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निर्माण–कार्य नीति

WORK POLICY

निर्माण–कार्य नियमावली

MANUAL FOR PROCURMENT OF WORKS

DEPARTMENT OF EXPENDITURE, MINISTRY OF FINANCE

(GoI)

सागर – 470003 (म.प्र.)

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सत्यमेव जयते

MANUAL FOR PROCUREMENT OF WORKS

(Updated June, 2022)

Government of India
Ministry of Finance
Department of Expenditure

Manual for Procurement of Works

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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.

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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 2017[1];

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-

[1] 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

II local supplier' but less than that prescribed for 'Class-I local supplier' under the Public Procurement (Preference to Make in India), Order 2017[2];

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

[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

(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[3].

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 2017[4]

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 contacts) 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

[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

[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

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);

xxxi) "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;

xxxii) "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;

xxxiii) “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.

xxxiv) "Prospective bidder" means anyone likely or desirous to be a bidder;

xxxv) "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;

xxxvi) “Registration” means **s**imply registering the bidder/ supplier/ service provider/ contractor, without any verification, say on a website etc. (Please refer to enlistment to appreciate the differentiation).

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 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 2017[5]. 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.

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

b) n 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 [6]Rs. 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) [7]For 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. [8]If 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) [9]Any 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) [10]Any 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) [11]Ministry 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) [12]Subject 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) [13]No works shall be commenced or liability incurred in connection with it until:-

i) Feasibility Study Report / Preliminary Project Report (PPR) has been be 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

[9]Rule 138, GFR, 2017
[10]Rule 136(3), GFR, 2017
[11]Rule 135(2), GFR, 2017
[12]Rule 135(1), and 139(i), GFR, 2017
[13]Rule 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) [14]Administrative 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.

[14]Rule 131, GFR, 2017
[15]Rule 132, GFR, 2017
[16]Rule 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/ schemes[17].

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).

[17]No. 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 operatingregularly 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) [18]For 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

[18]Rule 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

[19]Niti 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 ins 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 in volved 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 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;

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 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

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 mayhelp 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 EoI 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 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. 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 EoI 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 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.

v) **Evaluation of EoI:** 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 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 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 guidelines[20] 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 al so 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).F 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 [21]Open 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

[21]Rule 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**
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 • Insufficient publicity; • Hindrances in availability of bid documents; • insufficient time for bid preparation; or • Due to onerous cost of bid-documents or EMD	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 though SMS/ mail/ email. All enlisted vendors/ contractors (in particular past successful vendors/ contractors) should be given intimation about forthcoming tenders via SMS/ mail/ email. 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. It should be also ensured that there is no impediment to issue/ access of bid documents. 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.

3.5.2 **OTE - Risks and Mitigations**	
Risk	**Mitigation**
	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. EMD should be sufficient to ensure that bidders honour their bids but at the same time should not be large enough to reduce competition.
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 [22]**Global 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

[22]Rule 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 crores**[23] 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 format[24] (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

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

[24] Issued 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 offices[25].

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 cases[26].

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 cases[27].

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 15.05.2020[28].

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 Expenditure[29].

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 etc[30].

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

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

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

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

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

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

[30]Notified 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-STEM[31] 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	**Mitigation*s***
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 [32]**Limited 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

[32]Rule 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

quote – causing a transparency dilemma about consideration of such offers.	treated as a single tender enquiry situation, with relevant powers of approval etc. 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.
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 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.

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;

[33]Rule 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.

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

[34]Rule 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, 20thand 30th of every month and the bid submission dates are so determined that bids are opened only on fixed scheduled dates, viz, 7th, 17thand 27thof 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 enrity 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 askedto submit a detailed presentationon 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 Bonds[35], 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

[35] Notified 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 Bond[37], 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 securities[38]. 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.

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

[37] Notified 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 recorded[39].

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

[39]Notified 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 though 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 clause[40] 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 clause[41] 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;

[41] 8. 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*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 lakh[42]. 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 a enlisted contractor but the tenderer is not a 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 Infirmity/ 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 arfe 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-venders, 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) [43]A 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

[43]Rule 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	
Risk	*Mitigation*
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	
Risk	*Mitigation*
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	
Risk	*Mitigation*
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. **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. **Cover bidding:** Cover bidding is designed to give the appearance of genuine competition by way of supporting bids for the leading bid-rigger. **Bid suppression:** Bid suppression means that a company does not submit a bid for final consideration in support of the leading bid-rigger. **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. **Market allocation:** Competitors carve up the market and agree not to give competitive bids for certain customers or in certain geographic areas.	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.

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, Stale/ Central Environmental Authorities, Forrest 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 form 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) Organsations 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. 76[44]) 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) [45]Final 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) **<u>Delay in payment to the contractors</u>**

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

[44]DoE 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 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 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.

