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MANUAL FOR PROCUREMENT OF NON-CONSULTANCY SERVICES (2025)

Government of India
Ministry of Finance
Department of Expenditure

Manual for Procurement

of

Non-Consultancy services

(2025)

Government of India
Ministry of Finance
Department of Expenditure

FOREWORD

As part of initiatives to enhance transparency, fairness, competition, value for money, and good governance in public procurement, the Department of Expenditure, Ministry of Finance had released various Manuals for Procurement.

2. Since their publication, various developments - policy insights, stakeholder discussions, the Covid pandemic, the Methodology for Assessment of Procurement (MAPS-II) Report (2020), Model Tender Documents for Goods, Non-consultancy services and Consultancy Services, FTA dialogues, the new DFPR 2024, amended GFR 2017, and the new Mediation Act - have necessitated a comprehensive revision of the manuals.

3. The procurement of Non-consultancy Services (NC Services) has gained prominence with increased outsourcing by Government Departments. Earlier, only a Chapter on NC Services was included in the Manual for Procurement of Consultancy and Other Services.

4. Now, a standalone **Manual for Procurement of Non-consultancy Services** has been developed, integrating recent developments. It emphasizes ease of business for service providers and clarity for procurement officials.

5. I would like to acknowledge the outstanding work done by the team le.d by Shri Chinmay Pundlikrao Gotmare (Joint Secretary), Shri Sanjay Aggarwal (ex-Advisor, PPD) and the efforts of Shri Anil Kumar (Deputy Secretary, PPD), Shri Sher Bahadur (Under Secretary, PPD), Shri Girish Bhatnagar (Sr. Consultant), and Shri Vikram Rajvanshi (Procurement Specialist, PPD). I also extend my gratitude to the Ministries, Departments, and other Organizations that reviewed drafts and provided valuable input.

6. I hope that this new manual would help in streamlining the procurement of Non-consultancy services by Ministries/ Departments and their Organizations.

(**Vumlunmang Yualnam**)
Secretary (Expenditure)

Date: 20.06.2025

Preface

1. **Compliance**: This Manual adheres to the relevant laws, GFR, and clarifications/ OMs issued by the Procurement Policy Division, Department of Expenditure, Ministry of Finance ('the Ministry') up to April 2025. In case of inconsistencies between this Manual and prevailing law or GFR, the extant law and GFR shall prevail. However, the provisions of this Manual shall prevail in case of discrepancies with the clarifications/ OMs issued till March April 2025 by the Ministry. Procuring entities are advised to stay informed about any further changes in the relevant law, GFR, and clarifications/ OMs from the Ministry.
2. **Interpretation**:
    a) Any mention of writing or writing includes matter in digital communications (including email), manuscript, typewritten, lithographed, cyclostyled, photographed, or printed—under or over signature or seal or digitally acceptable authentication, as the case may be.
    b) Words in the singular include the plural and vice-versa. Words importing the masculine gender shall be taken to include other genders. Words importing persons include any company or any association/ body of individuals/ companies and vice-versa.
    c) Any reference to any legal Act, Government Policies or orders shall be deemed to include all amendments to such instruments, from time to time, till date.
    d) Sentences containing 'may' are to be considered desirable or good practices that procuring entities are encouraged to implement.
    e) Sentences containing 'should'/ 'shall' are required to be followed.
    f) Sentences containing "allowed" indicate an optional course of action to be decided upon on merits.
3. **Manual for Procurement of Goods as a Comprehensive Reference:** The 'Manual for Procurement of Goods, 2024' is written to be a comprehensive reference. Other Manuals (Works, Consultancy, and Non-consultancy Services) are self-sufficient from the point of carrying out a procurement; however, common topics relevant for a deeper understanding of the fundamentals of procurement are included only in brief in these manuals, giving reference to relevant details in the 'Manual for Procurement of Goods, 2024'.
4. **Manuals and Model Tender Documents:** Model Tender Documents (MTD) for Procurement of Goods and Non-consultancy Services were issued in 2021, and those for Consultancy Services were issued in 2023. These complement the respective procurement manuals since the MTDs contain additional details on many topics that the Manuals can accommodate. Therefore, Procuring Officials are urged to read both Manuals and MTDs in tandem for better understanding.
5. **Annexures:** To maintain an uninterrupted flow of text on a topic, annexures contain voluminous details from various orders/websites. Since these orders/ websites undergo frequent revision, updating the annexures would be easier than updating the body of the Manual.
6. An attempt has been made in this edition of Manuals to illustrate some topics with relevant examples.

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Acronyms

The following acronyms are used throughout this Manual.[1]:

AMRCD Administrative Mechanism for Resolution of CPSEs

AITB Additional Instructions to Bidders

BG Bank Guarantee

BNS Bhartiya Nyaya Sanhita (BNS), 2023 (see IPC also)

BOC Bid Opening Committee

BOQ "Bill of Quantities" (refers to the Price Schedule in Excel sheet)

BSD Bid Securing Declaration (in lieu of Bid Security, if permitted)

CA (CFA) Competent Authority (Competent Financial Authority)

CBI Central Bureau of Investigation

CCI Competition Commission of India

CEO Chief Executive Officer

CIPP Code of Integrity for Public Procurement

CMC Contract Monitoring Committee

CMD (MD) Chairman and Managing Director (Managing Director)

COI Conflict of Interest

CPPP Central Public Procurement Portal

CPSE Central Public Sector Enterprise

CVC Central Vigilance Commission

CVO Chief Vigilance Officer

DFPR Delegation of Financial Power

DoE Department of Expenditure (Ministry of Finance)

DPIIT Department for Promotion of Industry and Internal Trade

DSC Digital Signature Certificate

E-BG Electronic Bank Guarantee

EMD Earnest Money Deposit

EoI Expression of Interest (Tender) – see also REoI

EPF Employee Provident Fund

ESI Employee State Insurance

FA Framework Agreement (Forward Auction, Financial Adviser)

FA (& CAO) Financial Adviser (and Chief Accounts Officer)

FM Force Majeure

GCC General Conditions of Contract

GeM Government e-Marketplace

GFR General Financial Rules, 2017

GST (CGST/ IGST/ SGST) (Central/ Integrated/ State) Goods and Services Tax

GSTIN GST Identification Number

GTE Global Tender Enquiry

H-1 Highest Scoring Bidder

HSN Harmonized System of Nomenclature

ICB International Competitive Bidding

IEM Independent External Monitor

IFD Integrated Finance Department

IoT Internet of Things

IPC Indian Penal Code, 1860 (This law has been replaced by Bhartiya Nyaya Sanhita (BNS), 2023 from 1st July 2024)

IPR Intellectual Property Rights

ISO International Organization for Standardization

ITB Instructions to Bidders (may in some instances be called Instructions to Tenderers - ITT)

JV Joint Venture (Consortium)

L1 is the lowest acceptable bid that is techno-commercially responsive for the supply of a bulk quantity.

[1] The main acronym is listed first, and alternatives are listed in bracket thereafter. Alternative meanings in certain contexts, if any, are listed in the brackets, after main meaning. Acronyms within brackets is not considered for sort-order.

LCC Life Cycle Cost

LCS Least Cost System

LD Liquidated Damages

LoA Letter (Notification) of Award (also called Letter of Intent (LoI, in some contexts)

LTE Limited Tender Enquiry

MHA Ministry of Home Affairs

MII Make in India (Order)

MoF Ministry of Finance

MSA Mediated Settlement Agreement

MSE Micro and Small Enterprise

MSME(D) Micro Small and Medium Enterprises (Development Act, 2006)

MSP Mediation Service Provider

MTD (SBD) Model Tender Document (Standard Bid Document)

NCB National Competitive Bidding

NGO Non-Government Organisation

NIC National Informatics Centre

NIT Notice Inviting Tender

NSCS National Security Council Secretariat

OTE Open Tender Enquiry

PAN Personal Account Number

PBG Performance Bank Guarantee - as performance security - also see SD.

PPD Procurement Policy Division - under the Department of Expenditure, Ministry of Finance

PPP-MII Public Procurement (Preference to Make in India), Order

PQB Prequalification Bidding

PQC Pre-qualification Criterion

PSARA Private Security Agencies Regulation Act, 2005

PSICs Public Sector Insurance Companies

PSU Public Sector Undertaking

PVC Price Variation Clause

QCBS Quality and Cost Based Selection

RBI Reserve Bank of India

RCM Reverse Charge Mechanism

REoI Request for Expression of Interest – see also EoI

RfP (SRfP) Request for Proposals (Standard Request for Proposals) – Document

RTGS Real Time Gross Settlement

RTI Right to Information (Act)

SCC Special Conditions of Contract

SD Security Deposit - also see PBG

SFMS Structured Financial Messaging System

SLA Service Level Agreement

SLTE Special Limited Tender Enquiry

SoPP Schedule of Procurement Powers

SoR Schedule of Rates

SSS/ STE Single Source Selection/ Single Tender Enquiry

TC (TPC/ TEC) Tender Committee, also called Tender Purchase Committee/ Tender Evaluation Committee

TCO Total Cost of Ownership – also see WOL

TCS Tax Collected at Source

TDS Tax Deducted at Source

TIA Tender Inviting Authority

TOR Terms of Reference

ToT Transfer of Technology

UAM[2] Udyam Aadhaar Memorandum

UIN Unique Identity Number

URC Udyam Registration Certificate

URDG Uniform Rules for Demand Guarantees

VfM (Best) Value for Money

WOL Whole of Lice (Cost) – also see TCO

[2] replaced by Udyam Registration Certificate (URC w.e.f. 01.07.2020)

Procurement Glossary

Unless the context dictates otherwise, the following definitions shall apply throughout this Manual.[3]:

1. “Agent” is a person, or a legal entity employed to act for/ represent another (called the Principal) in dealings with a third person or legal entity. In public Procurement, an Agent is a representative participating in the Tender Process or executing a Contract for and on behalf of its principals.
2. “Allied firm” (including ‘affiliates’/ ‘affiliated firm’, ‘sister concern’, ‘associated firm’, or ‘related party’ in certain contexts) of a bidder/ contractor (Principal firm, including Joint Venture Company) is a firm/ concern (including Joint Venture Company) that comes within the sphere of effective control/ influence of the principal firm, wherein the Principal Firm – i) being a proprietary firm, owns the Allied Firm, ii) being a partnership firm, has common (all or majority of) partners, or any one of its partners has profit share of 20% or more, in the Allied Firm iii) has common Management (say majority of director) with the Allied firm; iv) its partners or directors have a majority interest in the management of the Allied Firm; v) has a controlling voice by owning substantial (20% or more) shares in the Allied Firm; vi) directly or indirectly controls or is controlled by or is under common control, by way of any agreement/ MoU or otherwise with the Allied Firm, v) has the Allied Firm as its successor/ subsidiary or vice-a-versa; vii) has common offices/ manufacturing facilities with the Allied Firm;
3. "Bid" (including ‘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 Bids;
4. "Bidder" (including ‘consultant’, ‘tenderer’, ‘contractor’, supplier or ‘service provider’ in certain contexts) means any eligible person, firm, or company, including a consortium (that is, an association of several persons, firms, or companies) participating in a procurement process with a procuring entity;
5. "Bidder registration document" means a document issued by a Procuring Entity, including any amendment thereto, that sets out the terms and conditions of registration proceedings and includes the invitation to register;
6. "Bid security" (‘Earnest Money Deposit’(EMD), or ‘Bid Security Declaration’ in certain contexts) means security from a bidder securing obligations arising from its Bid, i.e., to avoid: the withdrawal or modification of its Bid within the validity, after the deadline for submission of such Bids ; failure to sign the resulting contract or failure to provide the required security for the performance of the resulting contract after its Bid has been accepted; or failure to comply with any other condition precedent to signing the contract specified in the solicitation documents;
7. “Bill of Quantities” (including ‘Price Schedule’, ‘Financial Bid’ or ‘BOQ’ in certain contexts) means the priced and completed Bill of Quantities forming part of the bid;

