the following functions:

- i) Ensuring compliance of contractors to the Code of Integrity for Public Procurement and Integrity Pact (CIPP) if stipulated in Bid Documents;
- ii) Holiday listing; removal from the list of enlisted contractors and banning/ debarment of firms; and
- iii) Development of new sources and registration/ enlistment of contractors.

7.2 Code of Integrity for Public Procurement (CIPP)

7.2.1 Introduction

Public procurement is perceived to be prone to corruption and ethical risks. To mitigate this, the officials of Procuring Entities involved in procurement and the bidders/ contractors must abide by the following Code of Integrity for Public Procurement (CIPP). All Procuring officials may be asked to sign declarations to this effect periodically and in various Procurement decisions (including Preparation of Estimates). The bidders/ contractors should be asked to sign a declaration about abiding by a Code of Integrity for Public Procurement (including sub-contractors engaged by them) in enlistment applications and in bid documents, with a warning that, in case of any transgression of this code, its name is not only liable to be removed from the list of enlisted contractors, but it would be liable for other punitive actions such as cancellation of contracts, banning and blacklisting or action in Competition Commission of India, and so on.

7.2.2 Code of Integrity for Public Procurement⁴⁸

Procuring authorities as well as bidders, contractors and consultants should observe the highest standard of ethics and should not indulge in the following prohibited practices, either directly or indirectly, at any stage during the procurement process or during execution of resultant contracts:

- i) **“Corrupt practice”**: making offers, solicitation or acceptance of bribe, rewards or gifts or any material benefit, in exchange for an unfair advantage in the procurement process or to otherwise influence the procurement process or contract execution;
- ii) **“Fraudulent practice”**: any omission or misrepresentation that may mislead or attempt to mislead so that financial or other benefits may be obtained or an obligation avoided. This includes making false declaration or providing false information for participation in a tender process or to secure a contract or in execution of the contract;
- iii) **“Anti-competitive practice”**: any collusion, bid rigging or anti-competitive arrangement, or any other practice coming under the purview of The Competition Act, 2002, between two or more bidders, with or without the knowledge of the procuring

⁴⁸ Rule 175 (1), GFR 2017

entity, that may impair the transparency, fairness and the progress of the procurement process or to establish bid prices at artificial, non-competitive levels;

- iv) **“Coercive practice”**: harming or threatening to harm, persons or their property to influence their participation in the procurement process or affect the execution of a contract;
- v) **“Conflict of interest”**: participation by a bidding firm or any of its affiliates that are either involved in the consultancy contract to which this procurement is linked; or if they are part of more than one bid in the procurement; or if the bidding firm or their personnel have relationships or financial or business transactions with any official of procuring entity who are directly or indirectly related to tender or execution process of contract; or improper use of information obtained by the (prospective) bidder from the procuring entity with an intent to gain unfair advantage in the procurement process or for personal gain; and
- vi) **“Obstructive practice”**: materially impede the procuring entity’s investigation into allegations of one or more of the above mentioned prohibited practices either by deliberately destroying, falsifying, altering; or by concealing of evidence material to the investigation; or by making false statements to investigators and/ or by threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or by impeding the procuring entity’s rights of audit or access to information;

7.2.3 **Obligations for Proactive Disclosures**⁴⁹

- i) Procuring authorities as well as bidders, contractors and consultants, are obliged under Code of Integrity for Public Procurement to suo-moto proactively declares any conflicts of interest (coming under the definition mentioned above – pre-existing or as and as soon as these arise at any stage) in any procurement process or execution of contract. Failure to do so would amount to violation of this code of integrity; and
- ii) Any bidder must declare, whether asked or not in a bid document, any previous transgressions of such a code of integrity with any entity in any country during the last three years or of being debarred by any other procuring entity. Failure to do so would amount to violation of this code of integrity.
- iii) To encourage voluntary disclosures, such declarations would not mean automatic disqualification for the bidder making such declarations. The declared conflict of interest may be evaluated and mitigation steps, if possible, may be taken by the procuring entity. Similarly voluntary reporting of previous transgressions of Code of Integrity elsewhere may be evaluated and barring cases of various grades of debarment, an alert watch may be kept on the bidder’s actions in the tender and subsequent contract.

7.2.4 **Punitive Provisions**⁵⁰

Without prejudice to and in addition to the rights of the procuring entity to other penal provisions as per the bid documents or contract, if the procuring entity comes to a conclusion that a (prospective) bidder/ contractor directly or through an agent, has violated this code of

⁴⁹ Rule 175(1) (ii & ii), GFR, 2017

⁵⁰Rule 175(2), GFR, 2017

integrity in competing for the contract or in executing a contract, the procuring entity may take appropriate measures including one or more of the following:

- i) If his bids are under consideration in any procurement
 - a) Forfeiture or encashment of bid security;
 - b) calling off of any pre-contract negotiations; and
 - c) rejection and exclusion of the bidder from the procurement process
- ii) If a contract has already been awarded
 - a) Cancellation of the relevant contract and recovery of compensation for loss incurred by the procuring entity;
 - b) Forfeiture or encashment of any other security or bond relating to the procurement;
 - c) Recovery of payments including advance payments, if any, made by the procuring entity along with interest thereon at the prevailing rate;
- iii) Provisions in addition to above:
 - a) Removal from the list of enlisted contractors and banning/ debarment of the bidder from participation in future procurements of the procuring entity for a period not less than one year;
 - b) In case of anti-competitive practices, information for further processing may be filed under a signature of the Joint Secretary level officer, with the Competition Commission of India;
 - c) Initiation of suitable disciplinary or criminal proceedings against any individual or staff found responsible.

7.2.5 Conduct of Public Servants in Public Procurement - Risks and Mitigations	
<i>Risk</i>	<i>Mitigation</i>
<p>Hospitality: Hospitality (including facilitation of travel, lodging, boarding and entertainment during official or unofficial programs) from suppliers may tend to cross the limits of ethical/ occasional/ routine/ modest/ normal business practice. Officials sent to firm's premises for inspections/ meetings may mistakenly presume entitlement to hospitality from the firm, even if other arrangements are available at the location.</p> <p>In the contracts signed with suppliers by some of the Ministries/ Departments have clauses of pre-inspection at the firm's premises, where there is a provision that the suppliers or the vendors will pay for the travel, stay, hospitality and other expenses of the Inspecting officials.</p>	<p>Hospitality must never be solicited, directly or indirectly. The frequency, scale and number of officials availing hospitality should not be allowed to identify the recipient in a public way with any particular contractor, supplier or service provider or raise doubts about its neutrality. It should not involve significant travel, overnight accommodation or trips abroad. Particular care should be taken in relation to offers of hospitality from firms (say participating in current or imminent tenders or its execution) who stand to derive a personal or commercial benefit from their relationship with the recipient.</p> <p>This is not in keeping with need to safeguard the independence of the inspecting teams. Such provisions in contracts need to be discouraged, so that Inspections are not compromised. Necessary steps maybe taken</p>

7.2.5 Conduct of Public Servants in Public Procurement - Risks and Mitigations	
<i>Risk</i>	<i>Mitigation</i>
	to strictly avoid such provisions in the contracts with suppliers/ vendors ⁵¹ .
Gifts: Gifts from suppliers may tend to cross the limits of ethical/ occasional/ routine/ modest/ normal business practice, especially on festive season. Since the value of the gift may not be known to the recipient, it may cause inadvertent violation of Conduct rules.	Gifts must never be solicited, directly or indirectly. An official should not accept and retain gifts more valuable than the limit as laid down in the conduct rules. Cash, gift cheques or any vouchers that may be exchanged for cash may not be accepted regardless of the amount. Particular care should be taken in relation to gifts from firms (say participating in current or imminent tenders or its execution) who stand to derive a personal or commercial benefit from their relationship with the recipient. Any gift received inadvertently in violation of above, must immediately either be returned or else reported and deposited in Toshakhana/ Treasury.
Private Purchases from Official Suppliers: Procuring Officials may mistakenly consider it innocuous to seek discounts in private procurements from suppliers having official dealings or its associates (especially from Rate Contract holders).	Officials involved in Public Procurement must never indulge in any non-official pecuniary transaction with the contractors, suppliers or service providers with whom they have official dealings; including seeking or accepting special facilities or discounts on private purchases (particularly same items which are being ordered officially on rate contracts).
Sponsorship of Events: Procuring Officials may mistakenly consider it innocuous to seek financial favours (donations, advertisements for souvenirs, and contributions in cash or kind) in relation to sponsoring of cultural, social, charitable, religious, or sporting events, in the false belief that since he/ she is personally not benefitted, it would not be a violation of CIPP.	Officials involved in Public Procurement must never indulge in any non-official pecuniary transaction with the contractors, suppliers or service providers with whom they have official dealings; including soliciting of sponsorship for unofficial and private cultural, social, sporting, religious, charitable or similar organisations or events.

7.3 Integrity Pact (IP)

The Pre-bid and Post-Contract Integrity Pact is a tool to help governments, businesses and civil society to fight corruption in public contracting. It binds both procuring entities and sellers to ethical conduct and transparency in all activities from pre-selection of bidders, bidding and contracting, implementation, completion and operation related to the contract. This removes

⁵¹ Notified vide OM No.F.11/13/2017-PPD issued by Department of Expenditure dated 24.10.2017

insecurity of Bidders, that while they themselves may abjure Bribery, but their competitors may resort to it and win contract by unfair means.

Ministry of Finance, Department of Expenditure have mandated Ministries/ Departments and their attached/ subordinate offices (including autonomous bodies) to incorporate Integrity Pact by, depending on the nature of procurements/ contracts above a threshold value. The nature of procurement and threshold of value is to be decided by the Ministries/ Departments with approval of the Minister in charge. As guidance, the threshold should be such as to cover bulk (80-90%) of its procurement expenditure.

The pact essentially envisages an agreement between the prospective contractors/ bidders and the Procuring Entity, committing the persons/ officials of both sides, not to resort to any corrupt practices in any aspect/ stage of the contract. Only those contractors/ bidders, who commit themselves to such a Pact with the Procuring Entity, would be considered competent to participate in the bidding process. In other words, entering into this Pact would be a preliminary qualification. The essential ingredients of the Pact include:

- i) Promise on the part of the Procuring Entity to treat all bidders with equity and reason and not to seek or accept any benefit, which is not legally available;
- ii) Promise on the part of bidders not to offer any benefit to the employees of the Procuring Entity not available legally and also not to commit any offence under Prevention of Corruption Act, 1988 or Indian Penal Code 1860;
- iii) Promise on the part of Bidders not to enter into any undisclosed agreement or understanding with other bidders with respect to prices, specifications, certifications, subsidiary contracts, etc.
- iv) Undertaking (as part of Fall Clause) by the Bidders that they have not and will not sell the same material/ equipment at prices lower than the bid price.
- v) Foreign bidders to disclose the name and address of agents and representatives in India and Indian Bidders to disclose their foreign principals or associates;
- vi) Bidders to disclose the payments to be made by them to agents/ brokers or any other intermediary.
- vii) Bidders to disclose any past transgressions committed over the specified period with any other company in India or Abroad that may impinge on the anti corruption principle.
- viii) Integrity Pact lays down the punitive actions for any violation.
- ix) IP would be implemented through a panel of Independent External Monitors (IEMs), appointed by the organization in consultation with Central Vigilance Commission. The IEM would review independently and objectively, whether and to what extent parties have complied with their obligations under the Pact. Government of India organizations and Public Sectors of implementing Integrity Pact are required to select at most three persons (below the age of 70 (seventy) years) of high integrity and reputation as Independent External Monitors (IEM) after due diligence and forward to the CVC for its approval. Only those officers of Government of India departments or Public Sector Undertakings, who have retired from top management positions, would be considered for appointment as IEM, provided they are neither serving or retired from the same organization. Eminent persons, retired judges of High/ Supreme Courts, executives of private sector of

considerable eminence could also be considered for functioning as Independent External Monitors. The appointment of Independent External Monitors would be for an initial period of three years and could be extended for another term of two years (maximum tenure of five years). Names and contact details of the Independent External Monitor(s) should be listed in Notice Inviting Tender (NIT).

- x) In tenders meeting the criteria of threshold value/ nature of procurement - Integrity Pact clause and format should be included in the Bid Documents. Each page of such Integrity pact proforma would be duly signed by Procuring Entity's competent signatory. All pages of the Integrity Pact are to be returned by the bidder (along with the technical bid) duly signed by the same signatory who signed the bid, i.e. who is duly authorized to sign the bid and to make binding commitments on behalf of his company. Any bid not accompanied by Integrity Pact duly signed by the bidder shall be considered to be a non-responsive bid and shall be rejected straightway. Names and contact details of the Independent External Monitor(s) should be listed in Notice Inviting Tender (NIT).
- xi) Role/ Functions of IEMs: The Monitors would not be subject to instructions by the representatives of the parties and should perform their functions neutrally and independently. They would review independently and objectively, whether and to what extent parties have complied with their obligations under the Integrity Pact. For this purpose, they would have access to all contract documents/ books of accounts of the bidders in case of any allegation of violation of any provisions of the Integrity Pact or payment of commission, whenever required. The IEMs will have the option to participate in such meetings among the parties related to the project provided such meetings could have an impact on the contractual relations between the parties. Ideally all IEMs of an organization should meet once every two months to take stock of ongoing tendering process. The IEMs would examine all complaints received by them and give their recommendations/ views to the designated officer of the Procuring Entity, at the earliest. The Monitors would also inform the Procuring Entity, if they notice or have reason to believe, a violation of the Integrity Pact. They may also send their report directly to the Central Vigilance Commission, in case of suspicion of serious irregularities requiring legal/ administrative action. At least one IEM would be invariably cited in the NIT. However for ensuring the desired transparency and objectivity in dealing with the complaints arising out of any tendering process, the matter should be examined by the full panel of IEMs, who would look into the records, conduct an investigation, and submit their joint recommendations. The recommendations of IEMs would be in the nature of advice and would not be legally binding. IEMs may not be equated with consultants in the Procuring Entity. Their role is independent in nature and the advice once tendered would not be subject to review. The role of the Chief Vigilance Officer (CVO) of Procuring Entity shall remain unaffected by the presence of IEMs. A matter being examined by the IEMs can be separately investigated by the CVO, if a complaint is received by him or directed to him by the CVC. As per para 5.13 of CVC OM No. 05/01/22 issued vide letter No. 015/VGL/091 dated 25.01.2022, in the event of any dispute between the management and the contractor relating to those contracts where Integrity Pact is applicable, in case, both the parties are agreeable, they may try to settle dispute through mediation before the panel of IEMs in a time bound manner. If required, the organizations may adopt any mediation rules for this purpose. In case, the dispute remains unresolved even after mediation by the panel of IEMs, the organization may take further action as per the terms & conditions of the contract.

7.4 Development of New Sources and Registration/ Enlistment of Contractors

7.4.1 The terms 'enlistment' and 'registration' may be differentiated as follows: --

- i) **Registration:** Simply registering the contractor, without any verification.
- ii) **Enlistment:** Including the name of the contractor in the list of after verification of credentials.

7.4.2 **Registration:** All the Ministries/Departments shall register the prospective contractors on their e-procurement portal or in the CPPP (in case they do not have their own e-procurement portal) before submitting their bids. The contractor may be an Individual, Sole proprietorship firm, partnership firm, limited liability partnership, private or public limited company. For registration, the Ministries/Department/CPSUs shall capture *at least*– (i) Name of contractor, (ii) Address and Contact details, (iii) Permanent Account Number (PAN), (iv) Details of digital signature certificate (DSC) and (v) GSTIN. Depending on the requirement of respective procurement portal, the Ministries/Departments can capture any other information, as may be considered necessary.

7.4.3 **Enlistment:** Some Departments such as Central Public Works Department (CPWD) and Military Engineering Services (MES) are enlisting the contractors after verification of their credentials. Such enlistment is used by CPWD for obtaining bids for small value tenders i.e. up to Rs. 20 crores. For the tenders above Rs. 20 crores any contractor even if not enlisted can participate in the tenders issued by the CPWD. It is expected that Ministries/Departments will also develop their own enlistment process, as has been done by CPWD, Ministry of Railways (MoR) and Ministry of Road Transport & Highways (MoRTH) to reduce the time required for verification of credentials of the contractors after opening of the bids. The lists of such enlisted contractors can be used by any Ministry/Department/CPSU.

7.4.4 The Ministries/Departments will also share the information of registered and enlisted contractors with each other through the Central Public Procurement (CPPP). The Ministries/Departments will also ensure that whenever a contractor is debarred, the information regarding the same is made available immediately to all the Ministries/Departments through the CPPP. The reasons for the debarment and order of such debarment may also be displayed on the CPPP. The National Informatics Centre (NIC)/ Ministry of Electronics and Information Technology (MeitY) shall make appropriate changes in the CPPP so that each contractor can be uniquely identified by PAN. All the Ministries/Departments may take cognizance of the information regarding debarment of contractors and use it as an input for the decision making process as per their own procurement policies.

7.4.5 Ministries/ Departments with a significant volume of procurements may follow their own policies and procedures for enlistment of contractors, if already existing. The policies and procedures for enlistment described below is for guidance of Ministries/ Departments, who do not have their own, laid down policies/ procedures for enlistment. The Ministry/ Department shall notify the authorities competent to deal with the applications and grant enlistments, along with their jurisdictions. The appellate authority shall be at least one level above the registering authority or as designated by the Ministry/ Department.

7.4.6 Categories for Enlistment

In case of procurement of works, the Administrative Department shall enlist firms as contractors of goods in different types/ categories of works (Civil, Electrical, Horticulture,

Furniture, Nursery etc). The contractor may be a Private, Partnership, Pvt Ltd, Corporate, PSU or a Joint Venture company.

7.4.7 Class of Enlistment (Tendering Limits)

Enlistment should be done by Class of the firms (Grade A, B, and so on) on their capability for executing contract orders of different monetary limits in the relevant category of requirements. The monetary limits should be carefully fixed keeping in view the banker's reports, capacity and capability of the firm and other financial information indicated in the balance sheets, profit and loss statements:

(A sample classification - Source CPWD website)

Class	Tendering Limit	Class	Tendering Limit
Class-I (Super)	Rs 500 crore	Class-II	Rs 5 crore
Class-I (AAA)	Rs 200 crore	Class-III	Rs 1.5 crore
Class-I (AA)	Rs 100 crore	Class-IV	Rs 60 lakh
Class-I (A)	Rs 50 crore	Class-V	Rs 15 lakh
Class-I	Rs 20 crore		

7.4.8 **Procedure for Enlistment:** Enlistment of contractors should be done by any Ministry/ Department in case it desires to enlist contractors for works which are exclusively needed by it by keeping fundamental principles of public procurement in view (especially the transparency principle - transparency, fairness, equality, competition and appeal rights) with the approval of CA after carefully assessing and verifying credentials, capability, quality control systems, past performance, after-sales service facilities, financial background, and so on, of the contractor/ service provider(s):

- i) Details of the procedure for enlistment of new firms may be uploaded on the website and also published in the form of a booklet for information of the contractors. Timeframes and criteria for enlistment of new contractors may be clearly indicated;
- ii) Possible sources for any category/ group of requirements can be identified based on internal and external references. Data of new contractors can be obtained from the response received from contractors, open tender advertisements, pre-qualification bids, Expression of Interest (Eoi), against various enquiries on the website, dedicated websites, exhibitions, buyer-seller meets, various publications of BIS, trade journals, and so on. The e-procurement portal does pre-registration of contractors online. Such data can be a source of information on prospective contractors;
- iii) New contractor(s) may be considered for enlistment at any time, provided they fulfil all the required conditions. For any larger scale or critical enlistment of contractors, Procuring Entity should call for EOI by publicising its need for development of sources. The stages to be followed together with the applicable guidelines for EOI have been detailed in Chapter 3;
- iv) While registering the firms, an undertaking may be obtained from them that they will abide by the CIPP enclosed with the application with a clear warning that, in case of transgression of the code of integrity, their names are likely to be deleted from the list

of enlisted contractors, besides any other penalty or more severe action as deemed fit; and

- v) Along with the new/ renewal application for enlistment, the contractors should also be asked to declare that, if awarded a contract in any LTE in which they participate, they bind themselves to abide by the Procuring Entity's General Conditions of Contract (GCC). Such GCC should be part of the application.
- vi) **Eligibility**
 - i) Any firm, situated in India or abroad, which is in the business of providing goods/ works/ services of specified categories of interest, shall be eligible for enlistment;
 - ii) Contractors should possess valid Digital Signature Certificate (DSCs) Class III b with the company name at the time of enlistment/ renewal, so as to enable them to participate in e-procurements
 - iii) Firm, against whom punitive action has been taken, shall not be eligible for re-enlistment during the currency of punitive action. Enlistment requests may not be entertained from such firms, stakeholders of whom have any interest in de-Enlisted/ banned firms;
- vii) The application form, complete in all respects and accompanied with the requisite processing fee and prescribed documents shall be submitted by the firms to the registering authority. The enlistment application form, duly filled-in, when received from the firms shall be scrutinised carefully for assessing the capacity and capability of the firms including credentials, capability, quality control system, past performance, financial background, and so on, of the applicant. References shall be made to other firms of standing of whom the applicant firm claims to be a contractor. Likewise, the applicant firm's bankers may also be requested to advice about the financial standing of the firm. Enlistment of contractors should be done with the approval of CA.
- viii) In cases where the firm is not considered capable and enlistment cannot be granted, the concerned authority shall communicate the deficiencies and shortcomings direct to the firms under intimation to the appellate authority. Where a request for re- verification and review is made by the firm, along with any fee as prescribed and within the period prescribed by the department, review shall be undertaken. Requests for re-verification after expiry of the said period would be treated as a fresh application and processing fee, if any prescribed, charged accordingly;
- ix) Enlistment should be for specific category of works;
- x) It should be mentioned in the letter of enlistment that the enlistment is valid for a period of three years and would be considered for extension based (on application by the contractor/ service provider) on satisfactory performance of the firm. However, the enlistment would be initially treated as provisional and it would be treated as confirmed only after the firm has satisfactorily executed one contract of the relevant category and value from Procuring Entity. The extension of validity of enlistment is not a matter of right and Procuring Entity reserves the right not to extend such enlistment without assigning any reason;

- xi) All Enlisted contractors should be allocated a unique enlistment number. Once the firms are enlisted, a circular shall be issued by the enlistment authority indicating the names and addresses of the enlisted contractors with details of the requirements and monetary value they will execute as well as the validity period, and so on, for which they are enlisted;
- xii) Performance and conduct of every enlisted contractor is to be watched by the concerned department. Procuring Entity should also reserve the right to remove firms who do not perform satisfactorily, even during the validity of enlistment (after giving due opportunity to the contractor to make a representation) if they fail to abide by the terms and conditions of the enlistment or fail to execute contracts on time or do substandard work or make any false declaration to any government agency or for any ground which, in the opinion of the government, is not in public interest;
- xiii) Procuring Entity shall retain its option to reassess firms already enlisted, at any later date, to satisfy itself about the current financial soundness/ credit worthiness, facilities available, and so on. Thereafter, Procuring Entity may decide to retain them as enlisted contractors for the requirements and monetary limit earlier considered or with necessary changes as deemed fit. In case of adverse reports from the team of Procuring Entity officers who reassess the firm, Procuring Entity shall delete such firm from the enlisted contractors list;

7.5 Debarment

7.5.1 Rule 151 of GFR, 2017 deals with debarment which is as under:

- i) A bidder shall be debarred if he has been convicted of an offence
 - a) under the Prevention of Corruption Act, 1988; or
 - b) 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 a public procurement contract.
- ii) A bidder debarred under sub-section (i) or any successor of the bidder shall not be eligible to participate in a procurement process of any procuring entity for a period not exceeding three years commencing from the date of debarment. Department of Commerce (DGS&D) will maintain such list which will also be displayed on the website of DGS&D as well as Central Public Procurement Portal.
- iii) A procuring entity may debar a bidder or any of its successors, from participating in any procurement process undertaken by it, for a period not exceeding two years, if it determines that the bidder has breached the code of integrity. The Ministry/ Department will maintain such list which will also be displayed on their website.
- iv) The bidder shall not be debarred unless such bidder has been given a reasonable opportunity to represent against such debarment.