[46] New 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 to 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 work[47] 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 Procurement[48]

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
[50] Rule 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**	
Risk	*Mitigation*
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.	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.
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 maybe taken

7.2.5 **Conduct of Public Servants in Public Procurement - Risks and Mitigations**	
Risk	*Mitigation*
	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 Bidding**[52]

1. The guidelines are classified under following two types:-

[52]Notified 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 ad 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.I 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 21500:2012could 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

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 IV: 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

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_____

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 on …….in 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 UNDERSTANDING[54]

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 Rates[56] 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 Co*nsultant' 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 he 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, Stale/ Central Environmental Authorities, Forrest 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 pro-active 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 lake 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 clue 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.

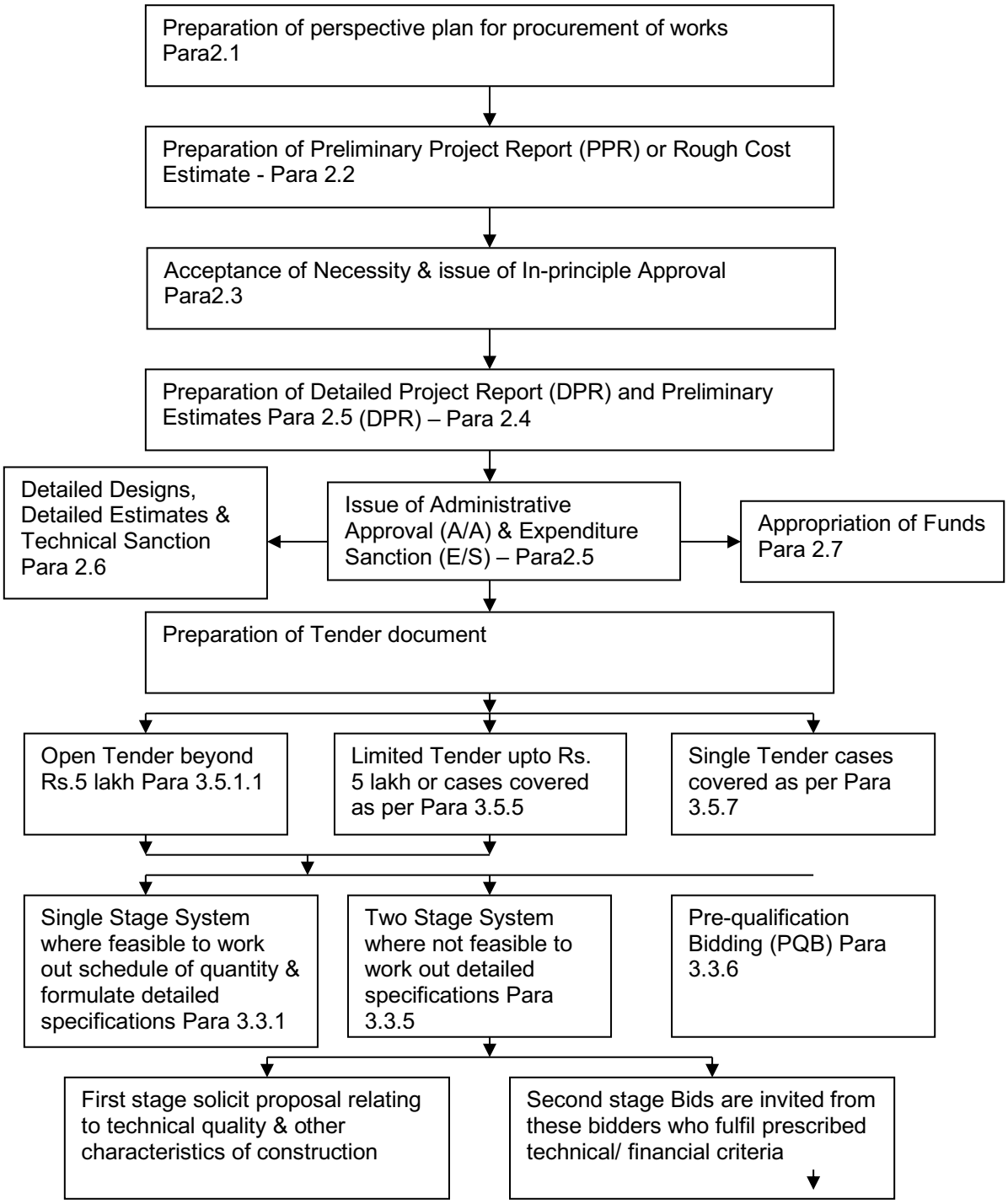
41. Provisions, if any, made in respect of deposit works in 'Project Management Consultant's Works Manual or Codes shall stand modified to the extent of the stipulations made in this MoU for execution of 'Procuring Entity' works by 'Project Management Consultant'.