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

8. “Central Public Sector Enterprise” (CPSE or CPSU) means a body incorporated under the Companies Act or established under any other act in which the Central Government or other CPSEs have a majority ownership of 51% or more;
9. “Class-I local supplier” means a supplier or service provider whose goods, services or works offered for procurement meets the minimum local content as prescribed for ‘Class-I local supplier’ under the Public Procurement (Preference to Make in India), Order 2017(as revised in 2024)[4];
10. “Class-II local supplier” means a supplier or service provider whose goods, services or works offered for procurement meets the minimum local content as prescribed for ‘Class-II local supplier’ but less than that prescribed for ‘Class-I local supplier’ under the Public Procurement (Preference to Make in India), Order 2017(as revised in 2024)[5];
11. “Competent authority” (or Competent Financial Authority) means an authority to which powers of approval in various stages of the procurement process or execution of a resultant contract are delegated by or under General and Financial Rules (GFR), Delegation of Financial Power Rules (DFPR), Schedule of Procurement Powers (SoPP) or any other general or special orders issued by the Government of India;
12. “Consultancy services” means a one-off (that is, not repetitive and not routine) services involving project-specific intellectual and procedural processes using established technologies and methodologies, but the outcomes – which are primarily of a non-physical nature – may not be standardised and would vary from one consultant to another. It may include small works or supply of goods that are incidental or consequential to such services; (Rule 177 of GFR 2017)
13. “Contract” (including ‘Procurement Contract', ‘Purchase Order’, ‘Supply Order’, ‘Withdrawal Order,’ ‘Work Order’, ‘Consultancy Contract’, ‘Contract for Services’, ‘Rate Contract’, ‘Framework Agreement’, ‘Letter of Award, ‘Agreement’, ‘Repeat Order’, or a ‘Formal Agreement’ in certain contexts), means a formal legal agreement in writing relating to the subject matter of Procurement, entered into between the Procuring Entity and the supplier, service provider or contractor on mutually acceptable terms and conditions and which are in compliance with all the relevant provisions of the laws of the Country;
14. “Contractor” (including ‘Supplier’ or ‘Service Provider’ or ‘Consultant’ or ‘Firm’ or ‘Vendor’ or ‘Manufacturer’ or ‘Successful Bidder’ in certain contexts) means the person, firm, or company, including a consortium (that is, an association of several persons or firms or companies - Joint Venture/ consortium) with whom the contract is entered into and shall be deemed to include the contractor's successors (approved by the Procuring Entity), agents, subcontractor, representatives, heirs, executors, and administrators as the case may be unless excluded by the terms of the contract;
15. “Contract Value” (or Contract Price) means the full and final monetary amount that the procuring entity is obligated to pay to the contractor under the terms of the contract, ensuring that no additional costs are incurred beyond the agreed sum. It is an all-inclusive figure that covers the base price of the goods, services, or works being procured, along with all applicable taxes/ surcharges (such as Goods and Services Tax – GST etc),

4 Notified vide Order No. P-45021/2/2017-PP (BE-II)-Part(4)Vol.II issued by Department of Promotion of Industry and Internal Trade dated 19.07.2024

5 Notified vide Order No. P-45021/2/2017-PP (BE-II)-Part(4)Vol.II issued by Department of Promotion of Industry and Internal Trade dated 19.07.2024

customs duties, freight, transportation, installation, commissioning, warranties, maintenance, and any other incidental charges;

16. “e-Procurement” means the use of information and communication technology (especially 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;
17. "Goods" (including ‘Stores’, Item(s) or ‘Material(s)’ in certain contexts) includes all articles, materials, commodities, livestock, medicines, furniture, fixtures, raw materials, consumables, spare parts, instruments, hardware, machinery, equipment, industrial plant, vehicles, aircraft, ships, railway rolling stock, assemblies, sub-assemblies, accessories, a group of machines comprising an integrated production process or intangible products (e.g. technology transfer, licenses, patents, software or other intellectual properties) but excludes books, publications, periodicals, etc., for a library, procured or otherwise acquired by a procuring entity. Procurement of goods may include certain small work or some services that are incidental or consequential to the supply of such goods, such as transportation, insurance, installation, commissioning, training, and maintenance (Rule 143 of GFR 2017);
18. “Indentor” (‘User (Department)’) means the entity and its officials assessing the need for procurement and initiating a procurement indent, that is, a request to the procuring entity to procure goods, works or services specified therein.
19. “Inspection” means activities such as measuring, examining, testing, analysing, gauging one or more characteristics of the goods or services or works, and comparing the same with the specified requirement to determine conformity.
20. “Inspecting Officer” means the person or organisation stipulated in the contract for inspection under the contract and includes his/ their authorised representative(s).
21. “Intellectual Property Rights” (IPR) refers to the owner’s rights against unauthorised possession/ exploitation by others of its tangible or intangible intellectual property. It includes rights to Patents, Copyrights, Trademarks, Industrial Designs, and Geographical indications (GI).
22. "Invitation to (pre-)qualify" means a document including any amendment thereto published by the Procuring Entity inviting offers for pre-qualification from prospective bidders;
23. "Invitation to register" means a document including any amendment thereto published by the Procuring Entity inviting offers for bidder registration from prospective bidders;
24. “Letter of Award” (including ‘Letter of Intent’ or ‘Notification of Award’ in certain contexts) means the letter or memorandum communicating to the contractor the acceptance of his bid for award of the contract;
25. “Local Content” means the amount of value added in India which shall, unless otherwise prescribed by the Nodal Ministry, be the total value of the item procured (excluding net domestic indirect taxes) minus the value of imported content in the item (including all customs duties) as a proportion of the total value, in percent;
26. "Model Tender (Bidding) Document(s)" (including the term ‘tender (enquiry) documents’ or ‘Request for Proposal Documents’ – RfP documents, or ‘Standard Bidding Documents’ - SBD in certain contexts) means a document issued by the procuring entity, including any amendment thereto, that sets out the terms, conditions of the given procurement, and includes the invitation to bid. A Model (Standard) Tender (Bidding) Document is the model

template to be used for preparing a Tender Document after making suitable changes for specific procurement;

27. “Non-consultancy services” (or ‘Outsourcing of Services’) are defined by exclusion as those services that cannot be classified as Consultancy Services. These involve routine, repetitive physical, procedural, and non-intellectual outcomes for which quantum and performance standards can be clearly identified and consistently applied and are bid and contracted on such basis. It may include small works or a supply of goods or Consultancy, which are incidental or consequential to such services; (Rule 197 of GFR 2017)
28. “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(as revised in 2024)[6];
29. "Notice inviting Tenders" (including ‘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 the subject goods, services, works or a combination thereof;
30. “Outsourcing of Services” means deployment of outside agencies on a sustained long-term (for one year or more) for the performance of Non-consultancy 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, Non-consultancy services also include procurement of short-term stand-alone services;
31. “Parties” means the parties to the contract are the Contractor and the Procuring Entity, as defined therein;
32. “Performance Security” (including ‘Security Deposit’ or ‘Performance Bond’ or ‘Performance Bank Guarantee’ or other specified financial instruments in certain contexts) means a monetary guarantee to be furnished by the successful Bidder or Contractor in the form prescribed for the due performance of the contract;
33. “Place of Supply” means the specific location where Goods are delivered to the Buyer, taken on board a conveyance, or otherwise supplied; and where Services or Works are performed or executed during the term of the Contract. This location is crucial not only for determining the time of completion of such delivery, performance, or execution but also for ensuring compliance with relevant tax laws and other regulations applicable to its jurisdiction.
34. "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;
35. "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;
36. "Procurement" (including public procurement, ‘Government Procurement’, ‘Public-Private Partnership’ in certain contexts) means acquisition by way of purchase, lease, license or otherwise, either using public funds or any other source of funds (e.g. grant, loans, gifts,

6 Notified vide Order No. P-45021/2/2017-PP (BE-II)-Part(4)Vol.II issued by Department of Promotion of Industry and Internal Trade dated 19.07.2024

private investment etc.) of goods, works or services or any combination thereof, by a procuring entity, whether directly or through an agency, but does not include any acquisition of goods, works or services without consideration, and the term "procure" or "procured" or “purchase”/ “purchased” shall be construed accordingly;

37. “Procurement Officer” means the officer signing the Letter of Award (LoA) and/or the contract on behalf of the Procuring Entity;
38. “(Public) Procurement Guidelines” means guidelines applicable to Public Procurement, comprising a hierarchy of Statutory framework, Rules and Regulations, Manuals of Procurement and Procurement Documents as detailed in Annexure 1 of the Manual for Procurement of Goods, 2024;
39. "Procurement Process" means the process of Procurement extending from the assessment of need, Bid Invitation Process, Bid Evaluation and Award of Contract to the Contract Management. It also covers the issue of invitation to pre-qualify or to register or to bid, as the case may be;
40. “Procuring Authority” means the officer who finally approves and those officials and committee members (including Associated/ Integrated Finance, technical departments, besides any other) who submit the notes/ reports to approve any decision;
41. "Procuring Entity" (or Public Authority or Employer) means the entity in any Ministry or Department of the Central Government or a unit thereof or its attached or subordinate office or CPSE to which powers of Procurement have been delegated and handles the entire procurement process, ensuring efficiency, transparency, fair treatment of suppliers, and the promotion of competition. It may partly or fully outsource its procurement process to ‘Procurement Agent/ Agency’ or ‘Project Management Consultant/ Agency’;
42. “Procuring Organisation” (or Public Entity/ Authority) means the Organisation for which the procurement is done to fulfil its stated objectives, assigned duties/ obligations/ responsibilities/ functions, and activities in alignment with desired policy outcomes;
43. "Prospective bidder" means anyone likely or desirous to be a bidder;
44. "Public Private Partnership" means an arrangement between a public entity, on one side, and a private sector entity, on the other, for the provision of public assets or public services or both, or a combination thereof, through investments being made or management being undertaken by the private sector entity, for a specified period, 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;
45. "Rate contract" (or ‘framework agreement’) means an agreement between a Central Purchase Organisation or a procuring entity with one or more bidders, valid for a specified period, which sets out terms and conditions under which specific procurements can be made during the term of the agreement and may include an agreement on prices which may be either predetermined or be determined at the stage of actual Procurement through competition or a predefined process allowing their revision without further competition;
46. “Registering authority” is an authority that registers bidders for various procurement categories;
47. "Registered Supplier (Service Provider)" means any supplier who is on a list of registered suppliers of the Procuring Entity or a Central Purchase Organisation;

;

48. "Reverse auction" (or ‘Electronic reverse auction’) 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 and automatic evaluation of bids;
49. “Scheduled Bank” means a bank as defined in section 2(e) of the Reserve Bank of India Act, 1934 and listed in Schedule 2 thereof;
50. "Service" means any subject matter of Procurement that has non-tangible outputs, as distinguished from 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 the 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’;
51. “Special Conditions of Contract” (SCC) means Special Conditions that override the General Conditions if and to the extent of the conflict between the two;
52. "Subject Matter Of Procurement" means any object of Procurement, whether in the form of goods, services or works or a combination thereof;
53. ‘Tender Document’ means the document (including all its sections, appendices, forms, formats, etc. and various terms prevalent for such documents) published by the Procuring Entity to invite bids in a Tender Process. The Tender Document and Tender Process may be generically called “Tender" or "Tender Enquiry", which would be evident from context without ambiguity;
54. “Tender Process” is the entire process from the publishing of the Tender Document to the resultant award of the contract;
55. ‘Total Cost of Owning’ - TCO (Life Cycle Costing - LCC, Whole of Life Costing - WOL) encompasses all costs associated with acquiring (including the price paid to the supplier), operating, maintaining, and disposing of a product or service. Essentially, the three terms refer to the cost incurred on a product during its lifetime. However, LCC has evolved beyond that to consider the cost of the impact of the product on the environment and, therefore, is mostly used as a tool in Sustainable Public Procurement. WOL is used mostly in capital-intensive assets, infrastructure projects, and long-term investments, and TCO is used mostly in procurement of Goods;
56. "Works" refer to any activity with a tangible and physical output 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 roads, railways, 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; (Rule 130 of GFR 2017)

Chapter 1: Introduction to Procurement of Non-consultancy Services

1.1. Procurement Rules and Regulations; and this Manual

1. Various Ministries, Departments, attached and subordinate offices, local urban bodies, public sector enterprises, and other Government (including autonomous) bodies (hereinafter referred to as 'Procuring Entities') spend a sizeable amount of their budget on the Procurement of goods, works and services to fulfil their stated objectives, assigned duties/ obligations/ responsibilities/ functions, and activities in alignment with desired policy outcomes.
2. The Ministries / Departments have been delegated full powers to make their own arrangements for the procurement of goods and services that are not available on the government e-marketplace (GeM). These powers must be exercised as per the Delegation of Financial Power Rules and in conformity with the 'Procurement Guidelines' described below. Common use Goods and Services available on GeM are required to be procured mandatorily through GeM as per Rule 149 of GFR, 2017.
3. To ensure that these procurements are made by following a uniform, systematic, efficient, and cost-effective procedure and also to ensure fair and equitable treatment of service providers, there are guidelines comprising a hierarchy of Statutory framework, Rules and Regulations, Manuals of Procurement and Procurement Documents as detailed in Annexure 1 of Manual for Procurement of Goods, 2024 (hereinafter referred as 'Procurement Guidelines).
4. 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 must be executed in writing by officers specifically authorised to do so. The Constitution also enshrines Fundamental Rights (In particular, Articles 14 – Right to Equality before Law and 19 (1) (g) – Right to practice any profession, or to carry on any occupation, trade, or Business) which have implications for Public Procurement. Further, the Indian Contract Act of 1872 and the Sale of Goods Act of 1930 are significant legislations governing contracts of sale/ purchase of goods in general. There are other mercantile laws (Arbitration and Conciliation Act, 1996; Mediation Act, 2023; Competition Act, 2002; Information Technology Act, 2000; Indian Stamp Act, 1899, etc. as amended from time to time) that may be attracted in Public Procurement Transactions.
5. In the Central Government, there is no law exclusively governing public procurement. However, comprehensive Rules and Regulations in this regard are available in the General Financial Rules (GFR), 2017 (especially chapters 6 to 9); Delegation of Financial Powers Rules, 2024 (DFPR); Government orders regarding purchase preference/ restrictions like Public Procurement (Preference to Make in India), Order 2017, facilities to Micro and Small Enterprises and Start-ups, Restrictions on Entities from a Class of Countries (Rule 144 (xi), GFR 2017) etc.
6. Without purporting to be a comprehensive compendium of all such 'Procurement Guidelines', this Manual is intended to serve as a portal to enter this vast area and draw attention to basic norms and practices governing public procurement.