7.5.2 Guidelines on Debarment of firms from Bidding⁵²

1. The guidelines are classified under following two types:-

⁵²Notified vide OM No. F.1/20/2018-PPD issued by Department of Expenditure dated 02.11.2021

- i. In cases where debarment is proposed to be limited to a single Ministry, the appropriate Orders can be issued by that Ministry itself, thereby banning all its business dealing with the debarred firm.
- ii. Where it is proposed to extend the debarment beyond the jurisdiction of the particular Ministry i.e. covering to all central Ministries/ Departments, the requisite Orders shall be issued by Department of Expenditure (DoE), Ministry of Finance (MoF).

Definitions

- i. Firm: The term 'firm' or 'bidder' has the same meaning for the purpose of these Guidelines, which includes an individual or person, a company, a cooperative society, a Hindu undivided family and an association or body of persons, whether incorporated or not, engaged in trade or business.
- ii. Allied firm: All concerns which come within the sphere of effective influence of the debarred firms shall be treated as allied firms. In determining this, the following factors may be taken into consideration:
 - a) Whether the management is common;
 - b) Majority interest in the management is held by the partners or directors of banned/ suspended firm;
 - c) Substantial or majority shares are owned by the banned/ suspended firm and by virtue of this it has a controlling voice.
 - d) Directly or indirectly controls, or is controlled by or is under common control with another bidder.
 - e) All successor firms will also be considered as allied firms.

The terms “banning of firm”, ‘suspension’, ‘Black-Listing’ etc. convey the same meaning as of “Debarment”.

2. Debarment by a Single Ministry/ Department

Orders for Debarment of a firm(s) shall be passed by a Ministry/ Department/organizations, keeping in view of the following:

- i. A bidder or any of its successors may be debarred from participating in any procurement process for a period not exceeding two years.
- ii. Firms will be debarred if it is determined that the bidder has breached the code of integrity as per Rule 175 of GFRs 2017. (Refer to para 7.2 of this Manual for further reading on Code of Integrity).
- iii. A bidder can also be debarred for any actions or omissions by the bidder other than violation of code of integrity, which in the opinion of the Ministry/Department, warrants debarment, for the reasons like supply of sub-standard material, non-supply of material, abandonment of works, sub-standard quality of works, failure to abide “Bid Securing Declaration” etc.
- iv. It shall not be circulated to other Ministries/ Departments. It will only be applicable to all the attached/ subordinate offices, Autonomous bodies, Central Public Sector Undertakings (CPSUs) etc. of the Ministry/ Department issuing the debarment Order.
- v. The concerned Ministry/ Department before issuing the debarment order against a firm must ensure that reasonable opportunity has been given to the concerned firm to represent against such debarment (including personal hearing, if requested by firm).
- vi. Secretary of Ministry/Department may nominate an officer at the rank of Joint Secretary/Additional Secretary as competent authority to debar the firms.

- vii. Ministry/ Department that issued the order of debarment can also issue an Order for revocation of debarment before the period of debarment is over, if there is adequate justification for the same. Ordinarily, the revocation of the Order before expiry of debarred period should be done with the approval of Secretary concerned of Ministry/Department.
 - viii. The Ministry/Department will maintain list of debarred firms, which will also be displayed on its website.
 - ix. Debarment is an executive function and should not be allocated to Vigilance Department.
3. It is possible that the firm may be debarred concurrently by more than one Ministry/ Department. Ministries/ Departments at their option may also delegate powers to debar bidders to their CPSUs, Attached Offices/ Autonomous Bodies etc. In such cases, broad principles for debarment in para 2 as above are to be kept in mind. Debarment by such bodies like CPSUs etc. shall be applicable only for the procurements made by such bodies. Similarly, Government e-Marketplace (GeM) can also debar bidders up to two years on its portal. In case of debarments done by CPSUs, revocation of the debarment orders before expiry of debarred period should be done only with the approval of Chief Executive Officer of concerned CPSUs etc.

4. Debarment across All Ministries/ Departments

- i. Where a Ministry/ Department is of the view that business dealings with a particular firm should be banned across all the Ministries/ Departments by debarring the firm from taking part in any bidding procedure floated by the Central Government Ministries/ Departments, the Ministry/ Department concerned, should after obtaining the approval of the Secretary concerned, forward to DoE a self-contained note setting out all the facts of the case and the justification for the proposed debarment, along with all the relevant papers and documents. DoE will issue the necessary orders after satisfying itself that proposed debarment across all the Ministries/ Departments is in accordance with Rule 151 of GFRs, 2017. This scrutiny is intended to ensure uniformity of treatment in all cases.
- ii. The firm will remain in suspension mode (i.e. debarred) during the interim period till the final decision taken by DoE, only in the Ministry/ Department forwarding such proposal.
- iii. Ministry/ Department before forwarding the proposal to DoE must ensure that reasonable opportunity has been given to the concerned firm to represent against such debarment (including personal hearing, if requested by firm). If DoE realizes that sufficient opportunity has not be given to the firm to represent against the debarment, such debarment requests received from Ministries/ Departments shall be rejected.
- iv. DoE can also give additional opportunity, at their option, to firm to represent against proposed debarment. DoE can also take suo-moto action to debar the firms in certain circumstances.
- v. No contract of any kind whatsoever shall be placed on the debarred firm, including its allied firms by any Ministries/ Departments/ Attached/Subordinate offices of the Government of India including autonomous body, CPSUs etc. after the issue of a debarment order.
- vi. DoE will maintain list of such debarred firms, which will be displayed on Central Public Procurement Portal.

5. Revocation of Orders

- i. An order for debarment passed shall be deemed to have been automatically revoked on the expiry of that specified period and it will not be necessary to issue a specific formal order of revocation.
 - ii. A debarment order may be revoked before the expiry of the Order, by the competent authority, if it is of the opinion that the disability already suffered is adequate in the circumstances of the case or for any other reason.
6. **Other Provisions (common to both types of debarment)**
- i. No contract of any kind whatsoever shall be placed to debarred firm including its allied firms after the issue of a debarment order by the Ministry/ Department. Bids from only such firms shall be considered for placement of contract, which are neither debarred on the date of opening of tender (first bid, normally called as technical bid, in case of two packet/two stage bidding) nor debarred on the date of contract. Even in the cases of risk purchase, no contract should be placed on such debarred firms.
 - ii. If case, any debar firms has submitted the bid, the same will be ignored. In case such firm is lowest (L-1), next lowest firm shall be considered as L-1. Bid security submitted by such debarred firms shall be returned to them.
 - iii. Contracts concluded before the issue of the debarment order shall, not be affected by the debarment Orders.
 - iv. The Debarment shall be automatically extended to all its allied firms. In case of joint venture/ consortium is debarred all partners will also stand debarred for the period specified in Debarment Order. The names of partners should be clearly specified in the “Debarment Order”.
 - v. Debarment in any manner does not impact any other contractual or other legal rights of the procuring entities.
 - vi. The period of debarment shall start from the date of issue of debarment order.
 - vii. The Order of debarment will indicate the reason(s) in brief that lead to debarment of the firm.
 - viii. Ordinarily, the period of debarment should not be less than six months.
 - ix. In case of shortage of suppliers in a particular group, such debarments may also hurt the interest of procuring entities. In such cases, endeavour should be to pragmatically analyze the circumstances, try to reform the supplier and may get a written commitment from the supplier that its performance will improve.
 - x. All Ministries/ Departments must align their existing Debarment Guidelines in conformity with these Guidelines. Further, bidding documents must also be suitably amended, if required.

7.6 Project Management

7.6.A Poor management of public funded projects costs the nation in terms of the following, be it in the owner organization or in construction firms contracted to build a project:

- i) Additional expenditure burden due to increased costs, crowding out more deserving schemes and projects
- ii) Affect viability of projects due to increase in construction, causing losses to CPSE or agency concerned
- iii) Economic burden, due to delayed return in investments
- iv) Imposes unnecessary economic burden on affected stakeholders
- v) Creates a culture of acceptance of delay and avoidable costs – breeding more cases

vi) Increased costs of procurement due to monetization of higher risks, perceived by contractors, of delays and scope creep associated with public funded projects.

7.6.B Given the importance of project management in the final outcomes of projects, owner organizations which plan, fund and implement projects as well as construction firms contracted to build and/or manage projects need to adopt and institutionalize project management standards in their processes. A number of International Project Management Standards have been evolved by Governments as well as International bodies to assist organizations minimize cost and time overruns. While there are a variety of frameworks such as ISO-21500, PMBOK, PRINCE2, LOGFRAME, etc., most of them have a lot in common and have the following elements that need to be taken into account for effective management of projects. Some of these standards may be adopted by Government to improve processes and train project staff.

7.6.C The quality of project works significantly depends on supervision and monitoring. For completion of the projects within the stipulated time and cost and with specified quality standards, periodical review should be done by various levels of the officers.

7.6.D Information Technology (IT) enabled project management systems can help in improving efficiency, transparency and aid faster decision making in execution of projects. These systems may be used for maintenance of records for the progress of work (including hindrance register), variations, etc., wherein reasons for delays are also to be captured on real time basis. Such systems may be used for capturing progress and quality of work, site records/ photographs/ videos etc. including geo tagging.

7.6.E Wherever applicable, the role of the Project Management Consultant (PMC) should be clearly defined in the contracts. Deployment of the PMC does not absolve the project executing authority of the responsibility to supervise the quality and timelines of the project.

7.6.F The credentials and deployment schedule of key and other technical personnel to be engaged by PMC on the work should be taken along with the bid. During execution, adherence to deployment of key and other technical personnel as per the schedule of deployment should be ensured.

7.6.G Execution of the work shall primarily be the responsibility of the officials designed with such responsibility. However, for large contracts senior officers shall also review the progress and quality of the work at various stages of construction. To this effect, presentations on the project performance may be made periodically before the senior officers depending upon the value of the project and progress of the project vis-à-vis schedule. Project executing authorities should put in place detailed instructions in this regard.

Note: In para 7.6.G instructions containing “shall” are mandatory; any deviation from these instructions shall require relaxation from Ministry of Finance (for Ministries/ Departments etc.) or from the Board of Directors (for Central Public Sector Enterprises).

7.6.H Project executing authorities should put in place a system for capturing the photographs and videos of important and critical activities of construction. This may be implemented in projects above a threshold value or, if possible, in all projects. Such photos/ videos may be uploaded in IT based project monitoring system to facilitate monitoring the progress and quality of work as well as assessment of delay in execution of work by stakeholders and senior management. Apart from this photographs and videos may serve as permanent record of the project for posterity in case needed for any eventuality including litigation or enquiry/ investigation.

7.6.1 It may also be useful to stipulate organizational standards and/or certifications for project managers/staff, in complex projects, as tender conditions to minimize risk of cost and time overruns:

7.6.1 **Organisational Standards: ISOs 21500:2012**⁵³

Guidance on Project Management is an international standard developed by the International Organization for Standardization, or ISO starting in 2007 and released in 2012. It was intended to provide generic guidance, explain core principles and what constitutes good practice in project management. ISO 21500 was developed to offer guidance on the concepts and processes of project management with the goal of implementing processes and best practices to improve project management performance. While, the standard describes important concepts and processes of project management it does not provide detailed guidance and general management topics are limited to relevant aspects of project management. The standard as developed by the ISO was modelled on the PMIs PMBOK, although there are some key differences. The ISO project management standard is only 47 pages long and is limited to the introduction of the processes, their inputs, and their outputs. Another major change is the introduction of a new subject by ISO, namely, “stakeholder management”. The ISO 21500 can be used as a basis for the development of national standards. It is not intended for certification or regulatory purposes.

7.6.2 **Organisational Standards: IS 15188:2009**

The Indian Standard, on *Construction Project Management*, covers general guidelines for construction project management. The scope of this standard covers the stages subsequent to the stage of approval (when a decision to implement the project including its financing is taken) till commissioning and handing over of the project. The standard explains that the distinct features of a construction project include the temporary nature of the organizations involved, the evolutionary process of project deliverables during project development stages and the unique output of the built facility. This standard is intended to provide a general overview of construction project management and information regarding the applicable tools and techniques. It covers general provisions about project, stakeholder, construction project life cycle, construction project delivery models, construction methodologies/techniques and organizational structures. It covers the construction project management stages such as pre construction, construction and commissioning and handling over and gives guidelines under these stages and their sub-stages for management of construction projects. It gives brief guidelines on the following construction project management functions:

- i) Scope management,
- ii) Procurement management,
- iii) Time management,
- iv) Cost management,
- v) Quality management,
- vi) Risk management,
- vii) Communication management,
- viii) Human resources management,
- ix) Health, safety and environment management,
- x) Integration management, and
- xi) Sustainability management.

⁵³ <https://www.iso.org/standard/50003.html>

9 out of 12 parts (except the ones in italics) of the above standard have been issued.

7.6.3 **Project Staff certification**

Project Management Institute (PMI-USA) has developed certification standards for project managers and executives in a variety of areas such as general project management, risk management, scheduling, etc. The PMI Project Management Book of Knowledge (PMBOK) describes processes, inputs, outputs and associated tools and techniques. Both organizations use the concept of process as an integral part of project management. A large number of project firms have adopted this standard for improving competence of their manpower. ISO and PMI segregate project processes into five process groups with some minor variances in labelling. The differences between the two standards are minimal with respect to process groups and subjects/knowledge areas. The substantive difference in the two standards is with the detail and description of tools and techniques, because ISO 21500:2012 do not provide it. The 47 project management processes identified in the *PMBOK® Guide* are further grouped into ten separate Knowledge Areas. Knowledge Area represents a complete set of concepts, terms, and activities that make up a professional field, project management field, or area of specialization. These ten Knowledge Areas are used on most projects most of the time. Project teams should utilize these ten Knowledge Areas and other Knowledge Areas, as appropriate, for their specific project. The Knowledge Areas are:

- i) Project Integration Management
- ii) Project Scope Management
- iii) Project Time Management
- iv) Project Cost Management
- v) Project Quality Management
- vi) Project Human Resource Management
- vii) Project Communications Management
- viii) Project Risk Management
- ix) Project Procurement Management
- x) Project Stakeholder Management

PMBOK – 10 Knowledge Areas

Knowledge Areas	Project Management Process Groups				
	Initiating Process Group	Planning Process Group	Executing Process Group	Monitoring and Controlling Process Group	Closing Process Group
4. Project Integration Management	4.1 Develop Project Charter	4.2 Develop Project Management Plan	4.3 Direct and Manage Project Work	4.4 Monitor and Control Project Work 4.5 Perform Integrated Change Control	4.6 Close Project or Phase
5. Project Scope Management		5.1 Plan Scope Management 5.2 Collect Requirements 5.3 Define Scope 5.4 Create WBS		5.5 Validate Scope 5.6 Control Scope	
6. Project Time Management		6.1 Plan Schedule Management 6.2 Define Activities 6.3 Sequence Activities 6.4 Estimate Activity Resources 6.5 Estimate Activity Durations 6.6 Develop Schedule		6.7 Control Schedule	
7. Project Cost Management		7.1 Plan Cost Management 7.2 Estimate Costs 7.3 Determine Budget		7.4 Control Costs	
8. Project Quality Management		8.1 Plan Quality Management	8.2 Perform Quality Assurance	8.3 Control Quality	
9. Project Human Resource Management		9.1 Plan Human Resource Management	9.2 Acquire Project Team 9.3 Develop Project Team 9.4 Manage Project Team		
10. Project Communications Management		10.1 Plan Communications Management	10.2 Manage Communications	10.3 Control Communications	
11. Project Risk Management		11.1 Plan Risk Management 11.2 Identify Risks 11.3 Perform Qualitative Risk Analysis 11.4 Perform Quantitative Risk Analysis 11.5 Plan Risk Responses		11.6 Control Risks	
12. Project Procurement Management		12.1 Plan Procurement Management	12.2 Conduct Procurements	12.3 Control Procurements	12.4 Close Procurements
13. Project Stakeholder Management	13.1 Identify Stakeholders	13.2 Plan Stakeholder Management	13.3 Manage Stakeholder Engagement	13.4 Control Stakeholder Engagement	

7.6.4 Capacity of Contractors

Contractors involved in construction or development of large projects for the Government needs to have tremendous capacity to deliver projects on time and cost. Firms are often unable to deliver contracts on time in cases where conditions precedent is met by the Government agency. There are several other reasons for project delays or escalation of costs:

- i) Poor Governance within the firm
- ii) Financial mismanagement
- iii) Incompetent project leadership
- iv) Lack of competence in the project team
- v) Inability to use technology for project management.
- vi) Poor process management and standardisation

Financial management by the contractor is an equally critical factor. Mobilising finances and resources for several large projects on which the firm is working on poses significant managerial challenge. Hence, ensuring that the eligibility criteria in fixing the minimum turnover, net worth, profits and bidding capacity in relation the project size (simultaneous exposure in other large projects) becomes a sine qua non for successful execution of projects. There is need to ensure that contracting firms adopt appropriate management standards. Adoption of ISO 21500:2012 could be specified in the RFQ conditions when inviting tenders. Third party assessment of the capabilities listed in this standard could be called for.

Contracting firms involved project construction need qualified, trained personnel and managers to plan and construct projects in time, cost and quality. It is important to ensure that contractor organisations have qualified/ certified project management professionals at the time of commencement of works on awarded contracts. Certifications such as PMI-PMP/PRINCE2-practitioner/CPMP etc., besides experience, may be specified in the contract conditions for the key staff of the field project organisation of the contractor.

7.6.5 Capacity of Government Organisations

- i) Selecting and appointing a full-time competent and experienced *Project Director/Mission Director* to head the project, especially large projects, on part of the public organisation is a crucial decision. Public agencies need to appoint a Project Director in time to prevent drift and cost/time overruns. This must be the first decision in commencement of projects.
- ii) *Recruiting and staffing the public sector organisation* with experienced and reliable heads of finance, technical, legal, HR & PR wings will ensure effective decision making on project options, resolving project hurdles, supervision of the Project Consultants, completing procurement processes and awarding contracts on time, launching construction/implementation, monitoring construction, contract and claims management, monitoring quality, cost control, managing stakeholders, etc., are crucial activities that only the owner organisation would care about.
- iii) The *quality, experience and competence of the Project Design and Management Consultant selected to prepare the Detailed Project Report (DPR)* is a key decision. Experience and performance of the PMC in past projects are vital in determining optimal decision making in project design. Time spent in site and market investigation, exploring and evaluating technology options, finance and implementation options, evaluating procurement options, etc., would save a lot of costs and time later. Involvement of the project organisation in the DPR preparation is a key factor in project success. Dilution of eligibility criteria in selection of consultants could save money in the short run, but end up very expensive in the long run, especially in large projects.
- iv) Delay in land acquisition and securing all statutory clearances for the projects are critical conditions precedent for start of any project. *As a principle, no project contracts may be awarded without possession of at least 90% of the entire land and the obtaining statutory clearances/NOCs for project construction and operation.*
- v) *Weekly Project Management meetings* of owner organisation with the PMC/IE and contractors are key factors in ensuring effective communications, timely detection of critical issues and their resolution. This will also enable detection and removal of hurdles, prevention of disputes or at least satisfactory resolution of disputes within the ambit of the contract.
- vi) The Project Management team in the Government agency has to regularly and independently track the status of the projects; identify bottlenecks and risks that may

impact project delivery. Developing a *risk management strategy* enables identification of risks associated with the projects enabling timely decision making by the relevant authorities. A risk management group may need to be setup to periodically assess risks and review mitigation measures undertaken.