Signatures and Witnesses

Date:_____ Place: _____

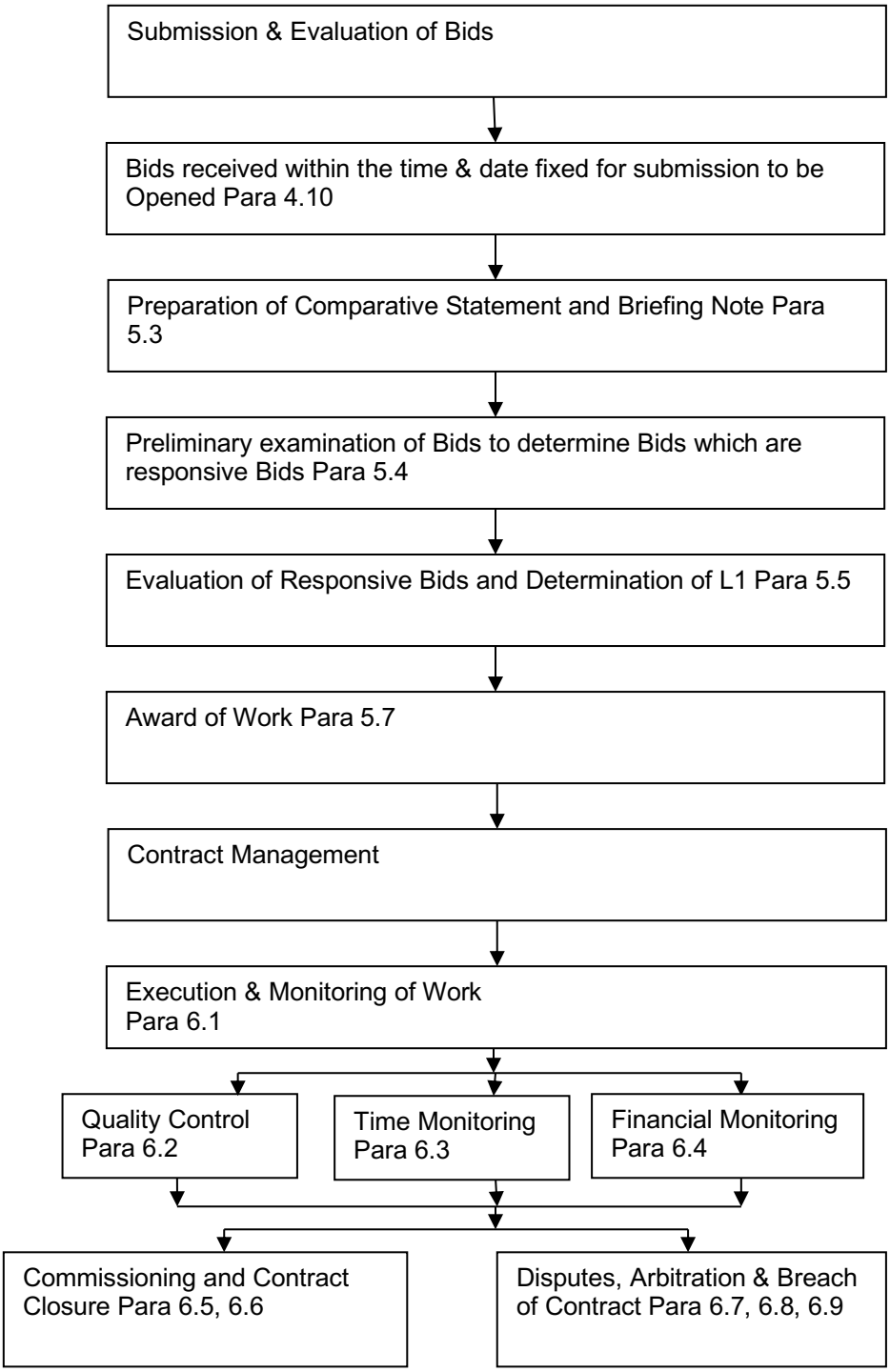
Annexure 9: Flowchart of Process of Procurement of Works

(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 Rates2016 - Vol-I, Vol-II

DSR2016-(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:

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 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 *(substituted) 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 susceptibly 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	Cavitational /Cavitron - Ultrasonic Surgical Aspirator (CUSA)
23	Endobronchial Ultrasound System
24	Rotary Microtome
25	Magnifying surgical loups
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 CO2,O2 and N2
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
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 Facture 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 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:-

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

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 Po.
- 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, $\left(\frac{M1}{Mo}\right)$ and $\left(\frac{L1}{Lo}\right)$ should be multiplied by a correction factor of exchange rates$\left(\frac{Eo}{E1}\right)$, 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_o 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 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-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 members[10]

   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) above[60]. 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 concur[61].

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

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[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 Affairs[62].

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 Authority[63].

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 regard[64].

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[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 2020[65]

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 form 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 I: 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 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

"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 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 sub-divided 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 off act 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 actor 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 fulfil mentor 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 is 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, 1973and 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