1.2. Clarification, Amendments and Revision of this Manual

The Procurement Policy Division, Department of Expenditure, Ministry of Finance would be the nodal authority for this Manual's revision, interpretation, and clarification.

1.3. Applicability of this Manual

1. This manual is applicable to the procurement of "Non-consultancy Services" (including “Outsourcing of Services”) as defined in the ‘Procurement Glossary section’. For any circumstances not covered in this manual for procurement of non-consulting services, the Procuring Entity may refer to the Manual for Procurement of Goods, 2024. (Rule 206 of GFR, 2017). For the sake of brevity, this Manual refer to some of the sections of the Goods Manual without reproducing them.
2. **Procuring Entities:** This Manual shall apply to all Procuring Entities covered by Rule 1 of GFR, i.e., all Central Government Ministries/Departments, attached and subordinate bodies. These provisions shall also apply, as per the same rule, to autonomous bodies except to the extent that the bye-laws of an autonomous body provide separate procurement guidelines[7] that the Government has approved.
3. **Statutory Bodies and CPSEs:** These guidelines shall also be applicable to bodies substantially owned or controlled by or receiving substantial financial assistance from the Central Government (inter-alia, Central Public Sector Enterprises (CPSEs or undertakings, including their subsidiary companies/ Ventures); Public Sector Banks (PSBs); Public Sector Insurance Companies (PSICs); Public Sector Financial Institutions (FIs); Constitutional or Statutory Bodies, Public Academic Institutions (National/ Central institutes), and Commissions that have been created under the Constitution of India or specific legislations), except to the extent deviations[7] that have been approved by their competent authority (e.g., Board of Directors)
4. **Indian Missions and CPSE Units Abroad:** While the applicability of the Manual in the case of Indian Missions abroad and CPSE Units abroad shall be as per sub-para 2) and 3) above, respectively – the following is clarified:
    a) **Adopting Financial Limits/ Thresholds in Local Currency**: For procurements done and for use outside India, in the host country’s local currency, Indian Missions and CPSE units abroad may adopt General Financial Rules (GFR) financial limits/ thresholds of procurements (as mentioned in this Manual at various instances, e.g., selection of mode of Procurement etc.) by using latest INR-PPP conversion rates for the local currency as published by the IMF (International Monetary Fund). For convenience, such converted limits/ thresholds may be reviewed annually. Even if the Procurement is to be done in a currency other than the local currency, the applicable financial limits/ thresholds of procurements shall be in terms of the INR-PPP conversion rate for the local currency only. If the IMF does not publish the PPP conversion rate for local currency, then the conversion may be done to the currency most relevant to that mission/ unit in consultation with the Financial Advisor.

[7] Such approved guidelines must retain fundamental provisions relating to the Constitution and Government instructions relating to Preferential Procurement Policies, GTE and Land Border restriction, General Instructions on Procurement and Project Management (NO.F.1/1/2021-PPD dtd 20.10.2021)

The following illustration may be used as guidance:

Financial limits in GFR are to be calculated for the Indian Mission in Bangladesh, where the relevant local currency is Bangladesh Taka (BT). Let the PPP conversion rate (as per international dollar) published by the IMF for INR and BT in a particular year be as follows:

Rs. 22.947 = 1 USD = 31.98 BT

The PPP-based conversion rate for BT/ INR may be calculated as 31.98/ 22.947 = 1.394. Thus, a threshold of INR. 25,00,000 (say the threshold for OTE) would be then 34,85,000 BT.

b) Exemptions: For exemptions from restrictions relating to Global Tenders, bidders from Land-border countries, and eProcurement for bona-fide procurements and use outside India by Indian Missions and CPSE Units abroad, please refer to paragraphs 4.3.2-4-g, 1.11.4-3-f(ii), and 4.17.1-4, respectively, in the Manual for Procurement of Goods, 2024.

5. **Portals:** GeM portal, CPPP (Central Public Procurement Portal) portal, and various such platforms of different Organisations carry out a substantial proportion of Public Procurement. Hence, the procedures for such platforms should generally conform to these 'Procurement Guidelines.'
6. **Outsourced Procurement:** These procurement guidelines will continue to apply if these procuring entities outsource the procurement process, bundle it with other contractual arrangements, or utilise the services of a procurement support agency or procurement agents to carry out the Procurement on their behalf.
7. **Customisation:** This Manual is to be taken as generic guidelines, which are necessarily broad in nature. Subject to the observance of these generic guidelines, Procuring Entities are advised to customise these manuals, with the approval of competent authority and financial concurrence, to suit their local/specialised needs by issuing their own detailed Manuals (including customised formats); Model Tender Documents; Schedule of Procurement Powers and Checklists to serve as practical instructions for their officers and to ensure completeness of examination of cases. For procuring organisations that have their own detailed manuals or procedure orders, the initiation, authorisation, Procurement, and execution of contracts undertaken by them shall be regulated by detailed rules and orders contained in their respective regulations and by other special orders applicable to them.
8. **Exemptions**: These procurement guidelines would not apply to procurements by procuring entities mentioned above for their own use from their subsidiary companies, including Joint Ventures, where they have a controlling share. Moreover, by a general or special notification, the Government may permit certain 'Procuring Entities' mentioned in the sub-paras above, considering unique conditions under which they operate, for all or certain categories of procurement, to adopt detailed approved guidelines for procurement, which may deviate in some respects but conform with all other essential aspects of these 'Procurement Guidelines.'
9. **Procurements financed by Loans/ Grants extended by International Funding Agencies**:
   a) For projects funded by the World Bank, Asian Development Bank, and other International Funding Agencies (IFA), the Articles of Agreement, with the approval of the Ministry of Finance, stipulate either the Indian (or State) Government's own

procurement procedures or IFA's specific procurement procedures to be followed by the borrowers.

b) These guidelines would not apply to projects funded by the World Bank using the Investment Project Financing (IPF) instrument and similar instruments of other International Funding Agencies (IFA), as stipulated under Articles of Agreement, as mentioned under sub-para-a) above. IFA's specific procurement procedures shall be applicable as permitted under Rules 264 of GFR 2017.

c) However, for the projects financed using instruments such as Program-for-Results (PforR) of the World Bank, and Results-based lending (RBL) of the Asian Development Bank, and similar instruments of other International Funding Agencies, the application of these guidelines as expressly agreed in the legal agreements shall be followed.

1.4. Categorisation of procurements

1. **Categories**: Categorisation of Procurements helps in preparing guidelines for Procurements and Model Tender Documents, which cater to peculiar contractual conditions of the categories of procurements. Following are the categories of procurements (please refer to the definition in the procurement Glossary):
   a) Goods.
   b) Services
      i) Consultancy Services and
      ii) Non-consultancy services (NC services)
   c) Works
2. **Distinctive Features**: Normally, such categorisation is clear as per their definition, and procurement should be done accordingly, following the relevant guidelines and Model Tender Documents. The boundaries between such categorisation may not be clear-cut and may overlap. It may neither be possible nor necessary to precisely distinguish between the categories in overlapping areas. Though simplistic, the main distinguishing factors between these are:
   a) While both Goods and Works lead to tangible outputs (with some exceptions like IPR materials), yet the main Difference between Goods and Works is that the manufacture of goods is done in the supplier's own premises (other than installation/ commissioning), while 'Works' is done on the premises of the procuring entity (other than pre-fabricated components). Works may include incidental 'Goods' and vice-versa.
   b) Main Difference Between 'Goods' and 'Works' on the one hand and 'Services' on the other is the intangibility of outputs of Services.
   c) The main difference between consultancy and non-consultancy services is the level of intellectual inputs, which are predominant in consultancy and not central to non-consultancy. Another difference is that Non-consultancy services are repetitive and routine, with measurable and standardised outputs, while Consultancy services are one-off and non-routine, with outputs that are neither exactly measurable nor standardised.
3. **In case of Doubt**: Procurement in cases of doubts about categorisation may be done as follows:
   a) A simpler procurement procedure should be followed in the case of blurred border lines and grey areas. In case of doubt between:

i) Goods and works/ NC services/ consultancy, it should be processed as procurement of goods.
ii) Works and NC service/ consultancy, it should be processed as procurement of works.
iii) Non-consultancy and Consultancy services, it should be processed as procurement of non-consultancy services.

b) Procurement of IT Projects should normally be carried out as Procurement of Consultancy services, as the outcomes/deliverables vary from one service provider to another. The IT Projects may include:
   i) bespoke software development;
   ii) Cloud-based services and
   iii) Composite IT system integration services involving design, development, deployment, and commissioning of an IT system, including hardware supply, software development, bandwidth, and operation/maintenance of the system for a defined period after go-live, etc.

c) [8]**Composite Contracts**: Composite contracts may involve mixed elements of Goods, Works, and Services. For example, in the Procurement of large machinery, some works and services like Installation, Commissioning, Training, Annual Maintenance Contract (AMC) or a Comprehensive Maintenance Contract (CMC), and so on may be incidental to the supply of goods. The relationship of primacy between the goods element and the works/ services element may be examined, irrespective of the relative values. A possible alternative approach could be to have separate but linked contracts for such elements of Goods, Works, and Services, but implementation may become challenging. If the primary objective is the Procurement of goods with services/ works being incidental to it, it may be processed as procurement of Goods. However, if the primary objective is Procurement of Works/ services with Procurement of goods being incidental, then it should generally be processed as Procurement of works/ services (as the case may be), irrespective of the relative values.

i) Procurement of "*new product*" viz. Mechanical, Electrical or ICT assets, etc, of the nature of Machinery and Plant with incidental works/ services like fabrication, installation, erection, commissioning, AMC/CMC should be handled as procurement of goods, except for procurement of IT Projects as specified above.

ii) AMC/ CMC of existing Mechanical, Electrical or ICT assets of the nature of Machinery and Plant should be treated as procurement of Non-Consultancy Services.

Notes:

1) If the NC services primarily involve construction, fabrication, repair, maintenance, overhaul, renovation, decoration, installation, erection, excavation, dredging, and so on, *of Civil assets*, then it should be handled as procurement of Works.

[8] PPD's OM No. F6/2/2023-PPD dated 13.01.2023

2) Procurement of new mechanical and electrical works (not in the nature of Machinery and Plant) involving fabrication, installation, or erection of a mechanical or electrical nature should be treated as procurement of Works if elements of procurement of Goods are incidental.
3) Repair, renovation, maintenance, overhauling, decoration, AMC/ CMC or similar work for *existing Mechanical, Electrical or ICT assets* NOT *of the nature of Machinery and Plant, etc,* should normally be handled as procurement of services.

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

1.5. Authorities Competent to incur Expenditure on a Procurement

1. The first step in procurement to procure goods, services, or works involves a formal decision to procure something along with the exact or approximate expenditure to be incurred. A Competent authority that is competent to incur expenditure may accord administrative sanction/ approval to incur expenditure on a specific procurement in accordance with the Delegation of Financial Rules (DFPR – extracted in Annexure 1) by following the 'Procurement Guidelines' described in this Manual (*Rule 145 of GFR 2017*). Each 'Procuring Entity' may issue a Schedule of Procurement Powers (SoPP), adding further details to the broad delegations in the DFPR based on the assessment of risks involved in different decisions/ approvals at various stages of the Procurement Cycle. A suggested structure of such SoPP is enclosed as Annexure 2.
2. Being a decision with a financial bearing and hence invariably requires consultation of the Financial Adviser (unless validly re-delegated within permissible limits or otherwise permitted by DoE through specific orders). The extent of involvement of the Financial Adviser and the Integrated Finance (IFD) in subsequent stages of procurement matters may be based on one of the following procedures (Para 19, Charter for FA, 2023):
   a) **Normal Procedure**: Under this procedure, the concurrence of the Financial Adviser/ IFD shall be required on all procurement matters, except for matters where re-delegation has been done within the limits permissible under the rules/ general orders/ general instructions of the DoE. Unless a special procedure is approved by the Secretary of the Department with the concurrence of the DoE, this procedure shall be followed.
   b) **Special Procedure**: With the prior concurrence of Secretary Expenditure, the Secretary of the Department may decide on a different level of involvement of the Financial Adviser /IFD specific to the Department. The procedure will lay out the types/ classes of cases where the Financial Adviser/ Integrated Finance Division's (IFD) consultation would be required, which may be in terms of threshold financial limits, stages in procurement or types of procurement and contracts, viz. consultancy/ non-consultancy, goods and works contracts etc. or any permutation thereof.