- vii) **Delay in taking timely decisions** : Delay in decision making by the officials of the project executing authority on various changes in the project scheme arising out of emerging situations during execution of the work is also one of the contributors to the delay in completion of projects. Sometimes timely decisions on these changes are so crucial that the next step could only be taken after addressing the change. Delay in decisions by the project executing authority can also lead to litigation due to inadequate utilisation/idling of resources of the contractor. There is frequently a feeling among officials that indecision is safe while a decision may lead to adverse consequences for the decision maker. Therefore, there is a need for project executing authorities to put in place a system of resolution of the issues coupled with timelines for various levels to take decisions.

Project executing authorities may review the flow chart of decision making and remove redundancies for faster decision making. They may also fix timelines for taking decisions on variations, extra items and changes in scope and specifications, etc to avoid delay and litigation arising out of delayed decisions.

7.6.6 Structuring contracts for timely completion

- i) *Optimal sharing of risks* has been a balanced way of ensuring that the time and costs of completion of a project do not go way off the mark. Structuring contract clauses keeping in mind the principle of '*responsibility for each risk shall be with the party best equipped to handle it*' has enabled contracts to lead to lower risk perception by bidders and as a result offer better prices. Contract clauses need to be further screened using this principle.
- ii) *Scope & Design creep* are widely stated causes for project delays. Changes in scope or design midway or at start cause time and cost variations. It may be therefore essential to consider options thoroughly and spend time on designs exhaustively at the time of DPR preparation and before procurement.
- iii) *Timely release of payments* to contractors raises the confidence level of contractors to mobilise more resources for early completion. DMRC's practice of releasing 80% of the Interim Payment Certificates (Bills) within 14 days of claim by contractor and the rest within 28 days of certification by the Engineer. Building these payment clauses into contracts raises contractor confidence, reduces project risk perception and enables better prices.
- iv) Embedding a *fair price variation clause* in contracts that mimics the market forces of escalation/reduction would lower risks to contractors and to the public organisation as well. PV clauses would vary from contract to contract, depending the structure of materials and costs.
- v) *Dispute Resolution Board (DRB)* may be created by express consent of the procuring entity and the contractor to monitor the project execution at various stages of completion. This is a conciliation forum to resolve disputes amicably. The primary function of DRBs is to monitor the progress of the project with respect to contract requirements. In case of any non-compliance with respect to the contract, the Board

immediately interferes and suggests ways to resolve the dispute. DRB mechanism may be embedded in contracts.

- vi) *Encourage institutional arbitration*: Settlement of disputes through Institutional arbitration is better than ad-hoc arbitration. Institutional arbitration provides an established format with a proven record ensures impartial decision-making and adherence to pre-established rules and procedures.

7.6.7 **Aligning the Interest of The Stakeholders**

- i) The incentive structure for all the key stakeholders of public procurement ought to be such that the system itself will ensure timely delivery of the projects / works in a qualitative manner within approved cost. A balanced framework and work culture, where risk and rewards are properly shared amongst stakeholders and timely completion of quality projects is the common goal, can be the bedrock of efficient project management. An incentive structure, which may include pecuniary as well as non-pecuniary aspects (Including public recognition), linked with measurable parameters of outcome / output, can help align the interests of stakeholders. An ethics based regime, where integrity of all the stakeholders is nurtured, can help increase efficiency in all aspects of project management.
- ii) Public authorities may devise strategies to provide incentives to contractors /concessionaires/ consultants/ architects/ other stakeholders by various means, including bonus, better rating and recognition for early/ timely / quality completion of the projects. Similar strategies may be devised for recognition of engineers/ officers/ other team members for early / timely and quality completion of the projects. The practice of mentioning the names of the contractor and the project in charge publicly at work sites may be implemented. Such recognition may be in a form which has long shelf life so as to associate the contractor and project In-charge with the life of the project.
- iii) “Coming together is a beginning; keeping together is progress; working together is success”. It is an accepted fact that the success of any project is dependent on a well-coordinated team working towards a common goal. For successful execution of any project within specified time, cost and quality, the interest of all the stakeholders need to be aligned. Coordinated efforts of all stakeholders such as contractors, consultants, public authority and project executing authority and public representatives will bring about the best possible outcome.

ANNEXURE

Hierarchy Level	Annexure 1: Procurement Guidelines (Refer Para 1.1)
I – Statutory Framework	The Constitution of India
	Indian Contract Act, 1872; Sale of Goods Act, 1930 and other Mercantile Laws
	Other Laws relevant to Public Procurement (e.g. Right To Information Act, 2005; The Micro, Small and Medium Enterprises Development Act, 2006; Prevention of Corruption Act, 1988 etc)
II – Rules and Regulations	General Financial Rules, 2017
	Delegation of Financial Power Rules
	Any other financial, vigilance (e.g. CVC Guidelines), security, safety, counter- trade and other regulatory aspects; orders and guidelines of the Government on the subject of Public Procurement
III –Ministry of Finance’s Manuals	Ministry of Finance’s Manual for the Procurement of Good/ Works and Consultancy Services (including non-consultancy services)
IV – Procuring Entities’ Codes/ Manuals and Standard Bidding Documents	More Comprehensive and detailed Codes and Manuals for Public Procurement for various categories issued by ‘Procuring Entities’ for their own use
	Standard Bidding Documents for Procurement of Goods/ Works/ Consultancy Services etc.

Remarks: The documents at Hierarchy Levels I and II above are of fundamental and generic nature. Documents at lower levels of hierarchy must conform to the Documents higher up in hierarchy. Relationships of Bidders/ Suppliers/ contractors/ service providers with procuring entities are solely governed by the law of the land and the relevant bid/ contract/ enlistment document(s). Other documents at hierarchy levels II and III mentioned above shall have no locus standi in such relationships.

Annexure 2: Bid Opening Attendance Sheet cum Report

(Refer Para 4.10 (iv))

[Name of Procuring Entity]

Bid (Techno-commercial/ Financial) Opening Attendance Sheet cum Report

Attendance Record						
Sr No	Bidder's Name	Bidder's Address	Bidder's Authorisation and Date	Represented by	Contact No.	Signature of Representative

Bid Opening Report						
Tender No			Title			Date of Opening
Offer No.	Bidder's Name	Bidder's Ref and Date	Submission of Requisite EMD (Y/ N)	Submission of other Mandatory Documents (Y/ N)	Rate Quoted and Taxes/ Duties	Signature of Representative
--/ ---						
--/ --						
--/ --						

Total no. of regular tenders taken out from the tender box to be opened as mentioned above..... (in figures and in words)

Signature, Date and Time Name and Designation of Tender Opening Officer	Signature, Signature, Date and Time Name and Designation of Tender Opening Officer
--	---

Received total regular tenders..... (In figures/ words) as above

Signature, Date and Time Name and Designation of Procuring Entity Officer	Signature, Signature, Date and Time Name and Designation of Procuring Entity Officer
--	---

Annexure 3: Tender Committee Minutes Format
(For Techno-Commercial/ Financial Bids)
(Refer Para 5.5.1 (v) and 5.6.11)

Organisation: _____					
Minutes of Tender Committee Meeting (Techno-commercial/ Financial Bids)					
Section I: Top Sheet					
File No:		Date:			
Description		Estimated Cost:-			
Tender Published In		Date of Publication			
Bid Validity		Bid Opening Date			
Past Procurements					
Sr. No.	Supplier	Order Reference & Date	Quantity	Basic Rate (Rs.)	Remarks
Members of the Tender Committee					
Sr. No.	Name	Designation	Sr. No.	Name	Designation
1			2		
3			4		
Section II: Salient Feature of the Tender					
Review background of indent; technical and financial approvals; estimated cost; budgetary provisions; urgency of requirement; special technical requirements and other connected procurements which are part of same package/ project					
Review mode of bidding; bidding document contents; bid publication; level of competition obtained; issues if any noticed during bid-opening (bids not opened due to lack/ unsatisfactory EMD, etc.) and any other procurement of this requirement in process (at various stages)					
Review special conditions, restriction if any, on participation of bidders; purchase preferences, requirements prescribed in bid documents (EMD, document submission, etc.)					
Section III: Preliminary Evaluation					
Review handling of any complaints received					
Review/ confirmation of quantity and period of delivery required					
Discuss preliminary evaluation for determining substantially responsive bids and for minor corrections and clarifications					
Section III: Evaluation of Responsive Bids					
Bid-wise deliberation should be recorded					

Annexures

In case of evaluation of Financial Bids			
<ul style="list-style-type: none"> i). Start with review of techno-commercial evaluation ii). Insert a summary table of evaluated price in the order of L1, L2, etc. iii). Deliberations should be in the sequence of L1, L2, etc. 			
Section IV: Summary of Recommendations			
Bid-wise recommendation should be recorded			
In case of evaluation of financial bids,			
<ul style="list-style-type: none"> i) Give a summary of recommended bids, award value, bid expiry date and special conditions, if <p>Also mention that the rates recommended are considered reasonable (and basis for such determination).</p> <p>Total value of the recommendations for determining level of acceptance authority. Mention that none of the TC members have any conflict of interest with the parties recommended for award.</p> <p>Request acceptance of recommendations by competent authority and that it's within his powers of acceptance as per SoPP/ DFPR.</p>			
Signature Name and Designation of the Members			
1		2	
	Date:		Date:
	(Name & Designation)		(Name & Designation)
3		4	
	Date:		Date:
	(Name & Designation)		(Name & Designation)
Remarks by the Accepting Authority:			

Signature: _____ Date: _____			
Name & Designation of Accepting Authority _____			

Annexure 4: Invitation and Declaration for Negotiations

(Refer Para 5.6.6 (iv) (c))

Invitation for Negotiations

(On letterhead of the procuring entity)

No: _____ Dt: _____

To M/ s _____ **Registered A/ D**

Sub: **Tender No ----- opened on -----for the supply of -----**

Dear Sir,

The rates quoted in your tender are considered high. You are therefore, requested to come for negotiations of rates, on..... (date) at..... (time) at..... (venue).

You should, however, come for negotiations only in case you are prepared to furnish before such date the declaration appended herewith.

A copy of the form in which you may submit your revised offer after negotiations is enclosed.

Yours faithfully,

Enclosure:

(Authorised Officer)

(1) Form of Declaration

(2) Form of Revised Offer

FORM OF DECLARATION

(To be signed and submitted before start of negotiations)

(On company letterhead)

No: _____ Dt: _____

To _____

Sub: **Tender No ----- Opened on -----for the supply of -----**

Ref: Your invitation for negotiations No: dated:

Dear Sir,

I _____ duly authorised on behalf of M/ s. _____ do declare that in the event of failure of the contemplated negotiations relating to Tender No. _____ opened on _____ my original tender shall remain open for acceptance on its original terms and conditions.

Yours faithfully,

Place: _____

Date: _____

Signatures of bidder, or officer
authorised to sign the bid documents
on behalf of the bidder

Annexure 5: Format of Revised Offer in Negotiations

(Refer Para 5.6.6(iv) (d))

Revised Offer in Negotiations

(On company letterhead)

From.....

Full address.....

To

Sir,

Sub: **Tender No ----- opened on -----for the supply of -----**

Ref: Your invitation for negotiations no: dated:

1. On further discussions with your representatives onin
response to your letter no dated

We are not prepared to reduce the rates already quoted in the original tender, which
will remain valid up to.....

Or

1. I/ we reduce my/ our rates as shown in the enclosed schedule of items.

2. I/ we am/ are aware that the provisions of the original bidding document
remain valid and binding on me.

3. I/ we undertake to execute the contract as per following Schedule.....

4. I/ we agree to abide by this tender on the revised rate quoted by me/ us, it is open
for acceptance for a period of 120/ 180 days from this date, *i. e.*, up to
..... and in default of my/ our doing so, I/ we will forfeit the earnest money
deposited with the original tender/ attached herewith. Eligibility as valid tenderers shall be
deemed to be the consideration for the said forfeiture.

Yours faithfully,

Signatures of bidder or
Officer authorised to sign the bid
documents on behalf of the bidder

Annexure 6: Letter (Notification) of Award (LOA) of Contract

(Refer Para 5.7.1)

Name of the procuring
entity _____

Letter of Award of Contract

Confidential

Contract No: [Insert date]

Contract Title:

To,

M/ s. [Insert name & address]

Sub: Award of contract for contract no: [insert contract number] and contract title: [insert contract title]

Reference: Your offer no. [insert offer number] against our tender no. [insert tender no] opened on [insert date of opening of tender]

Dear Sir/ Madam

I am directed to inform you that after evaluating the bid documents submitted by you on [enter date] Government of India is pleased to inform you that you have been selected as the successful bidder for the supply of [enter description]. The total purchase price shall be [enter amount] as indicated in your financial bid submitted on [enter date], in accordance with the procedures intimated in the relevant bid documents.

You/ your authorised representative(s) are requested to be personally present at [insert address] for the signing of the contract by [enter date].

In this respect, we also request you to submit the performance security of [insert amount of Rupees in words] by [insert date]. Security deposit being 10 (ten) percent of the total cost = Rs. _____.

Please apply for refund of EMD deposited over and above the SD of if any.

You are requested to execute necessary agreement within seven days from the date of issue of this letter in the enclosed agreement form. Special adhesive stamp of Rs.10 (ten) and revenue stamp of Re. one shall be affixed on the enclosed agreement form. Treasury receipts of EMD and SD shall be deposited in office within the stipulated time limit as above.

This notification concludes the legally binding contract between you and the Government of India, till issue of a formal contract.

Yours truly,

[Authorised Officer]

Enclosure: Agreement Form along with the schedule of delivery

Annexure 7: No Claim Certificate

(Refer Para 6.6.1)

(On company letterhead)

To,

(Contract Executing Officer)

Procuring Entity _____

NO CLAIM CERTIFICATE

Sub: **Contract Agreement no. ----- dated -----for the supply of -----**

We have received the sum of Rs. (Rupees
_____ only) in full and final settlement of all the
payments due to us for the supply of _____

under the above mentioned contract agreement, between us and Government of India. We hereby unconditionally, and without any reservation whatsoever, certify that with this payment, we shall have no claim whatsoever, of any description, on any account, against Procuring Entity, against aforesaid contract agreement executed by us. We further declare unequivocally, that with this payment, we have received all the amounts payable to us, and have no dispute of any description whatsoever, regarding the amounts worked out as payable to us and received by us, and that we shall continue to be bound by the terms and conditions of the contract agreement, as regards performance of the contract.

Yours faithfully,

Signatures of contractor or

Officer authorised to sign the contract documents

on behalf of the contractor

(Company stamp)

Date: _____

Place: _____

Annexure 8: A Sample MOU

(Refer Para 3.1.4 (iv); The sample is for illustrative purpose only and procuring entity may change the format suiting to their requirement. If felt necessary, procuring entity may also get the MOU document vetted from the Ministry of Law/ or procuring entity's legal cell)

MEMORANDUM OF UNDERSTANDING⁵⁴

between

[Name of Procuring Entity]

and

[Name of Project Management Consultant PWO/ PSU]

for

Construction of *[Name of Work(s)]* at *[Name of Location(s) of Work]*

This, Memorandum of Understanding (hereinafter called "MoU") signed between *[Name of Procuring Entity]* (hereinafter called "Procuring Entity") represented by its Chief Engineer of one part,

And

[Name of Project Management Consultant PWO/ PSU] (hereinafter called "Project Management Consultant") represented by its Chief Engineer on other part.

'Procuring Entity' and 'Project Management Consultant' are also referred to individually as 'Party' and collectively as 'Parties' wherever the context so requires

Whereas 'Project Management Consultant' have agreed to undertake the work of Construction of abovementioned Work(s) at abovementioned location(s) for 'Procuring Entity' as a 'Deposit Work' on Project Management Consultant (PMC) basis.

Now, therefore it is agreed between the Parties that:

A) Assigning of Work by 'Procuring Entity' to 'Project Management Consultant'.

1. *{In case of MoU of collection of works or of framework nature 'Procuring Entity' will assign a work to the 'Project Management Consultant' through a letter after due approval of the competent authority. A work specific MoU would be signed along with approval of Preliminary Estimates.}* 'Procuring Entity' will provide all relevant available documents related to Land, Site Details, functional and space requirements (or Various Facilities, Special Requirements/ Features and Broad Specifications for specialised Equipments and Plants), Layout Plans etc for facilitating Project

⁵⁴ The present sample is based on MoU with PWO. Work to PSUs is to be assigned on the basis of competitive bidding amongst them and the MoU in such cases would be based on the provisions in the bidding documents. This MoU would normally be for a specific standalone work, but could also be for a Project consisting of a collection of related works. In case of MoU with Public work Organisations (PWOs) it could also be as a long-term framework MoU. In case of MoU of collection of works or of framework nature, extra provisions are shown in italics within *{brackets}*, which can be omitted in standalone MoUs

Execution by 'Project Management Consultant' along with A & E Consultants

2. 'Project Management Consultant' shall appoint, if any, competent Architectural and Engineering (A & E) Consultant commensurate with size and nature of the work after following due process.

(B) Approval of Preliminary Project Report (PPR) & Detailed Project Report (DPR)/ Preliminary Estimate (PE)

3. Preliminary Project Report (PPR) shall be prepared by 'Project Management Consultant' based on functional & space requirements as intimated by 'Procuring Entity' and submitted to 'Procuring Entity' for its approval. *{It would be a joint endeavour on part of both 'Procuring Entity' and 'Project Management Consultant' in consultation with consultants & experts to develop Standard Plans & Specifications for Works & Services including Furniture, Equipments, Plants etc. pertaining to various categories of Works etc.}*⁵⁵
4. Based on approved PPR, 'Project Management Consultant' shall prepare Detailed Project Report (DPR)/ Preliminary Estimate (PE) consistent with their norms & standards, containing Milestones and commensurate activities to be accomplished against each Milestone & Baseline Programme in the form of CPM Network depicting clearly Dates of Start and Completion of the work *{along with Work specific draft MoU}*⁵⁵ and submit it to 'Procuring Entity' along with all relevant input information, documents and Drawings etc. for approval of 'Procuring Entity', within 8 (eight) weeks of receipt of approval for PPR. 'Project Management Consultant' shall use C.P.W.D. Analysis of Rates⁵⁶ for Delhi (DSR) for framing the DPR/ PE. Non - DSR Items shall be incorporated in the Detailed Estimates only when these are not either readily available in DSR. Detailed reasons and justifications for including Non-DSR Items shall have to be furnished by 'Project Management Consultant'. ' Procuring Entity' shall accord approval to DPR/ PE *{and Work specific Draft MOU}*⁵⁵ containing Milestones and commensurate activities to be accomplished against each Milestone & Baseline Programme in the form of CPM Network and issue Administrative Approval (A/A) & Expenditure Sanction (E/S) in about 8 (eight) weeks of its submission by 'Project Management Consultant'.
5. On receipt of the A/A and E/S, the 'Project Management Consultant' shall prepare and accord Technical Sanction (TS) to detailed and coordinated design of all the Architectural, Civil, Electrical, Mechanical, Horticulture and any other services included in the scope of the sanction and of the Detailed Cost Estimates containing the detailed specifications and quantities of various items prepared on the basis of the schedule of rates maintained by CPWD or other Public Works Organizations.

(C) Release of Funds, Payment of Bills

6. 'Project Management Consultant' has agreed to charge *[insert the Fee agreed]* for carrying out the assigned Deposit Work.
7. 'Procuring Entity' shall release Initial Deposit of 10% of the approved preliminary

⁵⁵ Applicable to framework MoUs or MoUs for collection of projects

⁵⁶ Replace by any other relevant Schedule of Rates for the concerned location/ project

*estimate amount to 'Project Management Consultant' within 2 (two) weeks of issuing A/A & E/S{and signing work specific MoU along with Milestones & Baseline Programme between Chief Engineers of 'Procuring Entity' & 'Project Management Consultant', whichever is later}*⁵⁵.

7.1 'Procuring Entity' shall release additional deposit up to 10 (ten) % of approved estimate amount to 'Project Management Consultant' within 2 (two) weeks of award of first major construction contract on the basis of specific request made by 'Project Management Consultant' in this regard along with proper reasons and justifications acceptable to 'Procuring Entity' for additional requirement of fund over and above already released initial deposit of 10 (ten) % of approved preliminary estimate amount in terms of Clause – 7 above.

8. After the Initial and Additional Deposit as per clause 7 and 7.1 above and subsequent release of Fund shall be in the form of recoupment of the expenditure made by 'Project Management Consultant' on the work as per monthly expenditure statements which shall be submitted in Monthly Expenditure Statement (MES) in a form similar to CPWD Form – 65 (Account of Deposit works). While submitting MES, and placing demand for release of fund in the form of recoupment of the monthly expenditure already incurred on the work, 'Project Management Consultant' will also submit a comprehensive report on progress of physical completion of various activities and Milestones vis-a-vis earlier planned activities/ Milestones for the overall completion of the specific work mutually decided between 'Procuring Entity' & 'Project Management Consultant' *{and included as part of work specific MOU}*⁵⁵ for enabling 'Procuring Entity' to keep effective check on utilization of fund as well as physical progress of the work.
9. The fund subsequent to Initial Deposits shall be released by 'Procuring Entity' to 'Project Management Consultant' within 4 (four) weeks of submission of request by 'Project Management Consultant' along with all documents as described in Clause - 8 above. As per the monitoring of physical and financial progress indicators, 'Procuring Entity' will take necessary steps for recoupment of the monthly expenditure incurred on the basis of the Fund Utilization Certificate.
10. If any fund requirement is specifically made by 'Project Management Consultant' after the work has been assigned to 'Project Management Consultant' for undertaking pre-construction activities related to the Project Execution etc., the same shall be released by 'Procuring Entity' within 2 (two) weeks of such specific demand provided the amount is within ceiling limit of Rs 25 (twenty-five) lakh. The amount so released to 'Project Management Consultant' shall be adjusted from, Initial Deposit amount.
11. 'Project Management Consultant' shall intimate 'Procuring Entity' about any excess expenditure likely to be incurred over and above the approved Projected Cost and also about possibility of time overruns, as soon as it comes to the knowledge along with reasons and justifications thereof for necessary approvals from 'Procuring Entity' before continuing/ incurring the extra/ additional expenditure.
12. The 'Project Management Consultant' shall be responsible for certifying and making payment of Bills of the Contractors/ Agencies engaged by them and make available Final Statement of Accounts in Standard Format to 'Procuring Entity' & also provide

copies of Final Bills for all Contract Packages and other expenditure incurred related to Project Construction after the Completion of the Work. In addition, should 'Procuring Entity' ask for any other details from 'Project Management Consultant' regarding Utilization of Fund at any stage, Detailed Estimates, Technical Sanctions, Award of Works, Running Bills etc., the same shall be provided by 'Project Management Consultant' readily.