3. In all procedures, payments under approved contracts shall not require IFD consultation except in cases where the payments are in relaxation/variation to approved contract conditions.

1.6. 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 the need for an item, facility or service is identified till the need is satisfied) is designed to achieve such a right balance. Although couched in the jargon of procurement of Goods, it's equally applicable to procurement of Consultancy and Non-consultancy services. The term 'Right' is used here in the sense of being 'optimal balance':

1. Right quality;
2. Right quantity;
3. Right price;
4. Right time and place; and
5. Right source.

(For more details on the basic aims of procurement, please refer to Chapter 1 and 'Appendix 1: Advanced Concepts of Value for Money' of the Manual for Procurement of Goods, 2024).

1.7. Refined Concepts of Cost and Value – Value for Money

The concept of price or cost has been further refined into Total Cost Of Ownership (TCO), Life Cycle Cost (LCC) or Whole-of-Life (WOL) to consider not only the initial acquisition cost but also the cost of operation, maintenance, and disposal during the lifetime of the external resource procured. Similarly, the concept of quality is linked to the need and is refined into the concept of utility/ value. These two, taken together, are used to develop the concept of Value for Money (VfM, also called Best Value for Money in certain contexts). VfM means the effective, efficient, and economical use of resources, which may involve the evaluation of relevant costs and benefits, along with an assessment of risks, non-price attributes (e.g., in goods and/or services that contain recyclable content, are recyclable, minimise waste and greenhouse gas emissions, conserve energy and water and minimise habitat destruction and environmental degradation, are non-toxic etc.) and/or life cycle costs, as appropriate. Price alone may not necessarily represent VfM. *In public Procurement, VfM is achieved by attracting the widest competition by way of optimal description of need; development of value-engineered specifications/ Terms of Reference (ToR); appropriate packaging/ slicing of requirement; selection of an appropriate mode of Procurement and tendering system.* These advanced concepts are explained in *Chapter 1 and '*Appendix 1: Advanced Concepts of Value for Money' *of the Manual for Procurement of Goods, 2024*.

1.8. Fundamental Principles of Public Procurement

General Financial Rules, 2017 (*Rule 144*) lay down the Fundamental Principles of Public Procurement. These principles and other additional obligations of procuring authorities in public procurement can be organised into five fundamental principles of public procurement, which all procuring authorities must abide by and be accountable for:

1. Transparency principle;
2. Professionalism principle;

3. Broader obligations principle;
4. Extended Legal Responsibilities principle; and
5. Public accountability principle.

(For more details on fundamental principles of public procurement, please refer to Chapter 1 of the Manual for Procurement of Goods, 2024).

1.9. Public Procurement Infrastructure at the Centre

Public Procurement is a complex function, and the infrastructure needed to execute it is equally complex. In India, the following administrative, oversight, and Digital infrastructure exist for Public Procurement.

1. Procurement Policy Division
2. Central Public Procurement Portal
3. Government e-Marketplace (GeM)
4. Comptroller and Auditor General (CAG) of India
5. Lokpal/ Lokayukta – Anti-corruption Ombudsman
6. Central Vigilance Commission (CVC)
7. Central Bureau of Investigation (CBI)

(For details about these, please refer to Chapter 1 of the Manual for Procurement of Goods, 2024).

1.10. Preferential/ Mandatory Purchase from certain sources

The Central Government may, by notification, provide for mandatory procurement of any goods or services from any category of bidders or provide for preference to bidders on the grounds of promotion of locally manufactured goods or locally provided services. (General and Financial Rules, 2017, Rule 153 (iii)).

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

1.10.1. Public Procurement Policy for Micro and Small Enterprises (MSEs)-

(Rule 153 (ii) of GFR 2017)

1. **The Policy**: From time to time, the Government of India (Procuring Entity) lays down procurement policies to help inclusive national economic growth by providing long-term support to micro and small enterprises and disadvantaged sections of society. The Procurement Policy for Micro and Small Enterprises, 2012 (amended 2018 and 2021) has been notified by the Government in the exercise of the powers conferred in Section 11 of the Micro, Small and Medium Enterprises Development (MSMED) Act, 2006, which is mandatory to be followed by Central Government Ministries/ Departments/ Public Sector Undertakings. Details of the policy, along with the amendments issued in 2018[9] and 2021,[10] are available on the MSME website[11].

[9] http://www.dcmsme.gov.in/Gazette%20Notification.pdf

[10] http://www.dcmsme.gov.in/PPP-MSEs%20Order,2012%20Amendment,2022.pdf

[11] http://dcmsme.gov.in/pppm.htm.aspx

2. **Eligibility**:
   a) Micro and Small Enterprises (MSEs) registered under Udyam Registration are eligible to avail the benefits under the policy.
   b) This Policy provides preferential procurement of goods produced and services rendered by MSEs. Traders, distributors, sole agents, and works Contracts are excluded from the policy's purview.
      i) [12]In case of an upward change in terms of investment in plant and machinery or equipment or turnover or both, and consequent re-classification, an enterprise shall continue to avail of all nontax benefits of the category (micro, small, or medium) it was in before the re-classification, for a period of three years from the date of such upward change. Non-tax benefits include benefits of various schemes of the Government, including Public Procurement Policy, Delayed Payments, etc.
      ii) MSEs would be treated as owned by SC/ ST or Women entrepreneurs:

1). In the case of proprietary MSE, proprietor(s) are SC /ST or Woman;

2). In the case of partnership MSE, the SC/ ST or Women partners hold at least 51% (fifty-one per cent) shares in the unit;

3). In the case of Private Limited Companies, SC/ ST or Women promoters hold at least 51% (fifty-one per cent) share.

3. **Applicability and Exemptions**:
   a) The policy is applicable to Central Government Ministries/ Departments/ Public Sector Undertakings
   b) The policy is not applicable to State Government Ministries/ Departments/ State PSEs, but they have similar policies applicable in their state.
   c) **Exemptions**: Given their unique nature, defence armament imports shall not be included in computing the 25 (twenty-five) per cent goal for the Ministry of Defence. In addition, defence equipment like weapon systems, missiles, etc., shall remain out of the purview of such a reservation policy. Monitoring of goals set under the policy will be done, as far as they relate to the Defence sector, by the Ministry of Defence itself in accordance with suitable procedures to be established by them.
4. **Facilities for MSE**:
   a) **Reduced Transaction Costs**: To reduce the transaction cost of doing business, MSEs will be facilitated by providing them tender documents free of cost, exempting MSEs from payment of earnest money deposits, and adopting e-procurement to bring transparency in the tender process. However, exemption from paying Performance Bank Guarantee/ Security Deposit is not covered under the policy.
   b) **Relaxation in Prior Turnover and Experience**: The Procuring Entity may relax the condition of prior turnover and prior experience for start-up enterprises recognised by the Department for Industry & Internal Trade (DPIIT), subject to meeting quality & technical specifications. Startups may be MSEs or otherwise. Such relaxation can be provided in the case of procurement of works as well. It is further clarified that such relaxation is not optional but normally has to be ensured, except in case of procurement of items related to public safety, health, critical security operations and equipment, etc.) where adequate justification exists for the Procuring Entity not to relax

[12] Notified by MSME Ministry vide S.O. 4926(E) dt 18/10/2022

such criteria[13]. The decision of the Procuring Entity in this regard shall be final. Please also refer to para 1.10.4-2-b), 5.1.9-5 and 7.3.4-2-c). (Rule 173 (i) of GFR 2017).

c) **Timely Payments**: Chapter V of the MSMED Act, 2006, also has provisions for ensuring timely payments to the MSE suppliers. The period agreed upon for payment must not exceed forty-five days from the deemed acceptance of the materials supplied by the MSEs; in case of any discrepancies in the supplies, then the Procuring Entity shall raise an objection to the MSE supplier within 15 days from the date of receipt of materials if such objection is not raised, then it will be taken as deemed acceptance. For delays in payment, the buyer shall be liable to pay compound interest to the supplier on the delayed amount at three times the bank rate notified by the Reserve Bank. For arbitration and conciliation regarding the recovery of such payments and interests, the Micro and Small Enterprises Facilitation Council has been set up in various states.

5. **Purchase Preference**:

a) Under the amended Public Procurement Policy for MSEs, Order 2012, the Central Government Ministries/ Departments/ Public Sector Undertakings shall procure a minimum of 25 per cent of their annual value of goods or services from MSEs. (In accordance with General Financial Rules, 2017, Rule 153-(ii)).

i) The annual goal of procurement from MSEs also includes subcontracts to Micro and Small Enterprises by large enterprises and consortia of Micro and Small Enterprises formed by the National Small Industries Corporation. If a subcontract is given to MSEs, it will be considered as procurement from MSEs.

ii) The annual target of 25% procurement from MSEs is only a minimum. The MSE purchase preference is mandatory for all procurements (except for exemptions as per sub-para 3-c above), even after this target is achieved. For example, it is not permissible for organisations to earmark only some goods/ services to be procured exclusively from MSEs to achieve the annual target and not apply MSE procurement preferences to the rest of the goods/services.

b) In tender, if the L1 price is from someone other than an MSE, participating Micro and Small Enterprises (MSE) quoting prices within a price band of L1+15 (fifteen) per cent shall be allowed to supply up to 25 (twenty-five) per cent of the total tendered value by bringing down their price to L1 price. If there is more than one eligible MSE within such price band who agrees to match the L1 price, the 25 (twenty-five) per cent quantity is to be distributed proportionately to them

Note: If the procuring entity negotiates with the non-MSE L1 bidder, the price band (L1+15%) should be calculated based on the original L1 price, not the lower negotiated price. Such eligible MSE bidders shall be called to match the new negotiated L1 price as per the procedure mentioned above for placement of 25% quantity.

i) In case the tender item cannot be split or divided, etc., the MSE quoting a price within the band L1+15% may be awarded for full/ complete supply of the total tendered value to MSE, considering the spirit of the Policy for enhancing Government procurement from MSEs.

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

ii) Out of the target of 25% of annual procurement from MSEs (Not in the specific tender), the sub-target of 4% of annual procurement from MSEs is earmarked for procurement from MSEs owned by Scheduled Caste (SC)/ Scheduled Tribe (ST) entrepreneurs, and 3% of annual procurement from MSEs is earmarked for procurement from MSEs owned by women entrepreneur. However, in the event of failure of such MSEs to participate in the tender process or meet tender requirements and L1 price, the 4% sub-target for procurement earmarked for MSEs owned by SC/ST entrepreneurs and 3% earmarked to women entrepreneurs will also be met from other MSEs.

6. **Developing MSE Vendors**: The Central Ministries or Departments or Public Sector Undertakings shall take necessary steps to develop appropriate vendors by organising Vendor Development Programmes (VDP) or Buyer-Seller Meets focused on developing Micro and Small Enterprises (MSEs) for procurement through GeM Portal. To enhance the participation of MSEs owned by SCs /STs/ Women in Government procurement, Central Government Ministries/ Departments/ CPSEs should conduct Special Vendor Development Programmes/ Buyer-Seller Meets for SC/STs and Women MSEs.
7. **Policy Implementation**:
   a) A Review Committee has been constituted under the Chairmanship of the Secretary, Ministry of MSME, to monitor and review the Public Procurement Policy for MSEs. M/o MSME will review and/or modify the composition of the Committee as and when required. This Committee will, inter alia, review the list of 358 items reserved for exclusive purchase from MSEs on a continuous basis, consider requests from Central Government Departments CPSEs for exemption from 25 (twenty-five) per cent target on a case-to-case basis and monitor achievements under the Policy.
   b) To monitor the progress of procurement by Central Government Ministries/ Departments and CPSEs from MSEs, the Ministry of MSME launched the MSME 'Sambandh'[14] Portal on 8th December 2017 for uploading procurement details by all CPSEs on a monthly and an annual basis, which the Ministry regularly monitors.
   c) To redress the grievances of MSEs related to non-compliance with the policy, a Grievance cell named "CHAMPION Portal" has been set up in the Ministry of MSME.
   d) Clarifications: The office of the Development Commissioner (Micro, Small & Medium Enterprises) issued an FAQ[15] on the Public Procurement Policy for MSE Order, 2012, which is in Annexure 13.

1.10.2. Procurement Preference to Make in India

(Rule 153 (iii) of GFR, 2017)

1. **Purpose:** 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 for 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[16].

[14] https://sambandh.msme.gov.in/PPP_Index.aspx. Any payment grievances filed by the MSEs against Procuring Entity may be monitored and progress updated therein. Total value of month end payments due to the MSEs may updated.

[15] Issued Vide OM F.No 1(3)/2018-MA, Part III dated 25.03.2022.

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

The order is issued pursuant to Rule 153 (iii) of GFR, 2017. The Order is applicable to the procurement of Goods, Works, and Services.

2. **Definitions**: 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) 'Local Content' means the amount of value added in India which shall, unless otherwise prescribed by the Nodal Ministry, be the total value of the item procured (excluding net domestic indirect taxes) minus the value of imported content in the item (including all customs duties) as a proportion of the total value, in percent.

Explanatory notes for the calculation of local content:

i) Imported items sourced locally from resellers/ distributors shall be excluded from the calculation of local content.

ii) The license fees/ royalties paid/ technical charges paid out of India shall be excluded from local content calculation

iii) Procurement/ Supply of repackaged/ refurbished/ rebranded imported products, as understood commonly, shall be treated as reselling of imported products and shall be excluded from the calculation of local content. The definition of repackaged/ refurbished/ rebranded imported products is as follows:

1) 'Refurbishing' means repair or reconditioning of an imported product does not amount to manufacture because no new goods come into existence.

2) 'Repackaging' means repacking of imported goods from bulk pack to smaller packs would not ordinarily amount to manufacture of a new item.

3) 'Rebranding' means relabelling or, renaming, or change in symbol or logo/ makes or corporate image of a company/organisation/ firm for an imported product would amount to rebranding.

iv) To ensure that imported items sourced locally from resellers/ distributors are excluded from the calculation of local content, procuring entities to obtain from bidders, the cost of such locally-sourced imported items (inclusive of taxes) along with break-up on license/ royalties paid/ technical expertise cost etc. sourced from outside India/ for items sold by bidder as reseller, OEM certificate for country of origin to be submitted.

v) For contracts involving the supply of multiple items, a weighted average of all items is to be taken while calculating the local content

c) *'Class-I local supplier'* means a supplier or service provider, whose goods, services or works offered for procurement, meets the minimum local content as prescribed for 'Class-I local supplier' under this Order.

d) *'Class-II local supplier'* means a supplier or service provider, whose goods, services or works offered for procurement, meets the minimum local content as prescribed for 'Class-II local supplier' but less than that prescribed for 'Class-I local supplier' under this Order.

e) *'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 this Order.

f) *'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.

g) *'Nodal Ministry'* means the Ministry or Department identified pursuant to this order in respect of a particular item of goods or services or works.

h) *'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.

i) *'Works'* means all works as per Rule 130 of GFR- 2017 and will also include *'turnkey works'.*

2A. Special treatment for items covered under the PLI Scheme: The manufacturers manufacturing an item under the PLI scheme shall be treated as deemed Class II local supplier for that item unless they have minimum local content equal to or higher than that notified for Class-I local supplier for that item, provided the manufacturer has received incentive from the concerned PLI Ministry for the item. The above shall be applicable for the specific time period only, as notified by the concerned PLI Ministry.

3. **Eligibility** of 'Class-I local supplier'/ 'Class-II local supplier'/ 'Non-local suppliers' for different types of procurement

a) In the 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 a 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 3-a) above, and with estimated value of purchases less than Rs. 200 Crore, in accordance with Rule 161(iv)(b) 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 include Engineering, Procurement and Construction (EPC) contracts, and services include System Integrator (SI) contracts.

3.A. Mandatory sourcing of items, with sufficient local capacity and competition, from Class-I local suppliers in SI/ EPC/ Turnkey Contracts/ Service Tenders

a) The items, notified as having sufficient local capacity and competition, shall mandatory be sourced from Class-I local suppliers in SI/ EPC/ Turnkey Contracts/ Services tenders. This provision will be applicable only for those items that have been notified by the Nodal Ministry as Class-I, i.e. having sufficient local capacity and competition with specific HSN codes.

b) Notwithstanding the above, if in any project, it is considered that it is not practically feasible to source such items from Class I local suppliers, it may take a relaxation from such stipulation with the approval of the Secretary of the administrative Ministry/ Department concerned or with the approval of the Competent Authority specified by the Administrative Ministry/ Department, on a case-specific basis.

4. **Purchase Preference:**

a) Subject to the provisions of the Order and to any specific instructions issued by the Nodal Ministry or in pursuance of the Order, purchase preference shall be given to

'Class-I local supplier' in procurements undertaken by procuring entities in the manner specified here under.

b) In the procurements of goods or works, which are covered by sub-para 3-b) above and which are divisible in nature, the 'Class-I local supplier' shall get purchase preference over the 'Class-II local supplier' as well as the 'Non-local supplier', as per following procedure:

Note:

1. If the procuring entity negotiates with the L1 bidder, who is not a Class-I Local Supplier, the margin of purchase preference (L1+20%) should be calculated based on the original L1 price, not the lower negotiated price, and such eligible Class-I Local Suppliers shall be called to match the new negotiated L1 price as per procedure mentioned above for placement of 50% quantity.

2. Since as per sub-para c) below, MII order is applicable 'where the bid is evaluated on price alone' – MII purchase preference would not be applicable where evaluation is based inter-alia on non-price criteria, e.g., QCBS or FBS in Services and Works.

i) Among all qualified bids, the lowest bid will be termed as L1. If L1 is a 'Class-I local supplier', the contract for full quantity will be awarded to L1.

ii) If the L1 bid is not a 'Class-I local supplier', 50 (fifty) per cent 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) per cent quantity subject to the Class-I local supplier's quoted price falling within the margin of purchase preference (L1+20%) and contract for that quantity shall be awarded to such 'Class-I local supplier' subject to matching the L1 price. In case the 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 (L1+20%) shall be invited to match the L1 price for the remaining quantity and so on, and the contract shall be awarded accordingly. In case some quantity out of the 50% (for the eligible Class-I Local Suppliers) is still left uncovered, then such balance quantity may also be ordered on the L1 bidder.

c) In the procurements of goods or works, which are covered by sub-para 3-b) above and which are not divisible in nature, and in the 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:

i) Among all qualified bids, the lowest bid will be termed L1. If L1 is a 'Class-I local supplier', the contract will be awarded to L1.

ii) If L1 is not a 'Class-I local supplier', the lowest bidder among the 'Class-I local suppliers' will be invited to match the L1 price subject to the Class-I local supplier's quoted price falling within the margin of purchase preference(L1+20%), and the contract shall be awarded to such 'Class-I local supplier' subject to matching the L1 price.

iii) In case the 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 (L1+20%) shall be invited to match the L1 price and so on, and the contract shall be awarded accordingly. In case none of the 'Class-I local

suppliers' within the margin of purchase preference matches the L1 price, the contract may be awarded to the L1 bidder.

d) "Class-II local supplier" will not get a preference for any procurement undertaken by procuring entities.

4A Applicability in tenders where the contract is to be awarded to multiple bidders: In tenders where the 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 tender process along with 'Class I Local suppliers' as per provisions of the Order.

c) If 'Class I Local suppliers' qualify for the award of contract for at least 50 (fifty) per cent of the tendered quantity in any tender, the contract may be awarded to all the qualified bidders as per award criteria stipulated in the tender documents. However, in case 'Class I Local suppliers' do not qualify for the award of contract for at least 50 (fifty) per cent 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) per cent 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) per cent of the tendered quantity.

d) The margin of purchase preference shall be 20%. Only those 'Class-I local suppliers' would be eligible for purchase preference whose quoted rates fall within the 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. First, purchase preference must be given to the lowest quoting eligible 'Class-I local 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 the next higher eligible 'Class-I local supplier,' and so on. In case the quantity thus allocated to eligible 'Class-I local suppliers' is short of 50% of the tendered quantity, then this shortfall quantity may be distributed among all other qualified bidders as per award criteria stipulated in the tender documents.

e) To avoid any ambiguity during the bid evaluation process, the procuring entities may stipulate their own tender-specific criteria for the award of contracts amongst different bidders, including the procedure for purchase preference to 'Class-I local supplier' within the broad policy guidelines stipulated in the sub-paras above.

5. **Exemption of small purchases:** Notwithstanding anything contained in sub-para 1 above, 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.

5A Exemption in the sourcing of spares and consumables of closed systems: Procurement of spare parts, consumables for closed systems and Maintenance/ Service contracts with Original Equipment Manufacturer/ Original Equipment Supplier/ Original Part Manufacturer shall be exempted from this Order.

6. **Minimum local content**: The 'local content' requirement to categorise a supplier as a 'Class-I local supplier' is a minimum of 50 (fifty) per cent. For 'Class-II local suppliers,' the 'local content' requirement is a minimum of 20 (twenty) per cent. Nodal Ministry/ Department may prescribe only a higher percentage of the minimum local content requirement to categorise a supplier as a 'Class-I local supplier'/ 'Class-II local supplier.' For the items for which the Nodal Ministry/ Department has not prescribed higher minimum local content notification under the Order, it shall be 50 (fifty) per cent and 20 (twenty) per cent for 'Class-I local supplier'/ 'Class-II local supplier' respectively. It may be noted that local content is not related to the nationality of the firm – a foreign-owned firm may also become a Class-I or Class-II local supplier by adding local value addition.
7. **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.
8. **Government E-marketplace**: In respect of procurement through the Government E-marketplace (GeM), shall, as far as possible, specifically mark the items that 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.
9. **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) The bidder shall give self-certification for local content in the quoted item (goods/ works/ services) at the time of tendering. However, at the time of execution of the project, for all contracts above INR 10 Crore, the contractor/ supplier shall be required to give local content certification duly certified by cost/ chartered accountant in practice. For cases where it is not possible to provide certification by Cost/ Chartered Accountant at the time of execution of project, the supplier shall be permitted to provide the certificate for local content from Cost/ Chartered Accountant after completion of the contract, within the limit acceptable to the procuring entity. In case the contractor/ supplier does not meet the stipulated local content requirement and the category of the supplier changes from Class-I to Class-II/ Non-local or from Class-II to Non-local, a penalty upto 10% of the contract value may be imposed. However, contract once awarded shall not be terminated on this account.
    d) 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.

e) 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.
f) Nodal Ministries and procuring entities may prescribe fees for such complaints.
g) 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.
h) 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 above.
i) The Department of Expenditure shall issue suitable instructions (please refer to para 3.8 of this manual) for the effective and smooth operation of this process, so that:
    i) 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;
    ii) on a periodical basis such cases are consolidated and a centralized list or decentralised list of such suppliers with the period of debarment is maintained and displayed on the website(s);
    iii) in respect of procuring entities other than the one that has carried out the debarment, the debarment takes effect prospectively from the date of uploading on the website(s) in such a manner that ongoing procurements are not disrupted.

10. **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 (a) and (b) above.
    d) Reciprocity Clause:
        i) 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.
        ii) Entities of countries that 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.

iii) The stipulation in sub-para ii) above shall be part of all tenders invited by the Central Government procuring entities stated in sub-para 2-h) above. All purchases on GeM shall also necessarily have the above provisions for items identified by the nodal Ministry/ Department.

iv) State Governments should be encouraged to incorporate similar provisions in their respective tenders.

v) 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 a 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 the 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 PS Es/PS Us, for the next 5 years on their respective website."

10A 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.

11. **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.

12. **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.

13. **Manufacture under license/ technology collaboration agreements with phased indigenization**: 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.

13. A. In the procurement of all goods, services or works in respect of which there is a 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.