13. The 'Procuring Entity' shall settle compensation/ levies, if so required to be paid based on recommendation by 'Project Management Consultant' related to the Project works, under Workmen's Compensation Act or any other Act or Law of the Central or the State Government.

(D) Execution of Work

14. The 'Project Management Consultant' shall obtain necessary Statutory Approvals/ Permission/ Clearances/ Certificates from the concerned Local Bodies & Statutory Authorities like District Authorities, Municipal Corporation, Panchayati Raj Institutions, Town Planning Board, Electricity Board/ Fire Department, State/ Central Pollution Control Boards, State/ Central Environmental Authorities, Forest and Wild-life authorities etc (for e.g. removal of trees, re-locating utilities; conversion of railway level crossings, laying of railway sidings needed by the work; rehabilitation and resettlement of persons affected by the work; traffic control; mining of earth and stone; interfering protected monuments; blasting permission, environmental/ forest/ wild-life clearances; and shifting of religious shrines etc) to start the work have been obtained. The 'Procuring Entity' shall be responsible for providing all assistance to 'Project Management Consultant' in this process.
15. Works shall not be awarded by 'Project Management Consultant' to contractors till all statutory approvals/ certificates/ permissions required for taking up the work, are in place.
16. 'Procuring Entity' shall make the work site available free from encumbrances to 'Project Management Consultant'. 'Procuring Entity' shall also ensure Availability of auxiliary services - like roads, power, water, solid & liquid waste disposal system, street lighting and other civic services. 'Project Management Consultant' shall provide necessary support in this process.
17. 'Project Management Consultant' shall permit 'Procuring Entity' to inspect or monitor the works, either itself or through Third party as and when it desires for assessing actual progress and quality of construction and any other aspects.
18. 'Procuring Entity' shall provide security clearance and ensure free access for 'Project Management Consultant' staff/ Employees and their workers working at Work site in case these are required. 'Project Management Consultant' shall provide necessary support in this process.
19. 'Project Management Consultant' shall ensure adequate availability of men & material by their contractors.
20. 'Project Management Consultant' shall ensure that it's Contractor(s) implement required Health, Safety & Environmental (HSE) practices at the Construction Sites and

they also comply with all statutory obligations related to workmen deployed at the Construction Site. 'Project Management Consultant' will act as Principal Employer in respect of all Statutory Obligations related to workmen deployed at the site in execution of the work.

21. 'Procuring Entity' shall permit and facilitate to the 'Project Management consultant' all utilities required for construction e.g. drawl of Ground Water, obtaining electricity connection, putting up Labour Camps/ Huts inside the available space for facilitating construction by contractors engaged by 'Project Management Consultant'. 'Project Management Consultant' shall provide necessary support in obtaining permission, if any, of Local Bodies in this regard. The cost in this regard borne by 'Procuring Entity', if any, should not be duplicated as reimbursement by the 'Project Management Consultant'.
22. As soon as the work is allocated, 'Project Management Consultant' shall prepare and submit to 'Procuring Entity' an Integrated Programme Chart for the execution of work showing clearly all activities from the start of work to completion with details of manpower and other input information required for the fulfilment of the timelines given therein. 'Project Management Consultant' will intimate 'Procuring Entity', Project Team, both on - site and off-site, starting from Chief Engineer to Junior Engineer associated with execution of the work. The Programme Chart should inter-alia include descriptive note explaining sequence of the various activities, CPM Network Milestones etc. This will form Base Line Programme and the subsequent progress of the work shall be reviewed with reference to this during periodic Progress Review Meeting preferably monthly. Any increase in time period from the Base Line Value shall be construed as Time Overrun
23. 'Project Management Consultant' shall be responsible for providing Physical Progress Reports to 'Procuring Entity' in the form of CPM (Critical Path Method) Network on monthly basis for reviewing of the progress of the work vis - a vis Base Line Programme and taking all necessary remedial actions, after taking into account 'Procuring Entity's observations made in respect of quality and progress of .the work during the monthly/ periodic Project Review Meetings. To ensure timely completion of work as per mutually agreed time-schedule/ milestones and within agreed Cost.
24. 'Project Management Consultant' shall also be responsible for providing to 'Procuring Entity' Financial Progress Reports of the project and up to date Expenditure incurred on the work on monthly basis along with Certificate of Utilization of Fund against Fund earlier released to 'Project Management Consultant' by 'Procuring Entity'.
25. 'Project Management Consultant' shall be responsible for total Project Management including day-to-day supervision of works, maintenance of all project records and executing the works as per prescribed guidelines, their own Works Manual, Codes, Books of Specifications etc and also in accordance with relevant and extant provisions of General Financial Rules (GFR), 2017.

(E) Project Management, Cost and Time Control

26. 'Project Management Consultant' shall implement a system of 'Project Team Concept' with dedicated group of Engineers under single and unified command for

implementation of projects from concept to completion and call composite tenders to reduce the number of packages for better management. 'Project Management Consultant' shall be obliged to adopt all the above said measures to successful completion of the works within Approved Cost and agreed Time period.

27. 'Project Management Consultant' shall be responsible for managing the Project from concept to commissioning effectively and efficiently to ensure desired/ proportionate pace of progress and completion of work is achieved progressively vis-à-vis approved Plans & Specifications and in Terms and Conditions of the MOUs and mutually agreed milestones and timelines and approved cost, taking with due diligence all required proactive remedial measures including provision of stringent and elaborate enforceable Clauses to this effect and also making time as the essence of contract in the Bid and Contract Documents. 'Project Management Consultant' shall provide for clauses in the contract and established procedure to recover liquidated damages from their contractors/ agencies. The liquidated damages recovered from the contractors for delay, if any, shall be credited to 'Procuring Entity' in the project accounts.
28. The approved Initial Project Cost & Timeline should not exceed during execution of the Project except for reasons like increase in cost index during construction period, revised specifications or extra work over approved estimate carried out at the request of 'Procuring Entity' etc. In case of either increase in earlier approved cost or timeline, detailed reasons and justifications, based on verifiable facts and figures, shall have to be provided by 'Project Management Consultant' along with comprehensive proposals for revision in earlier approved Project Cost & Timeline, which shall be intensively examined by 'Procuring Entity' in consultation with 'Project Management Consultant' before approval is accorded to their proposals. No additional expenditure over and above the earlier approved Project Cost shall be incurred by 'Project Management Consultant' without prior approval of 'Procuring Entity'. Upward Revisions in either Cost or Timeline should be an exception rather than a rule and for achieving this objective, all required efforts shall be made by 'Project Management Consultant'
29. At any time, it appears to 'Procuring Entity' that the actual progress of the work does not conform to the approved programme referred above and intimated to 'Project Management Consultant' by 'Procuring Entity', detailed reasons and justifications for such delays shall have to be provided by 'Project Management Consultant', which shall be examined by 'Procuring Entity' to re-Schedule the Programme, if any. Progress Review Meetings preferably monthly shall be held between 'Project Management Consultant' and 'Procuring Entity' for reviewing the progress of works based on Baseline Programme/ Milestones etc. and also for resolving co-ordination issues, if any including fixing priority of some works, facilities and services for their early completion and handing over to 'Procuring Entity' for putting item to use for intended purpose. A&E Consultants may also participate. 'Project Management Consultant' will also designate a nodal officer in respect of specific work for coordinating with 'Procuring Entity' and A & E Consultant. Such designated nodal officer shall be suitably empowered and authorized to take decisions in work related issues so that delays are minimized for achieving timely completion of work.

(F) Disputes, Enquiries and Queries

30. 'Project Management Consultant' shall be responsible for observing due diligence and

adopting all possible measures at various stages of work execution so as to avoid Arbitration/ Litigation end other hindrances and the work is completed within optimum cost and time in hassle free environment

31. 'Project Management Consultant' shall be responsible for defending all Arbitration and Court Cases arising out of execution till the works end examining the Arbitration Award/ Decree of Court or Law/ liability by appropriate authority in 'Project Management Consultant' and forwarding the same along with a comprehensive report on the circumstance leading to the Arbitration/ Court Cases and the reasons and justification as to why an appeal against such awards/ decree was not considered necessary briefing out inter-alia details of the award and clear cut recommendations The decision of the competent authority in 'Project Management Consultant' to accept The award or challenge the same in a Court of Law will be binding on the 'Procuring Entity'.
32. 'Procuring Entity' shall settle and pay the final claims which may be decreed by a Court of Law, Tribunal or by award of an Arbitration in relation-to the-deposit work, based on recommendations of 'Project Management Consultant'.
33. 'Project Management Consultant' shall be responsible for redressing and complying with the observations of CTE/ CVC, Auditors, Statutory Authorities, Local Bodies, Municipal Corporation etc. pertaining to the work under intimation to 'Procuring Entity'. Providing all work related information promptly to 'Procuring Entity' for replying to Parliament Questions, queries from various Constitutional & Statutory Authorities.

(G) Completion and Handing-over of Completed Work and Facilities

34. 'Project Management Consultant' shall obtaining work Completion/ Occupancy Certificates & Clearances for completed Work and Facilities before handing over the same to 'Procuring Entity' for putting them to functional use. 'Procuring Entity' shall provide all assistance in this process.
35. 'Project Management Consultant' shall hand over to 'Procuring Entity' or its Authorized Representative completed Work including all Services and Facilities constructed in accordance with the Approved Plans, Specifications fulfilling all techno-functional requirements agreed with 'Procuring Entity' along with Inventory, As built - Drawings, Maintenance Manual/ Standard Operating Procedure (SOP) for Equipments and Plants, all clearances /Certificates from Statutory Authorities, Local Bodies etc.
36. On completion of the work, a Project Completion Report (PCR) shall be submitted by 'Project Management Consultant' duly bringing out the Final Project Completion Cost, Total Time period taken to complete the work and also completed Project Components as against the approved Cost, Time and Project Components. The PCR shall be submitted along with Final Project Accounts including return of unspent balance amount to 'Procuring Entity' within one month of settlement of final bills of the contractors/ other agencies deployed on the work by 'Project Management Consultant'.

(H) Termination of MoU

37. If 'Procuring Entity' decides to terminate this MOU or decides to drop/ abandon the work after substantial preliminary work has been done by 'Project Management

Consultant' on the work, both 'Project Management Consultant' and 'Procuring Entity' shall mutually decide the loss incurred by 'Project Management Consultant' for payment by the latter to the former. In case of abandonment of project/ work by 'Procuring Entity' during construction stage, 'Procuring Entity' shall pay to 'Project Management Consultant', after determining the value of the works, goods and contractors documents and any other sums due to them for work executed in accordance with the MOU, to help liquidate only such liabilities as were squarely needed towards construction/ consultant agencies engaged on the work, in a fair and reasonable manner.

(F) Miscellaneous

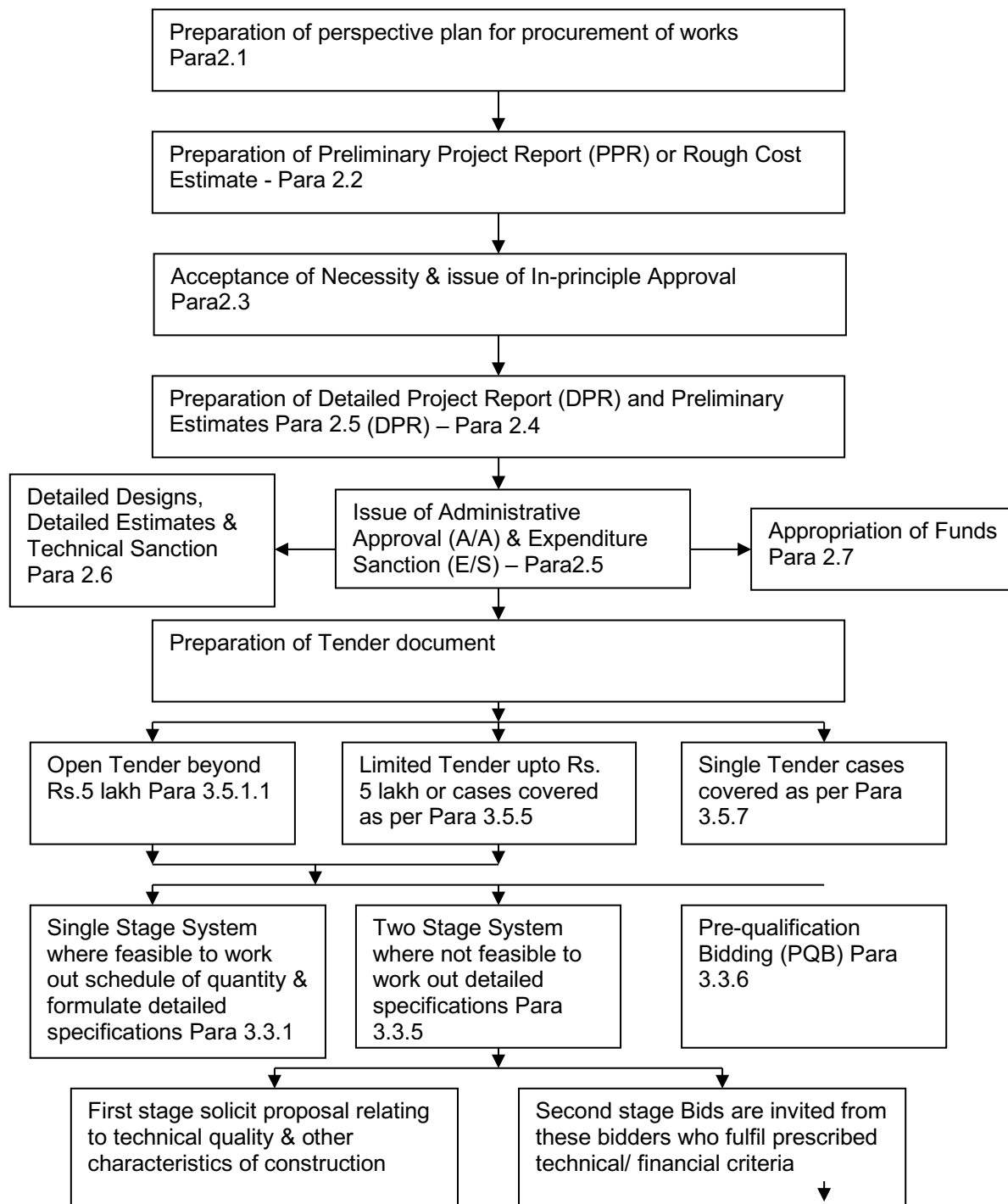
38. **Disputes between 'Procuring Entity' and 'Project Management Consultants'**: As dispute resolution mechanism for implementation of the provisions of this MoU, at the first instance the issues involved shall be brought before Chief Engineer of 'Procuring Entity' and concerned Chief Engineer of 'Project Management Consultant' for their resolution. In case, however, disputes/ differences between the parties do not get resolved, the matter shall be escalated to higher level in 'Procuring Entity', and 'Project Management Consultant', who shall be above the level of CE in the respective organizations. They shall submit a comprehensive report and recommendation to 'Procuring Entity' and 'Project Management Consultant' for facilitating final decision in the matter.
39. Individual and joint responsibilities of the Parties shall be as per clauses mentioned above.
40. No amendment in Terms & Conditions of the MoU shall be valid and effective unless it is in writing and duly signed by authorised representatives of 'Procuring Entity' and 'Project Management Consultant'. Each party shall give due consideration to any proposal for amendment/ modification made by other party with proper justifications thereof.
41. Provisions, if any, made in respect of deposit works in 'Project Management Consultant's Works Manual or Codes shall stand modified to the extent of the stipulations made in this MoU for execution of 'Procuring Entity' works by 'Project Management Consultant'.

Signatures and Witnesses

Date: _____ Place: _____

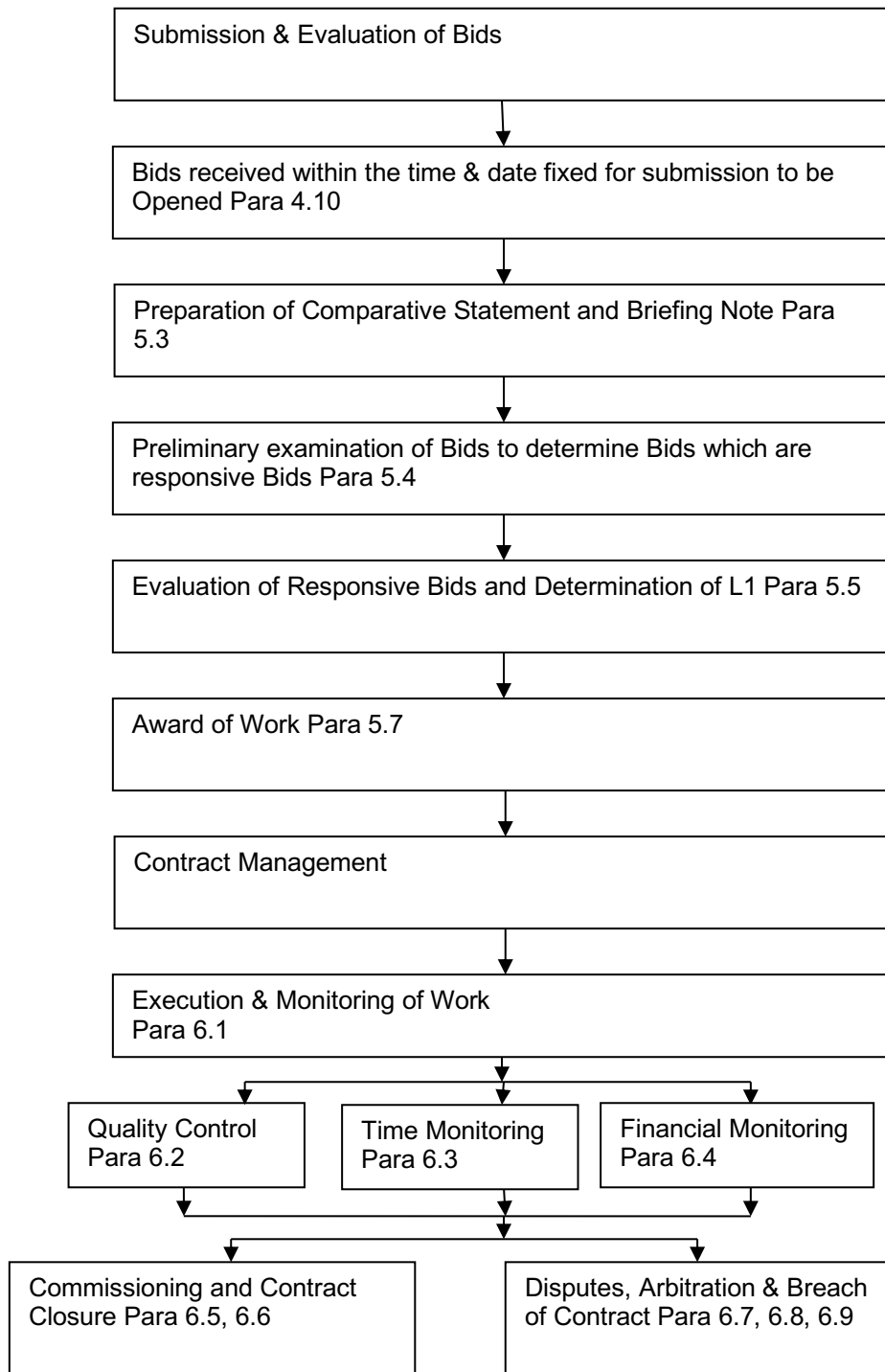
Annexure 9: Flowchart of Process of Procurement of Works

(Refer Para 1.11)



.....contd: Submission and Evaluation of Bids

Procedure for Submission and Evaluation of Bids –a flowchart



Annexure 10: Additional Resources relating to Procurement of Works

(Refer Para 2.8)

Department of Expenditure, Ministry of Finance

Manuals for Procurement of Goods and for Procurement of Consultancy and other services:
<http://doe.gov.in/manuals>

GFR, 2017: <http://doe.gov.in/order-circular/GENERAL%20FINANCIAL%20RULES>

Department of Economic Affairs, Ministry of Finance

PPP Cell, Infrastructure Division:

<https://www.pppinindia.gov.in/>

CPWD Publications: http://cpwd.gov.in/Documents/cpwd_publication.aspx

Manuals

CPWD Works Manual [2019](#)

CPWD Maintenance Manual [2012](#)

General Conditions of Contract (GCC)

GCC 2014- [PDF](#)

Plinth Area Rates

Supplement for Specialized E&M Works 2014 - View in [PDF](#)

Plinth Area Rates 2012 - View in [PDF](#)

Analysis of Rates for Delhi

2016 -[Civil Vol-I](#), [Vol-II](#)

2016 -[E & M](#)

Schedules of Rates (Civil)

Delhi Schedule of Rates 2016 - [Vol-I](#), [Vol-II](#)

DSR 2016-(E&M) in [PDF](#)

Specifications (Civil)

[Specifications Volumes I](#)

[Specifications Volumes II](#)

Other Publications

[Various Local Approvals and Clearances Required For Large Scale Project in Metro Cities](#)

CVC - Circulars on Tenders: http://cvc.nic.in/proc_works.htm

CVC – CTE Reports: http://www.cvc.nic.in/cte_menu.htm

Central Public Procurement Portal (CPPP): <https://eprocure.gov.in/cppp/>

Annexure 11: Format for seeking the approval of the Competent Authority for inviting Global Tender Enquiry for procurements less than Rs. 200 crores

(Refer Para 3.5.4)

- (i) Every page should be attested by Administrative Ministry
- (ii) Proposals are to be simultaneously sent to the following:
- Cabinet Secretariat, email: ca4-cabsec@gov.in
 - Department of Promotion of Industry & Internal Trade (DPIIT) email: manmeet.nanda@ias.nic.in & rajesh.gupta66@gov.in
 - Department of Expenditure, email: kanwal.irss@gov.in and sudesh.kumar85@gov.in

Table-1

S.No	Particulars	Remarks
1	Name of the Ministry:	
2	Name of the Department:	
3	Name of the sub-ordinate office (if applicable):	
4	Detailed Description of the Item	
5	Use of the Item	
6	Life time of the item proposed (in years)	
7	Whether item is procured regularly? [If so, details of procurement of the said item over the past three years (three completed financial years or last three tenders and the current financial year) inclusive of supply details as per format given under table-2.	
8	Quantity required to be procured with justification for the quantity (States/UT/Region wise projection)	
9	Estimated procurement price along with basic of such estimation (International Price comparison chart)	
10	Justification to be submitted as under	
	a. Detailed justification for Global Tender and essentially of import (item wise)	
	b. Who are the (possible) vendors of the item under procurement, in the global (including India) market?	
	c. Whether the Department has tried and floated the tender to identify the domestic suppliers in the past financial year (If not, the reason thereof)	
	d. Capacity of all domestic local suppliers as per the domestic tender floated, if any	
11	What are technical alternatives available within country and whether they can be used (<i>substituted</i>) for the proposed item under GTE?	
12	Whether the Department had in the past attempted at development of local suppliers/ phased indigenization/ promotion of alternative technology having sufficient local suppliers. (If so, details thereof)	

S.No	Particulars	Remarks
13	Consequences of non-procurement of the item through GTE.	
14	Whether BIS standards are available for the items proposed under procurement. If not, the efforts made to operationalize such standards.	
15	Whether the department had published procurement plan for next 5 years, for the item under discussion?	