14. **Powers to grant exemption and to reduce minimum local content**:
    a) 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,
        i) reduce the minimum local content below the prescribed level; or
        ii) reduce the margin of purchase preference below 20 (twenty) percent; or
        iii) exempt any particular item or supplying entities from the operation of this Order or any part of the Order.
    b) The Administrative Department, while seeking exemption under this para, shall certify that such an item(s) has not been notified by Nodal Ministry/ Department concerned under sub-para 3A-a) above.
    c) 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.
15. **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.
16. **Standing Committee**:
    a) A standing committee is hereby constituted with the following membership
        i) Secretary, Department for Promotion of Industry, and Internal Trade-Chairman
        ii) Secretary, Commerce-Member
        iii) Secretary, Ministry of Electronics and Information Technology-Member
        iv) Joint Secretary (Public Procurement), Department of Expenditure-Member
        v) Joint Secretary (DPIIT)-Member-Convenor
    b) 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.
17. **Functions of the Standing Committee**: The Standing Committee shall meet as often as necessary but not less than once in six months. The Committee
    a) shall oversee the implementation of this order and issues arising therefrom and make recommendations to Nodal Ministries and procuring entities.
    b) shall annually assess and periodically monitor compliance with this Order.
    c) shall identify Nodal Ministries and the allocation of items among them for issue of notifications on minimum local content.
    d) may require the furnishing of details or returns regarding compliance with this Order and related matters.

e) may, during the annual review or otherwise, assess issues, if any, where it is felt that the manner of implementation of the order results in any restrictive practices, cartelisation or increase in public expenditure and suggest remedial measures.
f) may examine cases covered by paragraph (xiii) above relating to manufacture under license/ technology transfer agreements with a view to satisfying itself that adequate mechanisms exist for enforcement of such agreements and for attaining the underlying objective of progressive indigenisation.
g) may consider any other issue relating to this Order which may arise.

18. **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.
19. **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.
20. Please refer to the FAQs related to the PPP-MII order issued by DPIIT, placed in Annexure 22.

1.10.3. Restrictions/ Prior Registration on Entities from a Class of Countries (Rule 144 (xi), GFR 2017)

1. **Requirement of registration:** Rule 144 of GFR, 2017, has been amended to include a new sub-para (xi) as follows:

> *"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, or bidders having commercial arrangements with an entity 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."*

2. Detailed provisions in this regard have been notified by the Department of Expenditure's OM No. F.7/10/2021-PPD (1) dated 23.02.2023 (Public Procurement Order No. 4 – hereinafter referred to in this section as the 'Order'), are as follows.

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. The information on Competent Authority is given in sub-para 10 below.
b) Any bidder (including an Indian bidder) who has a Specified Transfer of Technology (ToT) arrangement with an entity from a country that 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 sub-para 10 below.
c) The requirement of registration for cases covered by sub-para a) above has been applicable since 23.07.2020. The requirement of registration for bidders covered by

sub-para b) above will be applicable for all procurements where tenders are issued/ published after 01.04.2023.

d) In tenders issued after 23.07.2020 or 01.04.2023, as the case may be, the provisions of the requirement of registration of bidders and of other relevant provisions of this Order shall be incorporated in the tender conditions.

3. **Applicability**:

a) Apart from Ministries/Departments, attached and subordinate bodies, notwithstanding anything contained in Rule 1 of the GFR 2017, the Order shall also be applicable to:

i) all Autonomous Bodies;
ii) all public sector banks and public sector financial institutions;
iii) all Central Public Sector Enterprises;
iv) all procurement in Public Private Partnership projects receiving financial support from the Government or public sector enterprises/ undertakings; and
v) all Union Territories, National Capital Territory of Delhi, and all agencies/ undertakings thereof.

b) The Order will not be applicable to:

i) projects that 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 this order and without reference to the Competent Authority. Exceptions to this shall be decided in consultation with DEA.
ii) procurement made by Indian missions and by offices of government agencies/ undertakings located outside India.
iii) bidders (or entities) 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 on the website of the Ministry of External Affairs[17].
iv) 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.

4. **Definitions**:

a) "Bidder" for the purpose of the Order (including the term 'bidder', '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) "Transfer of Technology" means dissemination and transfer of all forms of commercially usable knowledge, such as transfer of know-how, skills, technical

[17]https://mea.gov.in/Lines-of-Credit-for-Development-Projects.htm

expertise, designs, processes and procedures, and trade secrets, which enables the acquirer of such technology to perform activities using the transferred technology independently. (Matters of interpretation of this term shall be referred to the Registration Committee constituted by the Department for Promotion of Industry and Internal Trade, and the interpretation of the Committee shall be final.)

d) "Specified Transfer of Technology" means a transfer of technology in the sectors and/ or technologies specified in sub-para 5 below, occurring on or after 23.07.2020.

e) "Bidder (or entity) 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

f) "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.

Note

1. A person who procures and supplies finished goods from an entity from a country that shares a land border with India will, regardless of the nature of his legal or commercial relationship with the producer of the goods, be deemed to be an Agent for the purpose of this Order.

2. However, a bidder who only procures raw material, components, etc., from an entity from a country that shares a land border with India and then manufactures or converts them into other goods will not be treated as an Agent.

g) **Beneficial owner** for the purposes of point e(iv) will be as under:

   i) In the 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: -

      1) "Controlling ownership interest" means ownership of, or entitlement to, more than twenty-five per cent of shares or capital or profits of the company;
      2) "Control" shall include the right to appoint the 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;

   ii) In the 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 persons,

has ownership of entitlement to more than fifteen percent of capital or profits of the partnership;

iii) In the 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 persons, has ownership of or entitlement to more than fifteen percent of the property or capital or profits of such association or body of individuals;

iv) Where no natural person is identified under sub-para g(i) or g(ii) or g(iii) above, the beneficial owner is the relevant natural person who holds the position of senior managing official;

v) In the 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 per cent 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.

vi) To determine nationality while assessing the beneficial ownership of the bidder, the nationality mentioned in the beneficiary owner's passport should be considered. In case of the possibility of dual citizenship, nationality on all the passports should be considered through a suitable declaration. If nationality in any of the passports of the person whose beneficial ownership is being assessed, is recorded to be from a country sharing a land border with India, the provisions contained under this Order shall apply. Hong Kong and Macau are to be considered as part of China for the purpose of this Order.

5. **Sensitive Sectors/ Technologies** (relevant only for the provisions on ToT arrangements; please refer to sub-para 2-b) above):

a) Certain sectors and technologies have been identified as sensitive from the national security point of view. The sectors listed in Schedule I to the Order are considered Category-I sensitive sectors. The sectors listed in Schedule II to the Order are considered Category-II sensitive sectors. The technologies listed in Schedule III are considered sensitive technologies.

List of Category-I Sensitive sectors (Schedule-I)

S. No	Sectors
1	Atomic Energy
2	Broadcasting/ Print and Digital Media
3	Defence
4	Space
5	Telecommunications

List of Category-II Sensitive sectors (Schedule-II)

S. No	Sectors
1	Power and Energy (including exploration/ generation/ transmission/ distribution/ pipeline)
2	Banking and Finance, including Insurance
3	Civil Aviation
4	Construction of ports and dams & river valley projects
5	Electronics and Microelectronics
6	Meteorology and Ocean Observation
7	Mining and extraction (including deep sea projects)

S. No	Sectors
8	Railways
9	Pharmaceuticals & Medical Devices
10	Agriculture
11	Health
12	Urban Transportation

List of Sensitive Technologies (Schedule-III)

S. No	Sectors
1	Additive Manufacturing (e.g., 3D Printing)
2	Any equipment having electronic programmable components or autonomous systems (e.g., SCADA systems)
3	Any technology used for uploading and streaming of data, including broadcasting, satellite communication, etc.
4	Chemical Technologies
5	Biotechnologies, including Genetic Engineering and Biological Technologies
6	Information and Communication Technologies
7	Software

b) For Category-I sensitive sectors, bidders with ToT arrangement in any technology with an entity from a country that shares a land border with India shall require registration.

c) For Category-II sensitive sectors, bidders with ToT arrangement in the sensitive technologies listed in Schedule III, with an entity from a country which shares a land border with India shall require registration.

d) In Category-II sensitive sectors, the Secretary (or an officer not below the rank of Joint Secretary to Government of India, so authorised by the Secretary) of the Ministry/ Department of the Government of India is empowered, after due consideration, to waive the requirement of registration for a particular item/ application or a class of items/ applications from the requirement of registration, even if included in Schedule III. The Ministry/ Department concerned shall intimate the Department for Promotion of Industry and Internal Trade (DPIIT) and National Security Council Secretariat (NSCS) of their decision to waive the requirement of registration. Ministries/ Departments of the Government of India are not required to consult the DPIIT/ NSCS before deciding and are only required to intimate the decision to DPIIT/ NSCS. If any point is raised by DPIIT/ NSCS, it should be considered in future procurements; ongoing procurement for which the waiver was granted need not be interrupted or altered.

e) Based on security considerations, a Ministry/ Department in a Category II sensitive sector or other Ministries/ Departments may recommend to DPIIT the inclusion of any other technology in the list of sensitive technologies, either generally or for their Ministry/ Department.

6. **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 that 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 sub-para 4-(e) above. This shall not apply to sub-contracts already awarded on or before 23.07.2020.

(Note: Procurement of raw material, components, etc. does not constitute sub-contracting)

7. **Model Clauses/ Certificate regarding compliance:** A certificate shall be taken from bidders in the tender documents (please see Annexure 11) that the extant guidelines for participation in the tenders (which should include conditions for implementation of this Order) have been complied with. If such a certificate is given by a bidder whose bid was accepted is found to be false, this would be a ground for debarment and further legal action in accordance with the law. Model Clauses and Model Certificates, which may be inserted in tenders / obtained from Bidders, are given in Annexure-11. 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.

8. **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.

9. **Government e-Marketplace:** GeM shall remove non-compliant entities from GeM unless/ until they are registered in accordance with this Order.

10. **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) (Notified vide OM No. F.6/18/2019-PPD issued by Department of Expenditure dated 23.07.2020)

Note:

(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. However, the requirement of political and security clearance as per para 10 (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.

b) The Registration Committee shall have the following members:

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.

iv) With effect from 01.04.2023, an officer (ordinarily not below the rank of Joint Secretary) representing the National Security Council Secretariat.

c) DPIIT has laid down the method of application, format etc. for such bidders as covered by the Order.
d) On receipt of an application seeking registration from a bidder covered by sub-para 2(a) and 2(b) 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.
e) 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.
f) 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.
g) Registration granted by the Competent Authority of the Government of India shall be valid not only for procurement by the Central Government and its bodies specified in sub-para 3 above but also for procurement by State Governments and their agencies/ public enterprises, etc. No fresh registration at the State level shall be required.
h) The Competent Authority is empowered to cancel the registration already granted if it determines that there is sufficient cause. Such cancellation by itself, however, will not affect the execution of contracts already awarded. Pending cancellation, it may also suspend the registration of a bidder, and the bidder shall not be eligible to bid in any further tenders during the period of suspension.
i) For national security reasons, the Competent Authority shall not be required to give reasons for rejection/ cancellation of registration of a bidder.

11. **Clarifications regarding the applicability of the restrictions under Rule 144 (xi) of the GFR**:

a) The proprietary purchases are not excluded from the provisions of the Rule 144 (xi) of GFR, 2017.
b) The rule is applicable on all purchases irrespective of the order value.
c) The provisions of Rule 144 (xi) are not applicable in the case of selling of raw materials by a Government agency (like a CPSE/ Autonomous Bodies, etc.).
d) The provisions of Rule 144 (xi) are not applicable on the export to the countries sharing land border with India.
e) Sub-contracting is not permitted to any contractor from a country sharing a land border with India unless registered with the competent authority. However, it is to be noted that procurement of raw materials, components, etc., does not constitute sub-contracting. In case a bidder has proposed to supply finished goods procured directly/ indirectly from vendors from the countries which share a land border with India, such vendor will be required to be registered with the Competent Authority as per the provisions of Rule 144 (xi) of GFR, 2017.
f) There is no bar on the contractor from procuring raw material from a firm that has been acquired by another firm belonging to a country that shares a land border with India.
g) **Contract Manufacturing outside India:** If the bidder is getting the subject product manufactured outside India, this is treated as contract manufacturing, and beneficial ownership of the foreign manufacturing entity must be verified. If the foreign manufacturer is covered by the beneficial ownership criteria (para 4-g above) – then

the bidder must submit DPIIT registration of such manufacturer to participate in the procurement.

h) **Hiring of Services:** Suppose a Bidder (Indian/ Foreign), who is not from a country sharing a land border with India, offers services to a procuring entity by arranging equipment from another company; then the following scenarios may appear:

S. No	Scenario	Applicability of Rule 144 (xi)
a)	The equipment/ goods have been purchased or will be purchased from a company (manufacturer) from a country which shares a land border with India.	The bidder has procured certain goods to offer the requisite services to a procuring entity. In such case, the bidder does not fall within the definition of the terms "bidder" as defined under sub-para 4-e) above. Hence, the provisions of Rule 144 (xi) of GFR, 2017 do not apply to this case.
b)	By entering into a MOU/ lease agreement with the company (who owns the equipment/ goods) from a country that shares a land border with India	Here, the bidding vendor proposes to hire services from a company that belongs to a country that shares a land border with India. This prima facie becomes the case of an indirect supply of services by a company that owns the equipment/ goods by introducing an intermediary. The intermediary merely acts as an agent to the company providing services of the equipment. In such a case registration of company owning the equipment and indirectly supplying the services shall require to be registered with the competent authority, thereby requiring the need to fulfil the provisions of Rule 144 (xi).
c)	By entering into an MOU/ lease agreement with the company (say 'X', who is the present owner of the equipment) from a country that does not share a land border with India. The equipment has been purchased from the manufacturer of the company (say 'Y'), which is from a country that shares a land border with India.	In this case, the actual supplier of services, prima facie, shall be 'X.' The status of 'X' in this case does not attract the provisions of Rule 144 (xi).