The above proposal is submitted, with the approval of the Secretary of the Administrative Department/ Ministry, for the consideration of the Competent Authority, as mandated by D/o Expenditure order dated 15th May, 2020 regarding Amendment in GFRs-2017, regarding Global Tender Enquiry.

Also, it is informed that the above proposal had been sent to Cabinet Secretariat (via Email ID: ca4-cabsec@gov.in), D/o Expenditure (via Email ID: GTEnquiry-200@gov.in) and to DPIIT, for their consideration.

Stamp and Signature of the
Authorized officer of the proposing Department

Name
Designation
Contact Number
Email ID

Table-2

Details of procurement of the said item over the past three years (Three completed financial years and the current financial year) inclusive of supply details.

Year of contract	Item	Contract No. & date	Supplier	Quantity of supply with unit	Rate per unit	Completion date of contract	Country of Origin of goods	Local content in %

Annexure 12: List of Medical Devices and IVDs, where local manufacturers are not available, as on 17.12.2021 (as verified with the Medical Devices Manufacturing Associations)

[Refer para 3.5.6 (e)]

S.No	Name of Medical Device/ Equipment
1	Intra-aortic balloon Pump (IABP)
2	Video Assisted Thoracic Surgery (VATS) and Minimally Invasive Cardiac Surgery instrument set
3	Flow Track Cardiac Output Monitoring (EV1000)
4	Sander's Jet Ventilator for Emergency Airway
5	ENT Coblator system with standard set of wands
6	Automated Identification and antibiotic susceptibility system
7	Automated Semen Analyzer
8	Histopathology fully automated H& E slide Stainer
9	Fully Automated IHC Stainer
10	Auto PAP cervical cancer screening system with HPV
11	Automatic components preparation machine
12	Visual Field Analyzer
13	Cystoscope paediatric cystoscope
14	Flow Cytometer
15	Flexible cysto-nephoscopy
16	T Piece Resuscitator
17	CO2 Fraction Laser
18	Diode Laser
19	Q-Switched ND YAD Laser
20	Video Bronchoscope set Adult, Paediatric, and Neonatal
21	Surgical Opera
22	Cavitation /Cavitron - Ultrasonic Surgical Aspirator (CUSA)
23	Endobronchial Ultrasound System
24	Rotary Microtome
25	Magnifying surgical loupes
26	Endoscopic Saphenous Vein Harvesting (EVH) System
27	Intra operative Imaging and TTFM for CT Surgery
28	DEXA Scan
29	Radio surgery equipment
30	Near Infrared Spectroscopy
31	Fluid therapy
32	Near Infrared Spectrometer (NIRS)
33	Electro Physiology (EP) System
34	TOF Monitor/Watch for Neuro Muscular block
35	Transcranial Doppler
36	Low Temperature Hydrogen Peroxide Gas Steriliser
37	Mannequins (Laerdal) for training of CPR for COVID Preparedness
	a) Intubation
	b) Cardio Pulmonary Resuscitation (CPR)
	c) Peripheral, Central and Arterial Cannulation
	d) Front of neck Access (Cricothyroidotomy and tracheostomy)

S.No	Name of Medical Device/ Equipment
38	Image Analysis Tools/Trinocular Compound Phase Contrast Microscope for Andrology Lab
39	Gas Analysis Apparatus Halden's Student Type
40	Gas Analyzer Automatic for CO ₂ , O ₂ and N ₂
41	High end Operating Microscope
42	Plasma Coblation System
43	Stroboscope
44	ENT Skull Base Navigation System
45	Automated Microbial Identification and Sensitivity System
46	NAT Analyzer
47	Cryostat
48	Vitek2-Automated Microbiology Susceptibility Testing Analyser
49	FFR Machine (Fractional Flow Reserve)
50	VIDAS
51	Kingfisher Flex
52	ACL Elite
53	Cytoprep Centrifuge with Vortex Mixer
54	Antigen Retrieval System
55	Trans Oesophageal Echo Cardiograph
56	IVUS -Volcano
57	STERRAD-100 NX All Clear
58	Minimally Invasive Cardiac Instruments
59	Impella
60	Endourology set
61	Cystoscope Karl Storz
62	Video Endoscopy Systems
63	Floppy wire with extra support 0 Coronary Angioplasty
64	Fully Automated Non-Contact Tonometer
65	Optical Biometer
66	Phaco Machine with Posterior and Anterior Vitrectomy
67	Portable Ultrasound Machine for Anaesthesia and Vascular Access
68	Activated Clotting Time Machine
69	Thromboelastogram (TEG)/ Thromboelastometer/ ROTEM
70	Bone Anchored Hearing Aid (BAHA) Sound Processor with Soft Band.
71	CI Speech Processor for Cochlear Implant
72	Bi-Ventricular Pacemaker with Quadripolar LV Lead
73	DDDR with Matching Electrodes Pacemaker
74	MRI Conditional Automatic Implantable Cardioverter Defibrillator (AICD)
75	MR1 Conditional Cardiac Resynchronisation Therapy - Pacing (CRT- P)
76	Single Chamber (SSI) MRI Compatible Pacemaker
77	Single Chamber Temporary Pacemaker
78	Non-complain /semi complain /CTO coronary balloon.
79	Vacuum Heart Stabilizer System for off Pump CABG
80	Expandable Corpectomy device
81	Biomimetic Synthetic Absorbable Dural substitute of sizes
82	AO TRS Modular Drive for Drill/Reamer
83	AO TRS Modular Sagittal saw system
84	Battery Oscillator
85	Arthroscopy Systems
86	Navigation System for Neurosurgery & Orthopaedic Surgery
87	Time Lapse Embryo Imaging System
88	Portable Mobile Endoscopy Unit

S.No	Name of Medical Device/ Equipment
89	Cryoprobe
90	Isothermal Calorimeter (ITC)
91	Electrical Impedance Tomography
92	FNIRS (Functional Near Infra-Red Spectroscopy) System
93	Automated Hand-Held Analyzer
94	Automated High Throughput Liquid Based Cytology (LBC) System
95	Automated IHC (Immuno Histochemistry Stainer)
96	Automated Slide Stainer for Histopathology
97	3T Digital PET/MR
98	Dual Particle Cyclotron on buyback basis
99	Sweat Collection and Chloride Estimation
100	Automated Bronchoscope Cleaning Equipment
101	Electronics and console for the existing 700 MHz NMR Spectrometer
102	Video bronchoscope with mobility of tip in four directions
103	Freeze Fracture System
104	Cryo Plunge Freezing Unit
105	Biological High- Resolution Atomic Force Microscopy
106	Carbon Coater (Evaporator) for grids
107	Hemostasis Analyzer System
108	Auricular Reconstruction Set
109	Thin Layer Chromatography Liner Analyser for lipid analysis
110	Digital Slide Scanner System
111	Full Endoscopic lumbar IT & ED set
112	Rapid Blood/Fluid Flow warmer
113	Fully Automated Computerized Archival System for Histopathology & Cytology Slides
114	Vacuum Assist Drainage Controller Device
115	VAP Care System
116	Cryoablation Unit
117	3D Printer Hardware with SLA (LFSJ TM Technology and Machine interface software)
118	Transcutaneous Oxygen Monitor
119	Non-Invasive Jugular Oximetry Monitor
120	Dedicated Solid-state cardiac SPECT Camera
121	Hemodynamic Recorder for Cardio Vascular Lab
122	Gel Documentation System
123	Automatic Colony Counter
124	Droplet Digital Polymerase Chain Reaction System (PCR)
125	Multi-block PCR Machine
126	Integrated Automated Charting System upgradable for ICU Monitoring System
127	Viscoelastic Global coagulation Testing Device
128	Robotic Surgery System with accessories

Annexure 13: Model Clause/ Certificate to be inserted in tenders etc. w.r.t Order (Public Procurement No.1)

[Refer para 1.4 and Appendix-1 (Para 4(iii)(e))]

(While adhering to the substance of the Order, procuring entities and GeM are free to appropriately modify the wording of the clause/ certificate based on their past experience, local needs etc.)

Model Clauses for Tenders

I. Any bidder from a country which shares a land border with India will be eligible to bid in this tender only if the bidder is registered with the Competent Authority.

II. "Bidder" (including the term 'tenderer', 'consultant' or 'service provider' in certain contexts) means any person or firm or company, including any member of a consortium or joint venture (that is an association of several persons, or firms or

companies), every artificial juridical person not falling in any of the descriptions of bidders stated hereinbefore, including any agency branch or office controlled by such person, participating in a procurement process.

III. "Bidder from a country which shares a land border with India" for the purpose of this Order means: -

- a. An entity incorporated, established or registered in such a country; or
- b. A subsidiary of an entity incorporated, established or registered in such a country; or
- c. An entity substantially controlled through entities incorporated, established or registered in such a country; or
- d. An entity whose beneficial owner is situated in such a country; or
- e. An Indian (or other) agent of such an entity; or
- f. A natural person who is a citizen of such a country; or
- g. A consortium or joint venture where any member of the consortium or joint venture falls under any of the above

IV. The beneficial owner for the purpose of (iii) above will be as under:

1. In case of a company or Limited Liability Partnership, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has a controlling ownership interest or who

exercises control through other means.

Explanation—

a. “Controlling ownership interest” means ownership of or entitlement to more than twenty-five per cent, of shares or capital or profits of the company;

b. “Control” shall include the right to appoint majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholders agreements or voting agreements;

2. In case of a partnership firm, the beneficial owner is the natural person(s) who, whether acting alone or together, or through one or more juridical person, has ownership of entitlement to more than fifteen percent of

capital or profits of the partnership;

3. In case of an unincorporated association or body of individuals, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has ownership of or entitlement to more than fifteen percent of the property or capital or profits of such association or body of individuals;

4. Where no natural person is identified under (1) or (2) or (3) above, the beneficial owner is the relevant natural person who holds the position of senior managing official;

5. In case of a trust, the identification of beneficial owner(s) shall include identification of the author of the trust, the trustee, the beneficiaries with fifteen percent or more interest in the trust and any other natural person exercising ultimate effective control over the trust through a chain of control or ownership.

V. An Agent is a person employed to do any act for another, or to represent another in dealings with third person.

VI. [To be inserted in tenders for Works contracts, including Turnkey contracts] The successful bidder shall not be allowed to sub-contract works to any contractor from a country which shares a land border with India unless such contractor is registered with the Competent Authority. Model Certificate for Tenders (for transitional cases as stated in para 3 of this Order)

“I have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India; I hereby certify that this bidder is not from such a country and is eligible to be considered.”

Model Certificate for Tenders

“I have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India; I certify that this bidder is not from such a country or, if from such a country, has been registered with the Competent Authority. I hereby certify that this bidder fulfills all requirements in this regard and is eligible to be considered. [Where applicable, evidence of valid registration by the Competent Authority shall be attached.]”

Model Certificate for Tenders for Works involving possibility of sub-contracting

"I have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India and on sub-contracting to contractors from such countries; I certify that this bidder is not from such a country or, if from such a country, has been registered with the Competent Authority and will not sub-contract any work to a contractor from such countries unless such contractor is registered with the Competent Authority. I hereby certify that this bidder fulfills all requirements in this regard and is eligible to be considered. [Where applicable, evidence of valid registration by the Competent Authority shall be attached.]"

Model Certificate for GeM:

"I have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India; I certify that this vendor/ bidder is not from such a country or, is not from such a country, has been registered with the Competent Authority. I hereby certify that this vendor/ bidder fulfills all requirements in this regard and is eligible to be considered for procurement on GeM. [Where applicable, evidence of valid registration by the Competent Authority shall be attached.]"

Annexure 14: Example of Formula for Price Variation Clause

[Refer Para 6.5.6]

(The formula for price variation should ordinarily include a fixed element, a material element and a labour element. The figures representing the material element and the labour element should reflect the corresponding proportion of input costs, while the fixed element may range from 10 to 25% (ten to twenty-five percent). That portion of the price represented by the fixed element and profits and is not subject to variation. The portions of the price represented by the material element and labour element along will attract price variation.)

The formula for price variation will thus be:-

$$P_a = P_o \left[\frac{\left(F + a \left(\frac{M_1}{M_o} \right) + b \left(\frac{L_1}{L_o} \right) \right)}{100} \right] - P_o$$

Where: -

P_a is then adjustment amount payable to the supplier (a minus figure will indicate a reduction in the contract price) on the date of supply.

P_o is the contract price on the base date (which is taken as the date on which tender is due to open).

F is the fixed element (as the percentage of the total price) not subject to price variation.

a is the assigned percentage to the material element in the contract price.

b is the assigned percentage to the labour element in the contract price.

(F, a and b being percentages should total 100)

L_o and L_1 are the average wage indices for the quarter before the quarter in which base month falls and for the quarter before the quarter in which date of supply falls; respectively. For example for a tender opening on March 17, 2016 (base date), L_o would be average wage index for the quarter of Oct-Dec 2015.

M_o and M_1 are the material prices/indices as average of the month, two month prior to the month in which base month falls and average of the month, two month prior to the month in which date of supply falls, respectively. For example, for a tender opening on March 17, 2016 (base date), M_o would be prices/index as average of the month of January 2016. All material prices/indices will be basic prices without excise duty and without any other central, state, local taxes and duties and Octroi.

If more than one major item of material is involved, the material element can be broken up into two or three components such as M_x , M_y , M_z .

The following conditions would be applicable to price adjustment:

- Base dates shall be due dates of opening of bids (technical bid in two or three envelop/cover system).
- Date of supply shall be the date of calculation/determination of the price variation.
- No price increase is allowed beyond original delivery period.

- No price adjustment shall be payable on the portion of contract price paid to the seller as an advance/interim payment after the date of such payment.
- Total adjustment will be subject to maximum ceiling of ____%.
- No price adjustment shall be payable if this is less than or equal to 2% (two percent) of P_0 .
- Payments for each supply would initially be made as per the base price mentioned in the contract. Price adjustment bill should be submitted only quarterly for the supplies made during the quarter.
- In GTE tenders extra care should be taken in selecting the price indices. Preferably the price indices should be from the same country and of same currency as the country and currency of the bidder. In case price is in a currency of a country where inflation is low and the indices are from country with much higher inflation rates, $\left(\frac{M_1}{M_0}\right)$ and $\left(\frac{L_1}{L_0}\right)$ should be multiplied by a correction factor of exchange rates $\left(\frac{E_0}{E_1}\right)$, where E_0 is the exchange rate of country of M and L indices with reference to currency of price P. For example, if M&L are from India and P is in \$, then E_0 is Number of Rs. in a \$ on base date and E_1 is the exchange rate on determination date.
- Even if there is no price adjustment claim, supplier must submit all relevant data to prove that there is no downward variation. In any case he must submit a declaration as follows;

“It is certified that there has been no decrease in the price of price variation indices and in the event of any decrease of such indices during the currency of this contract we shall promptly notify the same to the purchaser and offer requisite reduction in the contract rate.”

Appendix 1: Advanced Concepts of Value for Money and Fundamental Principles of Public Procurement

1.0 The Concept of Value

Value is a management and economics concept. It represents the extent of satiation of a hierarchy of needs of a person by a product bought for this purpose. This is subjective and difficult to quantify. This is because different persons (or the same persons under different circumstances) would have different hierarchy of needs and would perceive different extents of satiation or value from the same product. There are three sources of the value of a product. The first source of value is from the functional usage of the product (known as use value) and the second source comes from the social status associated with the ownership of the product (esteem value). This can be shown as the difference between a luxury branded gold-plated, diamond encrusted pen and a disposable non-descript functional pen, though both fulfil the broadly same function and have the same use value. The luxury branded pen, in addition to the use value, also has additional esteem value. The third source of value comes from the price that one can get by exchanging or scrapping the product at the end of the useful life of the product. This is called the disposal value. Normally, when people buy a car, they do consider the estimated disposal value of different choices of models. Value is the sum total of all the three values.

2.0 Total Cost of Ownership

While the value of a product covers all components of value over the “Whole-Of-Life” (WOL), the costs incurred on the product should also take into consideration the total of various elements of costs incurred over WOL of the product. For this purpose, future costs are discounted to present value (not to be confused with the value we are discussing – this is a financial discounting concept). For example, it would not be prudent to buy a cheap car, which has a very high cost of operating. This is called variously as WOL or “Life-Cycle-Cost” (LCC) or “Total Cost of Ownership” (TCO). The last is a preferred nomenclature in procurement and is defined as the total of all costs associated with a product, service, or capital equipment that are incurred over its expected life. Typically, these costs can be broken into four broad categories:

- i) **Procurement price.** The amount paid to the vendor/ contractor for the product, service, or capital equipment;
- ii) **Acquisition costs.** All costs associated with bringing the product, service, or capital equipment into operation at the customer's location. Examples of acquisition costs are sourcing, administration, freight, taxes, and so on;
- iii) **Usage costs.** In the case of a product, all costs associated with converting the procured part/ material into the finished product and supporting it through its usable life. In the case of a service, all costs associated with the performance of the service that is not included in the procurement price. In the case of capital equipment, all costs associated with operating the equipment through its life. Examples of usage costs are inventory, conversion, wastage, lost productivity, lost sales, warranty, installation, training, downtime, and so on; and

- iv) **End-of-life costs.** All costs incurred when a product, service, or capital equipment reaches the end of its usable life, net of amounts received from the sale of the remaining product or the equipment (disposal value) as the case may be. Examples of end-of-life costs are obsolescence, disposal, clean-up, and project termination costs

3.0 Value for Money

Besides value of a product or service, the customer also has his own notion of “value” of a particular sum of money. This is different for different people or even for the same person in different circumstances. When the perceived value of a product matches the perceived value of the amount of money (cost of the product), the customer feels he got the full value for his money. This is called the VfM. In procurement, Total Cost of Ownership is taken to evaluate value for money. Given the limited resources available to the government, ensuring VfM in procurement is the key to ensuring the optimum utilisation of scarce budgetary resources. It usually means buying the product or service with the lowest WOL costs that is ‘fit for purpose’ and just meets the specification. VfM also incorporates affordability; clearly, goods or services that are unaffordable cannot be bought. This should be addressed as soon as possible within the process, ideally at the need assessment stage before procurement commences. In order to address this issue, a change in the procurement approach, specification or business strategy may be required.

Where an alternative is chosen that does not have the lowest WOL costs, then the additional ‘value added’ benefit must be proportional and objectively justifiable. Assessment of bids should be conducted only in relation to a published set of evaluation criteria (which should be relevant to the subject of the contract), and any ‘added value’ that justifies a higher price must flow from these defined criteria. In public procurement VfM is often primarily established through the competitive process. A strong competition from a vibrant market will generally deliver a VfM outcome. However, where competition is limited, or even absent, other routes may have to be used to establish VfM. These can include benchmarking, construction of theoretical cost models or ‘shadow’ bids by the procurement agency. For major contracts, this can require considerable financial expertise and external support. A VfM assessment, based on the published conditions for participation and evaluation, may include consideration of some factors such as:

- i) Fitness for purpose;
- ii) Potential vendor/ contractor’s experience and performance history;
- iii) Flexibility (including innovation and adaptability over the lifecycle of the procurement);
- iv) Environmental sustainability (such as energy efficiency and environmental impact); and
- v) Total cost of ownership

But due to uncertainties in estimates of various components of TCO (and actual costs over the life-cycle) and intangibles of Value, some element of subjectivity may become unavoidable, and hence is not normally useable in routine Public Procurement cases. Therefore preference is given to alternative means for ensuring VfM by way of optimal description of needs; development of value-engineered specifications/ Terms of Reference and appropriate packaging/ slicing of requirements and selection of appropriate mode/ bidding systems of procurement etc.

4.0 Fundamental Principles of Public Procurement

General Financial Rules, 2017 lay down the Fundamental Principles of Public Procurement. These principles and other additional obligations of procuring authorities in public procurement can be organised into five fundamental principles of public procurement, which all procuring authorities must abide by and be accountable for:

i) Transparency Principle

All procuring authorities are responsible and accountable to ensure transparency, fairness, equality, competition and appeal rights. This involves simultaneous, symmetric and unrestricted dissemination of information to all likely bidders, sufficient for them to know and understand the availability of bidding opportunities and actual means, processes and time-limits prescribed for completion of enlistment of bidders, bidding, evaluation, grievance redressal, award and management of contracts. It implies that such officers must ensure that there is consistency (absence of subjectivity), predictability (absence of arbitrariness), clarity, openness (absence of secretiveness), equal opportunities (absence of discrimination) in processes. In essence Transparency Principle also enjoins upon the Procuring Authorities *to do only that which it had professed to do as pre-declared in the relevant published documents and not to do anything that had not been so declared*. As part of this principle, all procuring entities should ensure that offers should be invited following a fair and transparent procedure and also ensure publication of all relevant information on the Central Public Procurement Portal (CPPP).

ii) Professionalism Principle

As per these synergic attributes, the procuring authorities have a responsibility and accountability to ensure professionalism, economy, efficiency, effectiveness and integrity in the procurement process. They must avoid wasteful, dilatory and improper practices violating the Code of integrity for Public Procurement (CIPP) mentioned in Chapter 3 of this manual. They should, at the same time, ensure that the methodology adopted for procurement should not only be reasonable and appropriate for the cost and complexity but should also effectively achieve the planned objective of the procurement. As part of this principle, the government may prescribe professional standards and specify suitable training and certification requirements for officials dealing with procurement matters.

In reference to the above two principles - Transparency and Professionalism Principle, It may be useful to refer to the following provisions in the General Financial Rules, 2017:

“Rule 144. Fundamental principles of public buying: Fundamental principles of public buying. (for all procurements including procurement of works).— Every authority delegated with the financial powers of procuring goods in public interest shall have the responsibility and accountability to bring efficiency, economy, and transparency in matters relating to public procurement and for fair and equitable treatment of suppliers and promotion of competition in public procurement.

The procedure to be followed in making public procurement must conform to the following yardsticks:-

- a) *The description of the subject matter of procurement to the extent practicable should --*
 - 1) be objective, functional, generic and measurable and specify technical, qualitative and performance characteristics;

- 2) not indicate a requirement for a particular trade mark, trade name or brand.
- b) *The specifications in terms of quality, type etc., as also quantity of goods to be procured, should be clearly spelt out keeping in view the specific needs of the procuring organisations. The specifications so worked out should meet the basic needs of the organisation without including superfluous and non-essential features, which may result in unwarranted expenditure.*
- c) *Where applicable, the technical specifications shall, to the extent practicable, be based on the national technical regulations or recognized national standards or building codes, wherever such standards exist, and in their absence, be based on the relevant international standards. In case of Government of India funded projects abroad, the technical specifications may be framed based on requirements and standards of the host beneficiary Government, where such standards exist. Provided that a procuring entity may, for reasons to be recorded in writing, adopt any other technical specification.*
- d) *Care should also be taken to avoid purchasing quantities in excess of requirement to avoid inventory carrying costs;*
- e) *Offers should be invited following a fair, transparent and reasonable procedure;*
- f) *The Procuring Entity should be satisfied that the selected offer adequately meets the requirement in all respects;*
- g) *The Procuring Entity should satisfy itself that the price of the selected offer is reasonable and consistent with the quality required;*
- h) *At each stage of procurement the concerned Procuring Entity must place on record, in precise terms, the considerations which weighed with it while taking the procurement decision.*
- i) *A complete schedule of procurement cycle from date of issuing the tender to date of issuing the contract should be published when the tender is issued.*
- j) *All Ministries/Departments shall prepare Annual Procurement Plan before the commencement of the year and the same should also be placed on the their website”*
- k) *[Notwithstanding anything contained in these Rules, Department of Expenditure may, by order in writing, impose restrictions, including prior registration and/or screening, on procurement from bidders from a country or countries, or a class of countries, on grounds of defence of India, or matters directly or indirectly related thereto including national security; no procurement shall be made in violation of such restrictions.]⁵⁷*

iii) Broader Obligations Principle

⁵⁷ Inserted vide Department of Expenditure (DoE), Ministry of Finance (MoF) OM No. F.6/18/2019-PPD dated 23.07.2020.

Over and above transparency and professionalism, the procuring authorities have also the responsibility and accountability to conduct public procurement in a manner to facilitate achievement of the broader objectives of the government - to the extent these are specifically included in the 'Procurement Guidelines':

- (a) Preferential procurement from backward regions, weaker sections and Micro and Small Enterprises (MSEs), locally manufactured goods or services, to the extent specifically included in the 'Procurement Guidelines'; and
- (b) Reservation of procurement of specified class of goods from or through certain nominated CPSEs or Government Organisations, to the extent specifically included in the 'Procurement Guidelines'.
- (c) Support to broader social policy and programme objectives of the government (for example, economic growth, strengthening of local industry - make-in-India, Ease of Doing Business, job and employment creation, and so on, to the extent specifically included in the 'Procurement Guidelines');
- (d) Facilitating administrative goals of other departments of government (for example, ensuring tax or environmental compliance by participants, Energy Conservation, accessibility for People With Disabilities etc. to the extent specifically included in the 'Procurement Guidelines').
- (e) Procurement policies and procedures must comply with accessibility criteria which may be mandated by the Government from time to time. Keeping this in view, Department of Expenditure amended Rule 144 of GFR, 2017 and introduced a sub-point (xi) imposing restrictions under the rule [as mentioned under (ii) above]. The detailed provisions were notified through Order (Public Procurement No.1)58 which are as follows:

1. **Requirement of registration**

- a) Any bidder from a country which shares a land border with India will be eligible to bid in any procurement whether of goods, services (including consultancy services and non-consultancy services) or works (including turnkey projects) only if the bidder is registered with the Competent Authority, specified in Para 12(c) below.
- b) The Order shall not apply to (i) cases where orders have been placed or contract has been concluded or letter/notice of award/ acceptance (LoA) has been issued on or before the date of the order (23rd July 2020); and (ii) cases falling under para 13 below.

2. **Transitional cases**

Tenders where no contract has been concluded or no LoA has been issued so far shall be handled in the following manner: -

- a) In tenders which are yet to be opened, or where evaluation of technical bid or the first exclusionary qualificatory stage (i.e. the first stage at which the qualifications of tenderers are evaluated and unqualified bidders are excluded) has not been completed: No contracts shall be placed on bidders from such countries. Tenders received from bidders from such countries shall be dealt with as if they are non-compliant with the tender conditions and the tender shall be processed accordingly.
- b) If the tendering process has crossed the first exclusionary qualificatory stage, if the qualified bidders include bidders from such countries, the entire process shall be

⁵⁸ Inserted vide Department of Expenditure (DoE), Ministry of Finance (MoF) OM No. F.6/18/2019-PPD dated 23.07.2020.

scrapped and initiated *de novo*. The *de novo* process shall adhere to the conditions prescribed in the Order.

- c) As far as practicable, and in cases of doubt about whether a bidder falls under paragraph (1) above, a certificate shall be obtained from the bidder whose bid is proposed to be considered or accepted, in terms of paras 5(c), 5(d) and 6 read with para (1).

3. **Incorporation in tender conditions**

In tenders to be issued after the date (23rd July 2020) of the order, the provisions of paragraph (1) above and of other relevant provisions of the Order shall be incorporated in the tender conditions.

4. **Applicability**

- a) Apart from Ministries/Departments, attached and subordinate bodies, notwithstanding anything contained in Rule 1 of the GFRs 2017, the Order shall also be applicable:to all Autonomous Bodies;
- b) to public sector banks and public sector financial institutions; and
- c) subject to any orders of the Department of Public Enterprises, to all Central Public Sector Enterprises; and
- d) to procurement in Public Private Partnership projects receiving financial support from the Government or public sector enterprises/ undertakings.
- e) Union Territories, National Capital Territory of Delhi and all agencies/ undertakings thereof

5. **Definitions**

- a) "Bidder" for the purpose of the Order (including the term 'tenderer', 'consultant' 'vendor' or 'service provider' in certain contexts) means any person or firm or company, including any member of a consortium or joint venture (that is an association of several persons, or firms or companies), every artificial juridical person not falling in any of the descriptions of bidders stated hereinbefore, including any agency, branch or office controlled by such person, participating in a procurement process.
- b) "Tender" for the purpose of the Order will include other forms of procurement, except where the context requires otherwise.
- c) "Bidder from a country which shares a land border with India" for the purpose of the Order means
 - i. An entity incorporated, established or registered in such a country; or
 - ii. A subsidiary of an entity incorporated, established or registered in such a country; or
 - iii. An entity substantially controlled through entities incorporated, established or registered in such a country; or
 - iv. An entity whose beneficial owner is situated in such a country; or
 - v. An Indian (or other) agent of such an entity; or
 - vi. A natural person who is a citizen of such a country; or
 - vii. A consortium or joint venture where any member of the consortium or joint venture falls under any of the above
- d) "Agent" for the purpose of the Order is a person employed to do any act for another, or to represent another in dealings with third persons.

6. **Beneficial owner for the purposes of point (c) (iv) will be as under:**

- a) In case of a company or Limited Liability Partnership, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical

person(s), has a controlling ownership interest or who exercises control through other means. Explanation:-

- b) In case of a partnership firm, the beneficial owner is the natural person(s) who, whether acting alone or together, or through one or more juridical person, has ownership or entitlement to more than fifteen percent of capital or profits of the partnership;
- c) In case of an unincorporated association or body of individuals, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has ownership or entitlement to more than fifteen percent of the property or capital or profits of such association or body of individuals;
- d) Where no natural person is identified under (6) (a) or (6) (b) or (6) (c) above, the beneficial owner is the relevant natural person who holds the position of senior managing official;
- e) In case of a trust, the identification of beneficial owner(s) shall include identification of the author of the trust, the trustee, the beneficiaries with fifteen percent or more interest in the trust and any other natural person exercising ultimate effective control over the trust through a chain of control or ownership.

7. Sub-contracting in works contracts

In works contracts, including turnkey contracts, contractors shall not be allowed to sub-contract works to any contractor from a country which shares a land border with India unless such contractor is registered with the Competent Authority. The definition of “contractor from a country which shares a land border with India” shall be as in paragraph (5) (c) above. This shall not apply to sub-contracts already awarded on or before the date of the Order (i.e. 23rd July, 2020).

8. Certificate regarding compliance

A certificate shall be taken from bidders in the tender documents regarding their compliance with the Order. If such certificate given by a bidder whose bid is accepted is found to be false, this would be a ground for immediate termination and further legal action in accordance with law.

9. Validity of registration

In respect of tenders, registration should be valid at the time of submission of bids and at the time of acceptance of bids. In respect of supply otherwise than by tender, registration should be valid at the time of placement of order. If the bidder was validly registered at the time of acceptance / placement of order, registration shall not be a relevant consideration during contract execution.

10. Government e-Marketplace

The Government E-Marketplace shall, as soon as possible, require all vendors/ bidders registered with GeM to give a certificate regarding compliance with the Order, and after the date fixed by it, shall remove non-compliant entities from GeM unless/ until they are registered in accordance with this Order.

11. Model Clauses/ Certificates

Model Clauses and Model Certificates which may be inserted in tenders / obtained from Bidders are given at Annexure-13. While adhering to the substance of the Order, procuring entities are free to appropriately modify the wording of these clauses based on their past experience, local needs etc. without making any reference to Department of Expenditure.

12. Competent Authority and Procedure for Registration

- a) The Competent Authority for the purpose of registration under this Order shall be the Registration Committee constituted by the Department for Promotion of Industry and Internal Trade (DPIIT)⁵⁹.
- b) The Registration Committee shall have the following members¹⁰
 - i. An officer, not below the rank of Joint Secretary, designated for this purpose by DPIIT, who shall be the Chairman;
 - ii. Officers (ordinarily not below the rank of Joint Secretary) representing the Ministry of Home Affairs, Ministry of External Affairs, and of those Departments whose sectors are covered by applications under consideration;
 - iii. Any other officer whose presence is deemed necessary by the Chairman of the Committee.
- c) DPIIT has laid down the method of application, format etc. for such bidders as stated in para (1) (a) above⁶⁰. On receipt of an application seeking registration from a bidder from a country covered by para (1) (a) above the Competent Authority shall first seek political and security clearances from the Ministry of External Affairs and Ministry of Home Affairs, as per guidelines issued from time to time. Registration shall not be given unless political and security clearance have both been received.
- d) The Ministry of External Affairs and Ministry of Home Affairs may issue guidelines for internal use regarding the procedure for scrutiny of such applications by them.
- e) The decision of the Competent Authority, to register such bidder may be for all kinds of tenders or for a specified type(s) of goods or services, and may be for a specified or unspecified duration of time, as deemed fit. The decision of the Competent Authority shall be final.
- f) Registration shall not be granted unless the representatives of the Ministries of Home Affairs and External Affairs on the Committee concur⁶¹.
- g) Registration granted by the Competent Authority of the Government of India shall be valid not only for procurement by Central Government and its agencies/ public enterprises etc. but also for procurement by State Governments and their agencies/ public enterprises etc. No fresh registration at the State level shall be required.
- h) The Competent Authority is empowered to cancel the registration already granted if it determines that there is sufficient cause. Such cancellation by itself, however, will not affect the execution of contracts already awarded. Pending cancellation, it may also

⁵⁹ (i) In respect of application of the Order to procurement by/ under State Governments, all functions assigned to DPIIT shall be carried out by the State Government concerned through a specific department or authority designated by it. The composition of the Registration Committee shall be as decided by the State Government and paragraph G above shall not apply. However, the requirement of political and security clearance as per para D shall remain and no registration shall be granted without such clearance.

(ii) Registration granted by State Governments shall be valid only for procurement by the State Government and its agencies/ public enterprises etc. and shall not be valid for procurement in other states or by the Government of India and their agencies/ public enterprises etc.

⁶⁰ Notified vide OM No.P-45021/112/2020-PP (BE-II) (E-43780) issued by DPIIT dated 30.03.2021

⁶¹ (i) In respect of application of the Order to procurement by/ under State Governments, all functions assigned to DPIIT shall be carried out by the State Government concerned through a specific department or authority designated by it. The composition of the Registration Committee shall be as decided by the State Government and paragraph G above shall not apply. However, the requirement of political and security clearance as per para D shall remain and no registration shall be granted without such clearance.

(ii) Registration granted by State Governments shall be valid only for procurement by the State Government and its agencies/ public enterprises etc. and shall not be valid for procurement in other states or by the Government of India and their agencies/ public enterprises etc.

suspend the registration of a bidder, and the bidder shall not be eligible to bid in any further tenders during the period of suspension.

i) For national security reasons, the Competent Authority shall not be required to give reasons for rejection/cancellation of registration of a bidder.

j) In transitional cases falling under para (2) above, where it is felt that it will not be practicable to exclude bidders from a country which shares a land border with India, a reference seeking permission to consider such bidders shall be made by the procuring entity to the Competent Authority, giving full information and detailed reasons. The Competent Authority shall decide whether such bidders may be considered, and if so shall follow the procedure laid down in the above paras.

k) Periodic reports on the acceptance/ refusal of registration during the preceding period may be required to be sent to the Cabinet Secretariat. Details will be issued separately in due course by DPIIT.

13. Special Cases [In reference to para (1) (b) above]

a) Bona fide procurements made through GeM without knowing the country of the bidder till the date fixed by GeM for this purpose, shall not be invalidated by the Order.

b) Bona fide small procurements, made without knowing the country of the bidder, shall not be invalidated by the Order.

c) In projects which receive international funding with the approval of the Department of Economic Affairs (DEA), Ministry of Finance, the procurement guidelines applicable to the project shall normally be followed, notwithstanding anything contained in the Order and without reference to the Competent Authority. Exceptions to this shall be decided in consultation with DEA.

d) The Order shall not apply to procurement by Indian missions and by offices of government agencies/ undertakings located outside India.

e) The Order will not apply to bidders from those countries (even if sharing a land border with India) to which the Government of India has extended lines of credit or in which the Government of India is engaged in development projects. Updated lists of countries to which lines of credit have been extended or in which development projects are undertaken are given in the website of the Ministry of External Affairs⁶².

f) A bidder is permitted to procure raw material, components, sub-assemblies etc. from the vendors from countries which shares a land border with India. Such vendors will not be required to be registered with the Competent Authority, as it is not regarded as "sub-contracting". However, in case a bidder has proposed to supply finished goods procured directly/ indirectly from the vendors from the countries sharing land border with India, such vendor will be required to be registered with the Competent Authority⁶³.

g) Procurement of spare parts and other essential service support like Annual Maintenance Contract (AMC)/ Comprehensive Maintenance Contract (CMC), including consumables for closed systems, from Original Equipment Manufacturers (OEMs) or their authorized agents, shall be exempted from the requirement of registration as mandated under Rule 144(xi) of GFR, 2017 and Public Procurement orders issued in this regard⁶⁴.

⁶² Notified through Order (Public Procurement No. 2) vide F.No.6/18/2019-PPD issued by Department of Expenditure dated 23.07.2020

⁶³ Notified vide OM No. F.18/37/2020-PPD issued by Department of Expenditure dated 08.02.2021

⁶⁴ Notified vide OM No. F.12/1/2021-PPD(Pt.) issued by Department of Expenditure dated 02.03.2021

14. Clarification to Order (Public Procurement No.1) dated 23rd July 2020⁶⁵
- a) For the purpose of (2)(b) above, “qualified bidders” means only those bidders would otherwise have been qualified for award of the tender after considering all factors including price, if the Order (Public Procurement No.1) dated 23rd July 2020 had not been issued.
 - b) If bidders from such countries would not have qualified for award for reasons unconnected with the said Orders (for example, because they do not meet tender criteria or their price bid is higher or because of the provisions of purchase preference under any other order or rule or any other reason) then there is no need to scrap the tender/ start the process *de novo*.
 - c) The following examples are given to assist in implementation of the Order
 - i. Example 1: Four bids are received in a tender. One of them is from a country which shares a land border with India. The bidder from such country is found to be qualified technically by meeting all prescribed criteria and is also the lowest bidder. In this case, the bidder is qualified for award of the tender, except for the provisions of the Order (Public Procurement No. 1) dated 23rd July. In this case, the tender should be scrapped and fresh tender initiated.
 - ii. Example 2: The facts are as in Example 1, but the bidder from such country, though technically qualified is not the lowest because there are other technically qualified bidders whose price is lower. Hence the bidder from such country would not be qualified for award of the tender irrespective of the Order (Public Procurement No. 1) dated 23rd July 2020. In such a case, there is no need to scrap the tender.
 - iii. Example 3: The facts are as in Example 1, but the bidder from a country which shares a land border with India, though technically qualified, is not eligible for award due to the application of price preference as per other orders/ rules. In such a case, there is no need to scrap the tender.

Example 4: Three bids are received in a tender. One of them is a bidder from a country sharing a land border with India. The bidder from such a country does not meet the technical requirements and hence is not qualified. There is no need to scrap the tender.

iv) **Extended Legal Responsibilities Principle**

Procuring authorities must fulfil additional legal obligations in public procurement, over and above mere conformity to the mercantile laws (which even private sector procurements have to comply with). The Constitution of India has certain provisions regarding fundamental rights and public procurement. Courts have, over a time, taking a broader view of Public Procurement as a function of ‘State’, interpreted these to extend the responsibility and accountability of public procurement Authorities. Courts in India thus exercise additional judicial review (beyond contractual issues) over public procurement in relation to the manner of decision making in respect of fundamental rights, fair play and legality. Similarly, procuring authorities have also the responsibility and accountability to comply with the laws relating to Governance Issues like Right to Information (RTI) Act and Prevention of Corruption Act, and so on.

v) **Public Accountability Principle**

⁶⁵ Notified through Order (Public Procurement No. 3) vide F.No.6/18/2019-PPD issued by Department of Expenditure dated 24.07.2020

Procuring authorities are accountable for all the above principles to several statutory and official bodies in the Country – the Legislature and its Committees, Central Vigilance Commission, Comptroller and Auditor General of India, Central Bureau of Investigations and so on– in addition to administrative accountability. As a result, each individual public procurement transaction is liable to be scrutinised independently, in isolation, besides judging the overall outcomes of procurement process over a period of time. Procuring authorities thus have responsibility and accountability for compliance of rules and procedures in each individual procurement transaction besides the achievement of overall procurement outcomes. The Procuring Entity, at each stage of procurement, must therefore, place on record, in precise terms, the considerations which weighed with it while making the procurement decision from need assessment to fulfilment of need. Such records must be preserved, retained in easily retrievable form and made available to such oversight agencies. The procuring entity shall Therefore, maintain and retain audit trails, records and documents generated or received during its procurement proceedings, in chronological order, the files will be stored in an identified place and retrievable for scrutiny whenever needed without wastage of time. The documents and record will include:

- a) documents pertaining to determination of need for procurement;
- b) description of the subject matter of the procurement;
- c) Statement of the justification for choice of a procurement method other than open competitive bidding;
- d) Documents relating to pre-qualification and enlistment of bidders, if applicable;
- e) Particulars of issue, receipt, opening of the bids and the participating bidders at each stage;
- f) Requests for clarifications and any reply thereof including the clarifications given during pre-bid conferences;
- g) Bids evaluated, and documents relating to their evaluation;
- h) Contracts and Contract Amendment; and Complaint handling, correspondences with Procuring Entities, consultants, banks.

Appendix– 2: Legal Aspects of Public Procurement

1.0 Relevant Provisions of the Constitution of India

1.1 Equality for Bidders

Article 19 (1) (g) of the Constitution of India (under Part III – ‘Fundamental Rights’) grants all its citizens the right “to practise any profession or to carry out any occupation, trade or business”. This has been interpreted by courts in a way so as to ensure that every citizen of India has a right to get equal opportunity to bid for and be considered for a public procurement contract. However, this provision does permit stipulation of reasonable eligibility or pre-qualification criteria for the selection of successful bidders in a public procurement contract. Thus a public procurement organisation should be ready to prove in court that no eligible bidder has been denied reasonable and equal opportunity under this article to bid and be considered for the concerned contract.

“Part III - FUNDAMENTAL RIGHTS - Right to Freedom

§19 Protection of certain rights regarding freedom of speech, etc.