12. **Illustrative examples of the applicability of the Restrictions under Rule 144 (xi) of GFR 2017**

a) A vendor, say, 'Party A' from India, is procuring an item from their sister company, say, 'Party B,' which is registered in a country not sharing a land border with India. Both the parties, Party A and B, are owned by an entity that does not belong to a country sharing

a land border with India. Party B has its production facility in a country sharing land border with India. The manufactured item will be procured by Party A from its sister concern, i.e., Party B from the above-mentioned production facility. The production unit is wholly owned by Party B. The Party A now claims that the provisions of Rule 144 (xi) of GFR 2017 do not apply on it because:

i) Both Party A and B are not an entity incorporated, established, or registered in such a country, since Party A is registered in India and Party B is registered in a country not sharing land border with India;
ii) Both Party A and B are 100% owned subsidiary of an entity, which is incorporated, registered, and established in a country not sharing land border with India;
iii) The beneficial owner of Party A and B is not situated in a country sharing land border with India since they are owned by an entity belonging to country not sharing land border with India;
iv) Both Party A and B are not an Indian (or other) agent of such an entity;
v) Both A and B are not a natural person who is a citizen of such a country;
vi) Both A and B are not a consortium or joint venture where any member of the consortium or joint venture falls under any of the above. Though, Party B has a wholly owned subsidiary in a country that shares a land border with India but is not a JV or consortium (a subsidiary does not qualify as a JV or consortium)
vii) In addition to the above, Party A claims that they are not procuring finished goods directly/ indirectly from the vendors from the countries sharing a land border with India as the item is being manufactured in their own production units.
viii) In light of the above facts and the claims put forth by Party A, it is important to clarify to the procurers that Party A acts as an agent for Party B, which manufactures goods in a country sharing a land border with India. Party B supplies goods manufactured at premises established in a country that shares a land border with India. In such a case, registration is required for Party B (and not necessarily for Party A, who is only an agent and not from a country sharing a land border with India).

b) Taking an example of IT goods and services:
    i) if the contractor is only supplying the servers as it is from an OEM that belongs to a country sharing a land border with India, and there is no value addition done by the contractor, then the contractor acts as an agent for the OEM and registration of the OEM and the agent (contractor) both are required as per the provisions of Rule 144 (xi) of GFR 2017.
    ii) In case the contractor supplies value added services on a hardware, the contractor outsources, in that case the registration of OEM is not required.
    iii) Where there is deployment of IT services that includes both hardware and software customization, and the contractor has sourced hardware, which is made in the country sharing land border with India, the requirement of registration as per the provisions of Rule 144 (xi) are not applicable.

1.10.4. Support to Start-up Enterprises

1. **Definition of Start-up Enterprises**:

a) As defined by DPIIT, an entity shall be considered as a 'Start-up':
    i) Upto a period of ten years from the date of incorporation/ registration, if it is incorporated as a private limited company (as defined in the Companies Act,

2013) or registered as a partnership firm (registered under section 59 of the Partnership Act, 1932) or a limited liability partnership (under the Limited Liability Partnership Act, 2008) in India, and

ii) Turnover of the entity for any of the financial years since incorporation/ registration has not exceeded one hundred crore rupees, and

iii) The entity works towards innovation, development or improvement of products or processes or services or a scalable business model with a high potential for employment generation or wealth creation.

b) Provided that an entity formed by splitting up or reconstructing an existing business shall not be considered a 'Start-up'.

c) Provided further that in order to obtain benefits a Startup so identified under the above definition shall be required to be recognized as Startup by DPIIT.

2. **Support to Start-ups:** The Government of India has ordered the following support to Start-ups (as defined by the Department for Promotion of Industrial and Internal Trade - DPIIT).

a) **Exemption from submission of Bid Security**: Such Start-ups shall be exempted from payment of Earnest Money.

b) [18]**Relaxation in Prior Turnover and Experience**: The Procuring Entity reserves its right to relax the condition of prior turnover and prior experience for start-up enterprises recognized by the Department for Industry & Internal Trade (DPIIT), subject to meeting quality & technical specifications. Startups may be MSEs or otherwise. Such relaxation can be provided in the case of procurement of works as well. It is further clarified that such relaxation is not optional but normally has to be ensured, except in case of procurement of items related to public safety, health, critical security operations and equipment, etc) where adequate justification exists for the Procuring Entity not to relax such criteria[19]. The decision of the Procuring Entity in this regard shall be final. The benefits under Startup policy will be applicable only for the particular industry/ sector for which they are registered with DPIIT (necessary certificate to be obtained from the bidder in this regard). Please also refer to para 1.10.1-4-b), 5.1.9-5) and 7.3.4-2-c) (Rule 173 (i) of GFR 2017).

1.11. When is Procurement of Non-Consultancy Service justified

In the interest of economy, efficiency and to provide more effective delivery of public services, Rule 198 of GFR, 2017 permits Ministries/ Departments to procure/ outsource NC services (e.g. non-core, auxiliary and support services). Approval of the competent authority should be obtained before engaging service providers. We may justify need for Procurement of NC services on consideration of: -

1. Economy, speed and efficiency and more effective delivery of public services relating to additional requirement/ commitment/ usage of:
   a) Staff/ Management/ Organization;
   b) Technological and Material Resources;
   c) Money, and
   d) Time/ Speed of execution.

[18] Such relaxation can be partial – e.g., 25% relaxation over specified turn-over and experience.

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

2. An administrative policy decided by the Ministry/ Department to outsource specific (or class of) services;

1.12. Principles for Public Procurement of NC Services

Other principles of Public Procurement as mentioned in para 1.8 above are also equally applicable to Procurement of Non-consultancy services. To ensure value for money during procurement of Non-consultancy services, the following additional principles shall be considered:

1. Services to be procured should be justifiable in accordance with Para 1.11 above;
2. In Non-consultancy Services, Activities Schedule (a document covering well-defined scope of work/ description of services and the time frame for which services are to be availed of) should be consistent with the overall objectives of Procuring Entity;
3. Equal opportunity to all qualified service providers to compete should be ensured;
4. Engagements should be economical and efficient.*;*
5. Transparency and integrity in the selection process (that is, proposed, awarded, administered, and executed according to highest ethical standards).

1.13. Legal Aspects Governing Public Procurement of Services

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. *(For salient features of laws applicable to public procurement, please refer to Appendix 2 provided in Manual for Procurement of Goods, Second Edition, 2024)*

1.14. The Law of Agency – applicable to Procurement of Non-consultancy services

Legally speaking service provider would be an Agent of the Procuring Entity acting as a 'Principal' –, to carry out the service on its behalf. Such a relationship is covered by The Law of Agency (Section 182 to section 238, of the Indian Contract Act, 1872) and hence there exists a Principal and Agent relationship between Procuring Entity and the service provider. As per this law, the Procuring Entity is vicariously legally and financially liable for actions of its Agents. For example, a violation of certain labour laws in deputing staff for Procuring Entity's contract by the service provider may render the Procuring Entity legally and financially answerable for such violations, under certain circumstances. There is a need to be aware of such eventualities. Model tender Documents take care of this aspect.

1.15. Public Procurement Cycle in Procurement of Services

The entire process of procurement and implementation of Non-consultancy services shall include the following steps:

1. **Need Assessment**:
   a) Preparation of Procurement Proposal (Concept Paper) and obtaining in principle approvals;

b) Preparation of the Services and Activities Schedule, cost estimate and seeking administrative and budgetary approval;
c) Developing a Procurement Plan

2. **Bid Invitation Process**: Preparing tender documents, publication, receipt and opening of bids;

3. **Bid Evaluation and Award of Contract**:
   a) Preliminary Examination and Evaluation of technical proposals: consideration of quality;
   b) Evaluation of financial proposals;
   c) Selection of winning proposal and award of the contract to the selected firm; and

4. **Contract Management**: Execution and Monitoring of Service Contract.

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

1.16. Nomenclature Conundrum

1. There is no standardised nomenclature in Public Procurement in India, and a mix of American, European, and British/ Indian nomenclature has become common. ‘Tender’ is taken to mean (i) ‘Tender Document’ or ‘Tender Process’ as well as (ii) the ‘Bid’ submitted by the ‘bidders.’ The Tender Document floated by Procuring Entity is also called a Bid (or Bidding) Document. Similarly, participants in a ‘tender’ are alternatively called bidders and tenderers. This duality is reflected in “Notice Inviting Tenders’ and ‘Instructions to Bidders’ etc.
2. An attempt is made to standardise the term ‘Tender’ for ‘Tender Document’ (document prepared and published by the Procuring Entity, instead of bid/ bidding document) or ‘Tender Process’ and Bid for the ‘bid’ submitted by the ‘bidders’ and hence ‘bidder’ is used instead of tenderer. Similar attempts are made to standardise other nomenclature in this document without disturbing the nomenclature (e.g., Pre-qualification Bidding) embedded in the CPPP or GeM portals.

Chapter 2: Need assessment and Procurement Planning

2.1. Need Assessment

1. **Procurement Proposal:** A critical part of the procurement of NC Services process is preparing an appropriately staffed and budgeted Procurement Proposal/ Concept Paper (which serve the function that an Indent serves in procurement of Goods). The authority in the user Department initiating the procurement proposal shall first determine the need (including anticipated quantum) for the subject matter of the procurement. Purpose/ Objective Statement of Services, Service Outcome Statement, and justification for the procurement of Services are important parts of the procurement proposal.
2. **Services and Activity Schedule** containing Service Outcomes, Description/ Scope of Services, Quantum and Length (Duration/ Frequency/ Shifts) of activities is of fundamental importance in ensuring value for money, transparency, competition, and level playing field in procurement of NC Services. The user Department shall maintain all documents relating to the determination and technical/financial/budgetary approvals of the need for procurement.

2.2. Procurement Proposal (Concept Paper) for Non-Consultancy services

2.2.1. Preparing Procurement Proposal/ Concept Paper

As a first step towards procurement of services, a formal written brief Proposal and Justification for the Services should be prepared *(Please see a suggested format in Annexure 3: Format of Procurement Proposal)*. It is akin to the Indent for Materials/ Material Requisition in case of Procurement of Goods. The User should prepare in simple and concise language the requirement, purpose/ objectives and the scope/ outcomes of the Services and justify the procurement based on analysis of in-house available capacity/ capability. The eligibility and qualification criteria to be met by the service providers should also be clearly identified at this stage. Justifications for procurement of NC Services as given in para 1.11 may be kept in view. It is the basic document for initiating procurement of services. It is also the document from which the subsequent detailing of Services and Activities Schedule for non-consultancy services is drawn up. A procurement proposal should contain:

1. **Purpose/ Objective Statement of Services:** “Purpose/ Objective Statement of Services” should be prepared by the user. One of the important contents of this statement is short description of service to describe the subject matter of procurement which would be used in all subsequent documents. Bringing out the background and context, this should justify how the proposed procurement of services would fit in with short-term and strategic goals of Procuring Entity. Making such a statement is important to put the need for services in clear perspective. It may seem elementary or academic but is a necessary and critical first step in properly designing a procurement proposal.
2. **Service Outcome Statement**: Once the “Purpose/ Objective of Services” has been clearly defined, the next step is to formulate a ‘Service Outcome Statement’. This should list out qualitatively and quantitatively the outcomes expected from the Procurement of Services, as well as the expected time-frame and a rough estimate of cost of Procurement of services (including related costs to be incurred by the organisation). At this stage, it is not necessary to go into details of all the activities required to achieve the service outcomes,

but it should list at least the broad activities to help in putting a rough estimate to the cost of the services. A 'Service Outcome Statement' should provide a concrete basis for subsequently defining the type and amount of work that needs to be done by service provider and the time-frame within which the output needs to be received by the user. The estimated cost is needed to ascertain the level of administrative/ financial approvals necessary as per SoPP.

3. **Justification for the Procurement of Services:** The Concept Paper/ Procurement proposal should analyse the capabilities/ capacities required to carry out the services. It should also analyse the available in-house capabilities/ capacities and compare these with the ones required for the assignment. Based on this assessment, the Procurement should be justified in the light of para 1.11.