(1) All citizens shall have the right-

(a) to freedom of speech and expression;

(b) to assemble peaceably and without arms;

(c) to form associations or unions;

(d) to move freely throughout the territory of India;

(e) to reside and settle in any part of the territory of India; [and]

(g) to practise any profession, or to carry on any occupation, trade or business.”

1.2 Persons Authorised to Make and Execute Contracts on Behalf of Governments

As per Article 299 (Part XII – Finance, Property, Contracts and Suits) of the Constitution of India, all contracts on behalf of the Union Government or state governments are to be entered into and executed by authorised persons on behalf of the President of India or Governor of the state, respectively. The President of India, Governor of the state and the authorised persons who enter into or execute such contracts are granted immunity from personal liability under this article. That is why, above the signatures of such persons, on the contract documents, a legal phrase “For and on Behalf of the President of India/ the Governor of State” is written to signify this fact. In a state government, the

“Part XII. - Finance, Property, Contracts and Suits

§299 Contracts:

All contracts made in the exercise of the executive power of the Union or of a State shall be expressed to be made by the President, or by the Governor of the State, as the case may be, and all such contracts and all assurances of property made in the exercise of that power shall be executed on behalf of the President or the Governor by such persons and in such manner as he may direct or authorise.

Neither the President nor the Governor shall be personally liable in respect of any contract or assurance made or executed for the purposes of this Constitution, or for the purposes of any enactment relating to the Government of India heretofore in force, nor shall any person making or executing any such contract or assurance on behalf of any of them be personally liable in respect thereof.”

persons who are authorised to do so are listed in the DFPR. Provisions of DFPR are expanded upon by various departments by issuing SOPs. Rule 224, Chapter 8: Contract Management of the GFR 2017 covers this aspect also

1.3 Other Mercantile Laws

A procurement contract besides being a commercial transaction is also a legal transaction. There are a number of commercial/ mercantile laws that are applicable equally to the private sector and public procurement, such as the Indian Contract Act, Sales of Goods Act, Arbitration and Conciliation Act, and so on. Although a public procurement professional is expected to have a working knowledge of the following basic laws relating to procurement, yet he is not expected to be a legal expert. If standard contract forms are used, the procurement official can discharge his normal functions without frequent legal help. In case any complex legal issue arises, or a complex contract beyond the standard contract form is to be drafted, an appropriate legal professional may be associated with the procurement from an early stage.

Salient features of these mercantile laws relating to Procurement are summarised below.

2.0 Salient Features of the Indian Contract Act

2.1 Elementary Legal Practices

- 2.1.1 **What is a Contract?** The proposal or offer when accepted is a promise, a promise and every set of promises forming the consideration for each other is an agreement and an agreement if made with free consent of parties competent to contract, for a lawful consideration and with a lawful object is a contract.
- 2.1.2 **Proposal or Offer:** When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of the other to such act or abstinence, he is said to make a proposal or offer. In a sale or purchase by tender, the tender signed by the tenderer is the proposal. The invitation to tender and instructions to tenderers do not constitute a proposal.
- 2.1.3 **Acceptance of the Proposal:** When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal when accepted becomes a promise.
- 2.1.4 **What agreements are contracts:** An agreement is a contract enforceable by law when the following are satisfied. A defect affecting any of these renders a contract un-enforceable
- i) Competency of the parties
 - ii) Freedom of consent of both parties
 - iii) Lawfulness of consideration
 - iv) Lawfulness of object

2.2 Competency of Parties

Under law any person who has attained majority and is of sound mind or not debarred by law to which he is subject, may enter into contracts. It, therefore, follows that minors and persons of unsound mind cannot enter into contracts nor can insolvent person do so.

2.2.1 Categories of persons and bodies who are parties to the contract may be broadly subdivided under the following heads: -

- i) Individuals;
- ii) Partnerships;
- iii) Limited Companies;
- iv) Corporations other than limited companies

2.2.2 Contracts with Individuals: Individuals tender either in their own name or in the name and style of their business. If the tender is signed by any person other than the concerned individual, the authority of the person signing the tender on behalf of another must be verified and a proper power of attorney authorizing such person should be insisted on. In case, a tender is submitted in a business name and if it is a concern of an individual, the constitution of the business and the capacity of the individual must appear on the face of the contract and the tender signed by the individual himself as proprietor or by his duly authorized attorney.

2.2.3 Contracts with Partnerships: A partnership is an association of two or more individuals formed for the purpose of doing business jointly under a business name. It is also called a firm. It should be noted that a partnership is not a legal entity by itself, apart from the individuals constituting it. A partner is the implied authority to bind the firm in a contract coming in the purview of the usual business of the firm. The implied authority of a partner, however, does not extend to enter into arbitration agreement on behalf of the firm. While entering into a contract with partnership firm care should be taken to verify the existence of consent of all the partners to the arbitration agreement.

2.2.4 Contracts with Limited Companies: Companies are associations of individuals registered under Companies Act in which the liability of the members comprising the association is limited to the extent of the shares held by them in such companies. The company, after its incorporation or registration, is an artificial legal person which has an existence quite distinct and separate from the members of shareholders comprising the same. A company is not empowered to enter into a contract for purposes not covered by its memorandum of association; any such agreement in excess of power entered into the company is void and cannot be enforced. Therefore, in cases of doubt, the company must be asked to produce its memorandum for verification or the position may be verified by an inspection of the memorandum from the office of the Registrar of Companies before entering into a contract. Normally, any one of the Directors of the company is empowered to present the company. Where tenders are signed by persons other than Directors or authorized Managing Agents, it may be necessary to examine if the person signing the tender is authorized by the company to enter into contracts on its behalf.

2.2.5 Corporation other than Limited Companies: Associations of individuals incorporated under statutes such as Trade Union Act, Co- operative Societies Act and Societies Registration Act are also artificial persons in the eye of law and are entitled to enter into such contracts as are authorized by their memorandum of association. If any contract has to be entered into with any one or such corporations or associations, the capacity of such associations to enter into contract should be verified and also the authority of the person coming forward to represent the said Association.

2.3 Consent of both Parties

Two or more persons are said to consent when they agree upon the same thing in the same sense. When two persons dealing with each other have their minds directed to different objects or attach different meanings to the language which they use, there is no agreement. The misunderstanding which is incompatible with agreement may occur in the following cases: -

- i) When the misunderstanding relates to the identity of the other party to the agreement;
- ii) When it relates to the nature or terms of the transactions;

- iii) When it related to the subject matter of the agreement.

2.4 Free consent of both Parties

- 2.4.1 The consent is said to be free when it is not caused by coercion, undue influence, fraud, misrepresentation or mistake. Consent is said to be so caused when it would not have been given but for the existence of coercion, undue influence, fraud, misrepresentation or mistake. When consent to an agreement is caused by coercion, undue influence, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was caused. A party to a contract, whose consent was caused by fraud or misrepresentation, may, if he thinks fit, insist that the contract shall be performed, and that he shall be put in the position in which he would have been if there presentations made had been true.
- 2.4.2 In case consent to an agreement has been given under a mistake, the position is slightly different. When both the parties to an agreement are under a mistake as to a matter essential to the agreement, the agreement is not voidable but void. When the mistake is unilateral on the part of one party only, the agreement is not void.
- 2.4.3 Distinction has also to be drawn between a mistake of fact and a mistake of law. A contract is not void because it was caused by a mistake as to any law in force in India but a mistake as to law not in force in India has the same effect as a mistake of fact.

2.5 Consideration

Consideration is something which is advantageous to the promisor or which is onerous or disadvantageous to the promisee. Inadequacy of consideration is, however, not a ground avoiding the contract. But an act, forbearance or promise which is contemplation of law has no value is no consideration and likewise an act or a promise which is illegal or impossible has no value.

2.6 Lawfulness of object

The consideration or object of an agreement is lawful, unless it is forbidden by law or is of such a nature that if permitted, it would defeat the provisions of any law, or is fraudulent or involves or implies injury to the fraudulent property of another or the court regards it as immoral or opposed to public policy. In each of these cases the consideration or object of an agreement is said to be unlawful.

2.7 Communication of an Offer or Proposal

The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made. A time is generally provided in the tender forms for submission of the tender. Procuring Entity is not bound to consider a tender, which is received beyond that time.

2.8 Communication of Acceptance

A date is invariably fixed in tender forms up to which tenders are open for acceptance. A proposal or offer stands revoked by the lapse of time prescribed in such offer for its acceptance. If, therefore, in case it is not possible to decide a tender within the period of validity of the offer as originally made, the consent of the tenderer firm should be obtained to keep the offer open for further period or periods.

The communication of an acceptance is complete as against the proposer or offerer, where it is put in the course of transmission to him, so as to be out of the power of the acceptor,

and it is complete as against the acceptor when it comes to the knowledge of the proposer or offerer. The medium of communication in government contracts is generally by post and the acceptance is, therefore, complete as soon as it is posted. So that there might be no possibility of a dispute regarding the date of communication of acceptance, it should be sent to the correct address by some authentic foolproof mode like registered post acknowledgement due, etc.

2.9 Acceptance to be identical with Proposal

If the terms of the tender or the tender, as revised, and modified, are not accepted or if the terms of the offer and the acceptance are not the same, the acceptance remains a mere counter offer and there is no concluded contract. It should, therefore, be ensured that the terms incorporated in the acceptance are not at variance with the offer or the tender and that none of the terms of the tender are left out. In case, uncertain terms are used by the tenderers, clarifications should be obtained before such tenders are considered for acceptance. If it is considered that a counter offer should be made, such counter offer should be carefully drafted, as a contract is to take effect on acceptance thereof.

If the subject matter of the contract is impossible of fulfilment or is in itself in violation of law such contract is void.

2.10 Withdrawal of an Offer or Proposal

A tenderer firm, who is the proposer may withdraw its offer at any time before its acceptance, even though the firm might have offered to keep the offer open for a specified period. It is equally open to the tenderer to revise or modify his offer before its acceptance. Such withdrawal, revision or modification must reach the accepting authority before the *date and time of opening of tender*.

No legal obligations arise out of such withdrawal or revision or modification of the offer as a simple offer is without a consideration. Where, however, a tenderer agrees to keep his offer open for a specified period for a consideration, such offers cannot be withdrawn before the expiry of the specified date. This would be so where earnest money is deposited by the tenderer in consideration of his being supplied the subsidiary contract and withdrawal of offer by the tenderer before the specified period would entitle the Procuring Entity to forfeit the earnest money.

2.11 Withdrawal of Acceptance

An acceptance can be withdrawn before such acceptance comes to the knowledge of the tenderer. A telegraphic revocation of acceptance, which reaches the tenderer before the letter of acceptance, will be a valid revocation.

2.12 Changes in terms of a concluded Contract

No variation in the terms of a concluded contract can be made without the consent of the parties. While granting extensions or making any other variation, the consent of the contractor must be taken. While extensions are to be granted on an application of the contractor, the letter and spirit of the application should be kept in view in fixing a time for delivery.

2.13 Discharge of Contracts

A contract is discharged or the parties are normally freed from the obligation of a contract by due performance of the terms of the contract. A contract may also be discharged: -

- i) **By mutual agreement:** If neither party has performed the contract, no consideration is required for the release. If a party has performed a part of the contract and has

undergone expenses in arranging to fulfil the contract, it is necessary for the parties to agree to a reasonable value of the work done as consideration for the value.

- ii) **By breach:** In case a party to a contract breaks some stipulation in the contract which goes to the root of transaction, or destroys the foundation of the contract or prevents substantial performance of the contract, it discharges the innocent party to proceed further with the performance and entitles him to a right of action for damages and to enforce the remedies for such breach as provided in the contract itself. A breach of contract may, however, be waived.
- iii) **By refusal of a party to perform:** On a promisor's refusal to perform the contract or repudiation there of even before the arrival of the time for performance, the promisee may at his option treat the repudiation as an immediate breach putting an end to the contract for the future. In such a case the promisee has a right of immediate action for damages.
- iv) **In a contract where there are reciprocal promises:** If one party to the contract prevents the other party from performing the contract, the contract may be put to an end at the instance of the party so prevented and the contract is thereby discharged.

2.14 Stamping of Contracts

Under entry 5 of Schedule I of the Indian Stamp Act, an agreement or memorandum of agreement for correlating to the sale of goods or merchandise exclusively is exempt from payment of stamp duty. (A note or memorandum sent by a Broker or Agent to his principal intimating the purchase or sale on account of such principal is not so exempt from stamp duty.)

The Stamp Act provides that no Stamp Duty shall be chargeable in respect of any instrument executed by or on behalf of or in favour of the Government in cases where but for such exemption Government would be liable to pay the duty chargeable in respect of such instrument. (Cases in which Government would be liable are set out in Section 29 of the Act).

2.15 Authority for Execution of Contracts

As per Clause 1 of Article 299 of the Constitution, the contracts and assurances of property made in the exercise of the executive power of the Union shall be executed on behalf of the President. The words "for and on behalf of the President of India" should therefore follow the designation appended below the signature of the officer authorized in this behalf.

Note 1: The various classes of contracts and assurances of property, which may be executed by different authorities, are specified in the Notifications issued by the Ministry of Law from time to time.

Note 2: The powers of various authorities, the conditions under which such powers should be exercised and the general procedure prescribed with regard to various classes of contracts and assurances of property are laid down in Rule 21 of the Delegation of Financial Powers Rules.

2.16 Contract Effective Date

The date of commencement of the obligations under the contract on the parties to a contract is referred as the contract effective date. This date should be invariably indicated in each contract, as per agreed terms and conditions. The Ministries/ Departments are advised to set the effective date to be a date after the following:

- i) Date of signing of the contract.
- ii) Furnishing of performance bond in terms of performance security.
- iii) Receipt of Bank Guarantee for advance payment.
- iv) Obtaining Export Licence for supply of stores by seller and confirmation by the buyer.
- v) Receipt of End User's Certificate. The supplier shall provide the End User's Certificate within 30 (thirty) days of the signing of the contract.

3.0 Salient Features of the Indian Arbitration & Conciliation Act 1996 and Arbitration and Conciliation (Amendment) Act, 2015

Indian Arbitration & Conciliation Act 1996 provides for dispute settlement either by a process of conciliation and/ or by arbitration. This act is based on a 'United Nation's Commission on International Trade Law Model Arbitration Law' with an object to minimise the supervisory role of courts in the arbitral process and to provide that every final arbitral award is enforced in the same manner, as if it was a decree of the court. It covers both international and domestic arbitration and conciliation.

3.1 Arbitration

Arbitration is one of the oldest methods of settling civil disputes arising out of and in the course of performance of the contract between two or more persons by reference of the dispute to an independent and impartial third person called the arbitrator, instead of litigating the matter in the usual way through the courts. It saves time and expense, avoids unnecessary technicalities and, at the same time, ensures "substantial justice within limits of the law".

3.2 Arbitrator, Arbitration and Arbitral Award

The person or persons appointed to determine differences and disputes are called the arbitrator or arbitral tribunal. The proceeding before him is called arbitration proceedings. The decision is called an Award. For the purpose of Law of Limitations, The Arbitration for a particular dispute is deemed to have commenced on the date, on which a request for arbitration is received by the respondent.

3.3 Arbitration Agreement

It is an agreement by the parties to submit to arbitration all or certain disputes, which have arisen or which may arise between them, in respect of a defined legal relationship, whether contractual or non-contractual. The dispute resolution method of arbitration, as per the Arbitration and Conciliation Act, can be invoked only if there is an arbitration agreement (in the form of an arbitration clause or a separate arbitration agreement) in the contract. If there is such an agreement, courts are barred from directly entertaining any litigation in respect of such contracts, and are bound instead to refer the parties to arbitration.

3.4 Appointment and Composition of Arbitral Tribunal

Both parties can mutually agree on the number of arbitrators (which cannot be an even number) to be appointed. In case there is no agreement, a single (sole) arbitrator may be appointed. The parties can mutually agree on a procedure for appointing the arbitrator or arbitrators, or else in case of arbitration with three arbitrators, each party will appoint one arbitrator and the two appointed arbitrators will appoint the third arbitrator, who will act as a presiding arbitrator. If one party fails to appoint an arbitrator within 30 (thirty) days, or if the two appointed arbitrators fail to agree on the third arbitrator, then the court may appoint any

person or institution as arbitrator. In case of an international commercial dispute, the application for appointment of arbitrator has to be made to the Chief Justice of India. In case of other domestic disputes, the application has to be made to the Chief Justice of the High Court within whose jurisdiction the parties are situated.

3.5 Challenge to Appointment of Arbitrator

An arbitrator is expected to be independent and impartial. If there are some circumstances due to which his independence or impartiality can be challenged, he must disclose the circumstances before his appointment. The appointment of an arbitrator cannot be challenged on any ground, except when there is justifiable doubt as to the arbitrator's independence or impartiality or when he does not possess the qualifications for the arbitrator agreed to by the parties. The challenge to appointment has to be decided by the arbitrator himself. If he does not accept the challenge, the arbitration can continue and the arbitrator can make the arbitral award. However, in such a case, application for setting aside the arbitral award can be made to the court, after the award is made by the arbitrator. Thus the other party cannot stall further arbitration proceedings by rushing to court.

3.6 Conduct of Arbitral Proceedings

The parties are free to agree on the procedure to be followed for conducting proceedings, location, language of hearings and written proceedings. Failing any agreement, the arbitral tribunal may decide themselves on these aspects. The parties shall be treated with equality and each party shall be given a full opportunity to present its case. The arbitral tribunal shall observe the rules of natural justice but is bound neither by Civil Procedure Code 1908 nor by Indian Evidence Act 1872. Limitation Act, 1963 is applicable from the date of commencement of arbitral proceedings. Arbitral tribunals have powers to do the following:

Determine admissibility, relevance, materiality and weight of any evidence;

- i) Decide on their own jurisdiction;
- ii) Decide on interim measures;
- iii) Termination of proceedings; and
- iv) Seek court assistance in taking evidence.

3.7 Arbitral Award

The decision of the arbitral tribunal is termed as 'arbitral award'. The decision of arbitral tribunal shall be by majority. The arbitral award shall be in writing, mentioning the place and date, and signed by the members of the tribunal. It must state the reasons for the award. A copy of the award should be given to each party. The tribunal can make interim award also. An arbitral award is enforceable in the same manner as if it were a decree of the court.

3.8 Recourse against Arbitral Award

Recourse to a court against an arbitration award can be made by an application (within three months from the date of the arbitral award), only on the grounds specified in the act, that is, the party was under some incapacity; arbitration agreement was not valid; proper opportunity was not given to present the case; award deal with disputes not falling within the terms of reference of arbitrator; composition of the arbitral tribunal is not as per agreement of parties; subject matter of dispute is not capable of settlement through arbitration under the law or the arbitral award is in conflict with the public policy.

3.9 Conciliation

This is a new concept added in the Act for settlement of disputes. The party initiating conciliation shall send a written invitation to the other party to conciliate and proceedings shall commence when the other party accepts the initiations to conciliation. The parties may agree on the name of a sole conciliator or each party may appoint one conciliator. The conciliation shall assist the parties to reach an amicable settlement of their dispute. When the parties sign the settlement agreement, it shall be final and binding on the parties. The conciliator shall authenticate the settlement agreement and furnish a copy thereof to each party. This process has not yet come into a common use.

3.10 Changes introduced by the Arbitration and Conciliation (Amendment) Act, 2015

- i) **Independence, Disqualification and Obligations of arbitrators at the time of appointment**
 - a) **Independence, Impartiality and Accountability of Arbitrators:** A fixed fee structure ensures the independence of the arbitral tribunal and also provides a reasonable cost estimate to the parties entering into arbitration. The Amendment Act in the Fourth Schedule prescribes the model fees for arbitrators and the High Courts have been assigned the responsibility of framing the rules for determination of the fees and the manner of its payment. The model fee varies from Rs 45,000 to Rs 30 (thirty) lakh for various slabs of disputed value from Rs five lakh to above Rs 20 (twenty) crore - with a sole arbitrator entitles to 25 (twenty-five) percent extra above the model fee). However it is clarified that such fees shall not be applicable in International Commercial Arbitration and in cases where parties have agreed for determination of fees as per the rules of an arbitral institution.
 - b) **Disqualification from appointment:** A long and exhaustive list of specific circumstances which shall act as a bar against any person from being appointed as an arbitrator in a dispute, have been enumerated in the seventh schedule. However, the parties to the dispute have been given the opportunity, after the dispute has arisen, to waive the applicability of the seventh schedule, by mutual written agreement, if they so deem fit. Especially of interest in Public Procurement is disqualification of past or present employees, consultant, advisors or other related business relationship not only with the Procuring Entity but also with any affiliated entity thereof. Thus the earlier practice of appointing serving officers of procuring entity as arbitrator is no more legal.
 - c) **Disclosures:** An arbitrator who is approached for appointment is obligated to disclose as per Sixth Schedule of the Act. The declaration as per a set format removes any ambiguity and ensures uniformity.
 - d) **conflict of Interest** the existence either direct or indirect, of any past or present relationship with or interest in any of the parties or in relation to the subject matter in dispute, whether financial, business, professional or other kind, which is likely to give rise to justifiable doubts as to his independence or impartiality as per fifth schedule to the Act for arbitrator.
 - e) **Time constraints:** An arbitrator shall disclose all circumstances which may affect his ability to deliver an award within 12 (twelve) months.
- ii) **Fast-tracking Arbitration in India**

a) **Award within 12 (twelve) months:** The arbitral tribunal is statutorily obligated to deliver an award within 12 (twelve) months from the date when arbitral tribunal enters into reference. The arbitral tribunal is said to have entered upon the reference on the date on which the arbitrator(s) have received notice of their appointment. The award can be delayed by a maximum period of six months only under the special circumstances where all parties give their consent to such extension of time. Where the award is not made out within the statutory period the mandate of arbitrators shall automatically terminate. It is open for the courts to extend the time period for making an award upon receipt of an application by any of the parties. Such extension is to be granted only for sufficient cause and the court in its discretion may impose the following penalties depending on the facts and circumstances of the case:

1. Reduce the fees of arbitrators by up to five percent for each month of delay.
2. Substitute one or all the arbitrators.
3. Impose actual or exemplary costs on any of the parties.

b) **Oral arguments to be held on a day-to-day basis:** Oral arguments as far as possible shall be heard by the arbitral tribunal on a day to day basis and no adjournments shall be granted without sufficient cause. Provision for imposition of exemplary cost on the party seeking adjournment without sufficient cause has also been made.

c) **Fast Track Procedure:** The parties to arbitration may choose to opt for a new fast track procedure either before or after the commencement of the arbitration. The award in fast track arbitration is to be made out within six months. Where the Arbitral Tribunal delivers the award within a period of six months the arbitral tribunal shall be entitled to additional fees. The quantum of such additional fees shall be determined by the parties. The salient features of the fast track arbitration are:

1. Dispute is to be decided based on written pleadings only.
2. Arbitral Tribunal shall have the power to call for clarifications in addition to the written pleadings where it deems necessary.
3. Oral hearing maybe held only if all the parties make a request or if the arbitral tribunal considers it necessary.
4. The parties are free to decide the fees of the arbitrator(s).

d) **Appointment within 60 (sixty) days:** Whenever an application for appointment of Arbitrator(s) is moved before a court such application shall be disposed of as expeditiously as possible and an endeavour shall be made to dispose of the matter within a period of sixty days from the date of service of notice on the opposite party. The court while appointing arbitrators shall confine itself to the examination of the existence of an arbitration agreement.

iii) **Procedural and Jurisprudence simplified**

i) **Arbitration to commence within 90 (ninety) days of interim relief:** Where the court grants interim relief before the commencement of arbitration, the arbitration must commence within 90 (ninety) days from such order of interim relief. The court however has been given the authority to extend the period within which the arbitration must commence, if it deems such extension necessary. The Act

prohibits courts from entertaining any application for interim relief once the arbitration has entered into reference, unless the court finds that circumstances exist which may not render the remedy provided under section 17 efficacious.

ii) **Powers of Interim Relief in Section 9 also to Arbitral Tribunal:** The parties to arbitration can now directly approach the arbitral tribunal for seeking interim relief on the same grounds as were available to the parties under section 9 of the previous act. Further, the tribunal has now been granted the powers of a court while making interim awards in the proceedings before it.

iii) **Arbitral tribunal not bound to rule in accordance with terms of the contract:** The arbitral tribunal was previously bound to deliver an award in accordance with the terms of the agreement and was required to take into consideration the 'usages of the trade applicable to the transaction'. Vide the Amendment the arbitral tribunal has been freed of the obligation to only rule in accordance with the terms of the agreement. The arbitral tribunal is only required to take the agreement into account while delivering its award and is free to deviate from the terms of the agreement if the circumstances so warrant.

iv) Act made applicable on International Commercial Arbitration with even seat outside India: Part I of the act has been made applicable for limited purpose (listed below) on International Commercial Arbitrations even in instances where the seat of the arbitration is outside India, however giving freedom to exclude the applicability the Act by entering into an agreement to this effect.

iv) **Seeking interim relief from courts [section 9]**

i) Seeking the assistance of the court in taking evidence [section 27]

ii) Appealing against the order of a court where the court refuses to refer the parties to arbitration. [section 37(1) (a)]

iii) Restricting the right to second appeal and preserving the right of parties to approach the Supreme Court in appeal. [section 37 (3)]

4.0 Salient Features of Competition Act, 2002 relating to Anti-competitive Practices

i) The **Preamble of the Competition Act, 2002**, provides for the establishment of a Commission keeping in view of the economic development of the country to promote and sustain competition in markets; prevent practices having adverse effect on competition; protect consumer interest; and ensure freedom of trade carried on by participants in Indian markets.

ii) The Act was amended by **Competition (Amendment) Act, 2007** and again by Competition (Amendment Act), 2009.

iii) In India, **Competition Commission of India ("CCI")**, formulated under the Competition Act is a quasi-judicial and regulatory body entrusted with the task enforcement of the Competition Act, 2002. Apart from specific functions under the Competition Act, 2002 the CCI also has extra-territorial jurisdiction, inquiry into anticompetitive conduct, sector-specific regulatory work, competition advocacy, power of appointment of professional and experts, and procedure for investigation (in terms of regulating its own procedure).

- iv) Section 8 dealing with **composition of Commission** provides for a chairperson and not less than two and not more than six members which are to be appointed by Central Government. The CCI is vested with inquisitorial, investigative, regulatory, adjudicatory and also advisory jurisdiction. Vast powers have been given to the Commission and under Section 64, the Commission can frame regulations.
- v) The **Competition Appellate Tribunal (COMPAT)** is another body entrusted with the responsibility of hearing and disposing of appeals against any direction or decision or order of the CCI. It also adjudicates on compensation claims arising from the findings of the CCI or its own findings on appeals against the CCI orders and passes orders on the recovery of compensation.
- vi) Any person aggrieved by the order or decision of the CCI may prefer an **appeal** to the Competition Appellate Tribunal ('COMPAT') within 60 (sixty) days from the date of communication of such order or decision. The second and final appeal under Section 53T lies before the Supreme Court of India from the orders of the COMPAT within a period of 60 (sixty) days from the date of communication of the order by the COMPAT.
- vii) CCI may initiate an inquiry:
 - i) On its own motion on the basis of information and knowledge in its possession, or
 - ii) On receipt of any information, in such manner and accompanied by such fee as may be determined by regulations, from any person, consumer or their association or trade association, or
 - iii) On receipt of a reference from the Central Government or a State Government or a statutory authority
- viii) The Act provides for Director General office as a separate investigative wing to assist the CCI. The DG looks into the complaints received from the CCI and submits all findings to it. DG is solely responsible for making enquiries, for examining documents and for making investigations into complaints. The DG is vested under the Act with powers of summoning of witnesses, examining them on oath, requiring the discovery and production of documents, receiving evidence on affidavits, issuing commissions for the examination of witnesses etc.
- ix) The Act in Section 49 (3) lays down the **advocacy function of CCI** and lays down that the CCI shall take suitable measures for the promotion of competition advocacy, creating awareness and imparting training about competition issues. Section 32 of the Act grants the CCI **extra-territorial jurisdiction** over anticompetitive conduct which has an appreciable adverse effect on competition within India. Any anticompetitive activity taking place outside India but having an appreciable adverse effect on competition within India shall be subject to the application of the Competition Act.
- x) Under s. 21 of the Act, any statutory authority can suo motto or on request of a party in the course of a proceeding before it **can make a reference** to CCI. CCI shall give its opinion within sixty days of receipt of such reference by such statutory authority. Under the provisions of the Act, the authority which made reference shall consider the opinion of the Commission and thereafter, give its findings recording reasons on the issues referred to in the said opinion by CCI. Section 21A in the same language provides for such reference by CCI to any statutory authority.
- xi) **The key provisions of the Competition Act include:**

- i) Section 3 of the Competition Act, 2002 dealing with anti-competitive agreements;
- ii) Section 4 of the Competition Act, 2002 which discusses abuse of dominance;
- iii) Section 5 and 6 of the Competition Act, 2002 dealing with the regulation of combinations.
- iv) The term 'agreement', has been defined broadly in the Competition Act. It extends to a mere 'arrangement', 'understanding' or 'action in concert', none of which need be in writing or enforceable by law.
- v) Section 3(1) of the Competition Act lays down that no enterprise or association of enterprises or person or association of persons shall enter into any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition within India. The Act prohibits an anti-competitive agreement and declares that such an agreement shall be void.
- vi) Section 3(3) of the Competition Act deals with the horizontal agreements as it covers the agreements between entities engaged in identical or similar trade of goods or provision of services. It also includes cartels. The section covers:
 - vii) Agreement entered into between enterprises or associations of enterprises or persons or associations of persons or between any person and enterprise
 - viii) Practice carried on by any association of enterprises or association of persons
 - ix) Decision taken by any association of enterprises or association of persons
- x) Section 3(3) of the Competition Act enlists four broad classifications of horizontal agreements which are presumed to cause an appreciable adverse effect on competition (AAEC) in India.
 1. Agreements regarding Prices
 2. Agreements regarding Quantity/ Quality
 3. Market Allocation
 4. Bid Rigging

These four horizontal agreements are not presumed to have appreciable adverse effect on competition and excluded from the provisions of Section 3(3) of the Competition Act, 2002 provided they are entered into by way of joint ventures and increase efficiency in production, supply, distribution, storage, acquisition or control of goods or provision of services.

Cartels, by their very nature are secretive and thus it is difficult to find the direct evidence of their presence. The orders of the CCI clearly point that CCI relies on circumstantial evidence, both economic and conduct-based, to reach its decision on the existence of a cartel agreement.

The Act provides a definition for bid rigging and it covers agreements having effect of eliminating or reducing competition for bids or adversely affecting or manipulating the process for bidding:

4.1 Collusive bidding: Agreement between firms to divide the market, set prices or limit production – involves, kickbacks and misrepresentation of independence

- i) Bid Rotation
- ii) Bid Suppression
- iii) Complementary Bidding
- iv) Subcontracting arrangements
- v) Market Allocation

4.2 The Act gives wide discretion to CCI to frame the remedies to overcome the anticompetitive situation:

- i) Declare Anticompetitive Agreements Void
- ii) Impose Heavy Penalties
 1. Penalty can be up to 10 (ten) percent of the average turnover for the last three preceding financial years upon each of such persons or enterprises which are parties to bid-rigging
 2. Cartel, a penalty of up to three times of its profit for each year of the continuance of such agreement or 10 (ten) percent of its turnover for each year of the continuance of such agreement, whichever is higher
 3. Order the parties to Cease & Desist
 4. Modification of agreements
 5. Remedy Damage to reputation
 6. Fix Individual Liability
 7. Grant Interim orders
 8. Any other order as CCI deems fit

4.3 **Who can file the information:** Raising issues regarding anti-competitive behaviour for action by CCI under the act is called filing the information:

1. Any person, consumer or their association or trade association can file information before the Commission.
2. Central Govt. or a State Govt. or a statutory authority can also make a reference to the Commission for making an inquiry.
3. "Person" includes an individual, HUF, firm, company, local authority, cooperative or any artificial juridical person.

4.4 **What are the issues on which information can be filed?**

1. The information can be filed on the issues like anti-competitive agreements and abuse of dominant position or a combination.
2. Class of consumers.

4.5 **The fee -**

1. Rupees 5000/- (Five thousand only) in case of individual, or Hindu undivided family (HUF), or Non-Government Organisation (NGO), or Consumer Association, or Co-operative Society, or Trust, duly registered under the respective Acts,

2. Rupees 20,000/- (twenty thousand only) in case of firms, companies having turnover in the preceding year upto Rupees one crore, and
3. Rupees 50,000/- (fifty thousand only) in case not covered under clause (a) or (b) above.

5.0 Salient Features of the Whistle Blowers Protection Act, 2011 and the Whistle Blowers Protection (Amendment) Act, 2015

- i) The Act seeks to protect whistleblowers, i.e. persons making a public interest disclosure related to an act of corruption, misuse of power, or criminal offence by a public servant.
- ii) Any public servant or any other person including a non-governmental organization may make such a disclosure to the designated agencies i.e. Central or State Vigilance Commission. The Time Limit for making any complaint or disclosure to the Competent Authority is seven years from the date on which the action complained against is alleged to have taken place.
- iii) The Designated Agency cannot entertain any disclosure relating to any inquiry ordered under the Public Servants (Inquiries) Act, 1850 and Commissions of Inquiry Act, 1952.
- iv) Similarly, the Amendment Act, 2015, The Bill prohibits the reporting of a corruption related disclosure if it falls under any 10 (ten) categories including information related to:
 - i) The sovereignty, strategic, scientific or economic interests of India, or the incitement of an offence
 - ii) Records of deliberations of the Council of Ministers
 - iii) That which is forbidden to be published by a court or if it may result in contempt of court;
 - iv) A breach of privilege of legislatures;
 - v) Commercial confidence, trade secrets, intellectual property (if it harms a third party);
 - vi) That relayed in a fiduciary capacity;
 - vii) That received from a foreign government;
 - viii) That which could endanger a person's safety etc.;
 - ix) That which would impede an investigation etc.;
 - x) Personal matters or invasion of privacy.
- v) However, if information related to (b), (e), (f), and (j) is available under the Right to Information Act, 2005, then it can be disclosed under the Act.
- vi) Any public interest disclosure received by a Competent Authority will be referred to a government authorised authority if it falls under any of the above prohibited categories. This authority will take a decision on the matter, which will be binding.
- vii) The Identity of the Complainant must be included in the Complaint or the Disclosure. However the Designated Agency shall conceal the identity of the complainant unless

the complainant himself has revealed his identity to any other office or authority while making public interest disclosure or in his complaint or otherwise. However, the Designated Agency can reveal the identity of the complainant in circumstances where it becomes inevitable or extremely necessary for the purposes of the enquiry.

- viii) The Designated Agency may, with the prior written consent of the complainant, reveal the identity of the complainant to such office or organization where it becomes necessary to do so. If the complainant does not agree to his name being revealed, in that case, the complainant shall provide all documentary evidence in support of his complaint to the Designated Agency.
- ix) Any person who negligently or with mala fide reveals the identity of the complainant shall be punished with imprisonment up to three years and fine not exceeding fifty thousand rupees.
- x) Similarly any disclosure made with mala fide and knowingly that it was false or misleading shall be punished with imprisonment up to two years and fine not exceeding thirty thousand rupees.
- xi) After receipt of the report or comments relating to the complaint, if the Designated Agency is of the opinion that such comments or report reveals either wilful misuse of power or wilful misuse of discretion or substantiates allegations of corruption, it shall recommend to the public authority to take appropriate corrective measures such as initiating proceedings against the concerned public servant or other administrative and corrective steps. However, in case the public authority does not agree with the recommendation of the Designated Agency, it shall record the reasons for such disagreement.
- xii) While dealing with any such inquiry, the Designated Agency shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908 in respect of matters like receiving evidence, issuing commissions, discovery and production of any document etc. Also, every proceeding before the Designated Agency shall be deemed to be a judicial proceeding under the Code of Criminal Procedure, 1973 and Indian Penal Code.
- xiii) No obligation to maintain secrecy or other restrictions upon the disclosure of information shall be claimed by any Public Servant in the proceedings before the Designated Agency.
- xiv) But, no person is required to furnish any information in the inquiry under this act if such information falls under the 10 (ten) categories mentioned before.
- xv) It shall be the responsibility of the Central Government to ensure that no person who has made a disclosure is victimised on the ground that such person had made a disclosure under this act.
- xvi) If any person is victimised or likely to be victimised on the above-mentioned ground, he may contact the Designated Agency and the Designated Agency may pass appropriate directions in this respect. The Designated Agency can even restore status quo ante with respect to the Public Servant who has made a disclosure. Also, the Designated Agency can pass directions to protect such complainant.

- xvii) If an offence under this act has been committed by any Head of the Department unless he proves that the offence was committed without his knowledge or that he exercised all due diligence in this respect.
- xviii) This Act extends to all the Companies as well. When any offence under this act has been committed by a company, every person who at the time of the offence was responsible for the conduct of the business of the company shall be deemed to be guilty of the offence unless he proves that the offence was committed without his knowledge or that he exercised all due diligence in this respect.
- xix) No court can take cognizance of any offence under this act save on a complaint made by the Designated Agency. No court inferior to that of a Chief Metropolitan Magistrate or a Chief Judicial Magistrate shall try any offence under this act. The High Court shall be the appellate authority in this respect.

Appendix 3: Electronic Procurement (e-Procurement)

(The details given in this appendix are generic in nature are not prescriptive part of this Manual. Procuring Entities may settle and decide the details with the service provider)

1.0 Electronic procurement (e-procurement)

- i) Electronic Procurement (e-Procurement) is the use of information and communication technology (specially the internet) by the Procuring Entity in conducting procurement processes with the vendors/ contractors for the acquisition of goods (supplies), works and services aimed at open, non-discriminatory and efficient procurement through transparent procedures. As per GFR 2017, it is now mandatory for Ministries/ Departments to receive all bids through e procurement portals in respect of all procurements.
- ii) Ministries/ Departments which do not have a large volume of procurement or carry out procurements required only for day-to-day running of offices and also have not initiated e-procurement through any other solution provider so far may use e-procurement solution developed by NIC. Other Ministries/ Departments may either use e-procurement solution developed by NIC or engage any other service provider following due process.
- iii) These instructions will not apply to procurements made by Ministries/ Departments through Government E-Markets (GeM).
- iv) In individual cases where national security and strategic considerations demands confidentiality, Ministries/ Departments may exempt such cases from e-procurement after seeking approval of concerned Secretary and with concurrence of Financial Advisers.
- v) In case of tenders floated by Indian Missions abroad, Competent Authority to decide the tender, may exempt such case from e-procurement.

2.0 Service Provider

A service provider is engaged to provide an e-procurement system covering the following:

- i) All steps involved, starting from hosting of tenders to determination of techno-commercially acceptable lowest bidder, are covered;
- ii) The system archives the information and generates reports required for the management information system/ decision support system;
- iii) A helpdesk is available for online and offline support to different stakeholders;
- iv) The system arranges and updates the Digital Signature Certificate (DSC) for departmental users; and
- v) Different documents, formats, and so on, for the e-procurement systems are available.

3.0 Process

In e-procurement, all processes of tendering have the same content as in normal tendering and are executed, once the necessary changes have been made, online by using the DSC as follows:

- i) **Communications:** Wherever traditional procedures refer to written communication and documents, the corresponding process in e-procurement would be handled either fully online by way of uploading/ downloading/ emails or automatically generated SMSs or else partly online and partly offline submission. It is advisable to move to full submissions online. More details would be available from e-procurement service provider's portal. In e-procurement, the tender fee, EMD and documents supporting exemption from such payments are submitted in paper form to the authority nominated in the NIT, but scanned copies are to be uploaded – without which the bid may not get opened. In future, such payments may be allowed online also;
- ii) **Publishing of tenders:** Tenders are published on the e-procurement portal by authorised executives of Procuring Entity with DSC. After the creation of the tender, a unique "tender id" is automatically generated by the system. While creating/ publishing the tender, the "bid openers" are identified – four officers (two from the procuring entity and two from the associated/ integrated Finance) with a provision that tenders may be opened by any two of the four officers. As in case of normal tenders, NITs are also advertised in newspapers and posted on the Procuring Entity website. The downloading of the tender may start immediately after e-publication of NIT and can continue till the last date and time of bid submission. The bid submission will start from the next day of e-publication of NIT. In case of limited and PAC/ single tenders, information should also be sent to target vendors/ contractors through SMS/ email by the portal;
- iii) **Registration of bidders on portal:** In order to submit the bid, bidders have to register themselves online, as a one-time activity, on the e-procurement portal with a valid DSC. The registration should be in the name of the bidder, whereas DSC holder may be either the bidder himself or a duly authorised person. The bidders will have to accept, unconditionally, the online user portal agreement which contains all the terms and conditions of NIT including commercial and general terms and conditions and other conditions, if any, along with an online undertaking in support of the authenticity of the declarations regarding facts, figures, information and documents furnished by the bidder online;
- iv) **Bid submission:** The bidders will submit their techno-commercial bids and price bids online. No conditional bid shall be allowed/ accepted. Bidders will have to upload scanned copies of various documents required for eligibility and all other documents as specified in NIT, techno-commercial bid in cover-I, and price bid in cover-II. To enable system generated techno-commercial and price comparative statements, such statements should be asked to be submitted in Excel formats. The bidder will have to give an undertaking online that if the information/ declaration/ scanned documents furnished in respect of eligibility criteria are found to be wrong or misleading at any stage, they will be liable to punitive action. EMD and tender fee (demand draft/ banker's cheque/ pay order) shall be submitted in the electronic format online (by scanning) while uploading the bid. This submission shall mean that EMD and tender fee are received electronically. However, for the purpose of realisation, the bidder shall send the demand draft/ banker's cheque/ pay order in original to the designated officer through post or by hand so as to reach by the time of tender opening. In case of exemption of EMD, the scanned copy of the document in support of exemption will have to be uploaded by the bidder during bid submission;

- v) **Corrigendum, clarifications, modifications and withdrawal of bids:** All these steps are also carried out online mutatis mutandis the normal tendering process;
- vi) **Bid opening:** Both the techno-commercial and price bids are opened online by the bid openers mentioned at the time of creation of the tender online. Relevant bidders can simultaneously take part in bid opening online and can see the resultant bids of all bidders. The system automatically generates a technical scrutiny report and commercial scrutiny report in case of the techno-commercial bid opening and a price comparative statement in case of price bid opening which can also be seen by participating bidders online. Bid openers download the bids and the reports/statements and sign them for further processing. In case of opening of the price bid, the date and time of opening is uploaded on the portal and shortlisted firms are also informed through system generated emails and SMS alerts – after shortlisting of the techno-commercially acceptable bidders;
- vii) **Shortfall document:** Any document not enclosed by the bidder can be asked for, as in case of the traditional tender, by the Procuring Entity and submitted by the bidder online, provided it does not vitiate the tendering process;
- viii) **Evaluation of techno-commercial and price bids:** This is done offline in the same manner as in the normal tendering process, based on system generated reports and comparative statements;
- ix) **Award of contract:** Award of the contract is done offline and a scanned copy is uploaded on the portal. More needs to be done in this regard. The information and the manner of disclosure in this regard must conform to Section 4(1) (b), 4(2) and 4(3) of the RTI Act to enhance transparency and also to reduce the need for filing individual RTI applications. Therefore, the award must be published in a searchable format and be linked to its NIT; and
- x) **Return of EMD:** EMD furnished by all unsuccessful bidders should be returned through an e-payment system without interest, at the earliest, after the expiry of the final tender validity period but not later than 30 (thirty) days after conclusion of the contract. EMD of the successful bidder should be returned after receipt of performance security as called for in the contract.



Government of India
Ministry of Finance
Department of Expenditure