2.2.2. In-principle Approval for initiating procurement of Services

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

2.3. Preparation of Services and Activities Schedules

2.3.1. Services and Activities Schedule

1. Services and Activities Schedule is akin to Description, Quantity and Technical Specification in Procurement of Goods. This is the first step in the selection of the Service Provider once a need has been identified. It explains the background and context, purpose/ objectives of the services, scope, quantum, duration/ frequency of activities/ tasks to be performed, respective responsibilities of the Procuring Entity and service provider, expected outcomes, and deliverables of the Service. Services and Activities Schedule is important for an understanding of the service requirement and its correct execution to ensure that the outcomes of the service are achieved. It reduces the risk for the Procuring Entity of unnecessary extra work, delays, and additional expenses. In addition, it helps reduce for the bidders the risk of ambiguities during the preparation of bidder's proposals and contract execution. Hence, the Services and Activities Schedule should be comprehensive and unambiguous. The objectives of the Services and Activities Schedule are:
   a) To provide sufficient information on the quantum, scope, duration/ frequency and timelines of Services to be performed to enable bids to be prepared efficiently and accurately; and
   b) When a Contract has been entered into, to provide a priced Services and Activities Schedule for use in the periodic valuation of Services executed.
2. Besides detailing the activities, quantum and time frame, the Services and Activities Schedule should contain the following sections also:
   a) Background:
      i) Procuring Entity's organisation and Project background;
      ii) Purpose and Service Outcomes Statement (refer to Chapter 1)
      iii) Short Description and Scope of Services (including any incidental works/ goods) that would help the bidders understand the service requirement.
      iv) Contract period (and provision of extension, if any), duration/ frequency/ timeline of outcomes/ deliverables;

v) Type of Contract/ BOQ (Time-based, Unit-Rate, Indefinite delivery, Lumpsum or Percentage-Based)
vi) Expected requirement of resources: Man-power, Materials, Equipment;
vii) Facilities such as office space, office machines, utilities, local services, etc., which would be provided to the Service Provider by the Procuring Entity;
viii) Insurances required, if any;
ix) Statutory and Contractual obligations to be complied with by the Service Providers
x) Institutional and organisational arrangement for Services (Counterpart Contract Management Team, Chain of Command, Interim/ ultimate beneficiaries/ stakeholders of Services, and
xi) Procedure for review of the Service delivery after award of contract, including Service Level Agreement, if any

b) **Description of Services:** A brief description of the service required is important information that would help the bidders understand the service requirement. It should cover background about the Procuring Entity's organisation and about the project/ service. The Purpose and Service Outcome statement should be included in the description of services (as finalised for initiating the procurement - Para 2.2.1 above) to help the service providers understand the requirement.

c) **Services and Activities Schedule:** In order to attain the objectives of the Services and Activities Schedule, Services should be itemised in sufficient detail to distinguish between the different classes of Services or between Services of the same nature carried out in different locations or in other circumstances which may give rise to different considerations of cost. There may be more than one Schedule of Services based on grouping similar services in one Schedule. Each Service should be described and broken down into discrete activities required to deliver the service. The description/ Scope of Service and Activities should indicate what is (and more important – what is not) included in the scope and conditions under which Services are to be performed. Consistent with these requirements, the layout and content of the Services and Activities Schedule should be as simple and brief as possible. All information relevant for the bidder to quote a price may be included, e.g., the location, frequency/ shifts/ length and quantum and time-frame/ duration of completion of activities to be performed. In the Services and Activities Schedule containing scores of items, evaluation can be simplified if the system used in Works contracts is borrowed, if feasible, where the Schedule of rates (SoR) for each activity is specified in the bid documents by the Procuring Entity and only percentage +/- above the SoR (separately for different Schedules or combined) is asked to be quoted by the bidders.

d) **Performance Standards and Quality Assurance:** Performance standards/ Service Levels; functional/ materials/ technical specifications (indicate quantitative and qualitative parameters/ limits/ thresholds for performance) should be specified overall for the Service and for each activity, materials, tools and machines to be used in the activity. It should also include:

i) Any reporting requirement, periodic meetings or other submissions
ii) Any Service Level Agreement, if required, say for the outsourcing of services
iii) Key Performance Indicators indicating how measurement, reporting, and tracking of performance parameters would be done for Quality Assurance and

Monitoring of Service (Indicate procedure for quality assurance and monitoring of services, including institutional or third-party arrangements for this purpose)

iv) Procedure for resolution and escalation procedures in case of deficiency in performance/ quality/ service levels.

v) Method Statement (Sequencing and inter-dependencies of activities), methodology, Service Level Agreement, arrangements to ensure environmental, social, gender, health, and safety requirements if relevant. Method Statement must be supplemented by information in sub-schedules for Work Plan and

vi) Schedule for Forms of BOQ/ Contract based on input-admeasurement, Key Inputs deployments (Personnel Deployment, Critical Equipment Deployment and Critical Materials Deployment) may not be essential – but list these if required to achieve the performance standards and quality. If the service is not dependent on any of the key inputs, that may be omitted.

e) **Labour/ Personnel Schedule:** If labour/ personnel are used in the activity, these may be quantified specifying place, shifts and frequency of utilization in the Services and Activities Schedule. In case any key professionals or Project Manager is required, their qualification and experience required may also be mentioned. Any relievers and leave reserve for deploying the personnel should be included in the rate for such personnel and would not be separately payable.

f) **Critical Material Schedule:** In case any Materials/ Consumables/ tools of trade are to be consumed/ deployed, a Separate Materials Schedule should be included, indicating the specification and quantity of such materials/ consumables/ tools to be consumed/ deployed per unit activity/ day/ location/ per manpower deployed. Price of all these materials/ tools etc is to be shown as a separate lump-sum cost in the financial bid by the bidder.

g) **Critical Equipment Schedule:** Any essential equipment, machinery (Trucks, Cranes, Washing Machines, Vessels/ crafts, plant, and machinery, etc) that the service provider must have and should deploy as a qualifying requirement must be mentioned along with specifications, capacity, age of equipment etc. It should be ensured that operators for such equipment must be mentioned in the Labour/ Personnel Schedule. In case of input Admeasurement, indicate only Critical Equipment (not others) required to carry out the Services to required standards and quality. Categorise the equipment – IT Equipment/ Motor Vehicles, Cranes, Washing Machines, vessels/ crafts, plant & machinery etc. Give estimated number location-wise, category wise. This schedule may not be essential for output-admeasurement BOQ/ Contracts, but list these if required. If the service is not dependent on Critical Equipment, this may be omitted.)

h) **Statutory and contractual obligations to be complied with by the contractor:** The service provider mostly works within the premises of the Procuring Entity, along with a staff of the Procuring Entity. Many services are subject to various statutory provisions relating to labour, taxation, Workmen's Safety, Child and Women Labour, Private Security Agencies, Environmental Protection, Mining, Forest clearance, Employment reservations, etc. The bidder must have a Service Tax Number, ESI, EPF Registration Certificate, Registration Declaration of ownership under the Indian Registration Act 1908 and Labour License and PAN (Income Tax). Moreover, the Procuring Entity itself may have its own regulations about safety, security, confidentiality, etc. All such statutory and contractual obligations must be listed so that price implications and

compliance are taken care of by the bidder. In the case of security services contracts, the bidder must have a valid license to run the business of a Private Security Agency in the state issued by the appropriate authority for operating Security Services.

i) **Facilities and Utilities to be provided by the Procuring Entity to the service provider at the Site:** It should be mentioned if any facility/ utility (IT/ Communication Services, Emergency Medical, Room, Furniture, Electricity connection, Water connection) etc would be made available to the successful bidder to carry out the service. In case it is proposed to charge the Electricity/ Water supplied to the service provider, the same may be mentioned, including the rate of charges. This aspect has a great bearing on the cost that will be quoted by the bidders. This can have implications in vitiating the selection process either way – a facility to be provided may not get declared, or a declared facility may not be provided ultimately. So great care and reality check is necessary, while preparing this Statement. Specially mention facilities and utilities which will not be provided, or the facilities which would be provided on a chargeable basis. It should be clearly mentioned that the service provider will not be allowed to use any of Procuring Entity's facility/ area which are not listed in this section.

j) **Institutional Arrangements and Procedure for Review of Work of Service Provider after the Award of Contract:** Institutional arrangements like the placement in a Department, name of project manager and chain of command for reporting may be specified. Process of Review of Service Outcomes and deployment of personnel and resources should be Cleary brought out.

3. A template for the Services and Activities Schedule is given in Annexure 4.

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

1. Preparation of a well-thought-through cost estimate is essential if realistic budgetary resources are to be earmarked. The cost estimate shall be based on the Procuring Entity's assessment of the resources needed to carry out the services: managerial and staff time and physical inputs (for example, materials, consumables, tools and machines). Costs shall be divided into three broad categories. Profit element, Taxes and duties should be added to the estimated costs:
   a) Remunerations for Personnel deployed;
   b) Reimbursable: (Travel, logistics, Consumables, Materials, Tools, Hiring of third-party services, etc.);
   c) Administrative and Miscellaneous (Mobilisation, demobilisation, Temporary Structures, Administrative expenses, office and IT equipment, contingencies, financing costs, Costs for hiring/ depreciation/ financing of machinery and equipment, etc)
2. **Rates:** Costs are normally estimated using unit rates (staff remuneration rates, reimbursable expenses) and quantities (exceptionally some items may be estimated on the lump-sum basis or percentage basis – Contingencies and support services).
3. **Staff Costs:** The estimate of staff cost is based on an estimate of the personnel time (staff-months/ weeks/ days) required for delivering the services considering time required by each staff, his remuneration rate (or the minimum wage rate, if applicable), and the related direct cost component. In general, staff remuneration rates include basic salary, social charges, overheads, fees or profit and allowances.

4. A mismatch between the cost estimate and the Services and Activities Schedule is likely to mislead service providers on the desired scope, quantum, and frequency of service required, and this could lead to serious problems during contract implementation.

2.3.3. Final Administrative and Budgetary Approvals

1. The Services and Activities Schedule shall be compatible with the available budget. The most important step is to determine whether all tasks required to achieve the desired output have been included. The next step is to determine whether an adequate budget has been allocated to implement the services as proposed. Since the budget may be fixed or limited, a series of iterations may be required before a final, acceptable Services and Activities Schedule is formulated. CA's approval may be taken for the Procurement before proceeding ahead. After administrative approval, provision may be made in the Budget, or if that is not feasible, additional confirmation at the time of seeking Administrative approval may be taken from the CA for inclusion in the Revised Estimate stage of the Budget. Procurement should be initiated only after such approvals and budgetary provisions.
2. Procuring Entities may lay down a schedule of powers for administrative and budgetary approval of procurement proposals for services. Before granting such approvals, it should be certified that funds in the budget are available and liability for this procurement proposal is noted against the total available budget.

2.3.4. Need assessment, Formulation of Terms of Reference, and Procurement Planning - Risks and Mitigations

Risk	Mitigation
1. Need is either artificially created or exaggerated, with the intention to channel benefits to an individual or an organisation. For example, demand is created for a good that is not needed simply to benefit the company's owner.	**Keep records and involve stakeholders:** Records of decision making, and data used should be kept. Involve procurement and finance functions at this stage also. End user and stakeholder consultations should be part of the process.
2. Delays in the Assessment of Need and generation of Indent for Procurement may lead to shortcut procurement procedures that dilute transparency and prevent the achievement of value for money. It may also lead to delays in the delivery of services.	Need assessment should be done sufficiently in advance of the time when services are required. In the case of urgent requirements, the urgency certificate should be approved by the authority empowered to grant administrative approval for the indent, recording justification – why the need could not be formulated earlier.
3. The estimate of the costs may be inadequate. This may lead to inadequate response from the bidders and may delay finalisation of procurement. It may also adversely affect the quality of supplies.	Estimates of procurement should be prepared with due diligence, keeping in view inflation, technology changes, profit margins etc.

Risk	Mitigation
4. Need Description/ Specifications and terms of reference are disproportionate to the need identified or made to tilt in favour of one or a group of vendor(s) or contractor(s) to artificially restrict competition.	**Use a formal market discovery tool:** Pre-bid conference and/ or well publicised EoI may be used for discovery of the market. Otherwise, encourage and invite comments on the technical and commercial conditions in the tender document or hold pre-bid conference.
5. Asymmetric dissemination of vital need information: Dialogue for determining solutions available in the market is held only with selected prospective bidders, giving them an undue advantage in preparing for the bidding. Selected prospective bidders get access to inside information not disclosed or disclosed late to others.	

2.4. Developing a Procurement Plan

2.4.1. Planning the Procurement

1. The NC Services may be part of a larger project/ works in which there be other components of work, Goods or Consultancy/ NC services. Once a project or a program is identified, the Procuring Entity needs to develop a synchronised procurement plan for all the various components of the project/programme. This will also require planning of the sequence and contents of the different components, including NC services, adoption of the most appropriate method of selection and type of contract and ensuring that selection of service provider is initiated and completed to meet the overall requirements of the project implementation. For example, if a service provider is required for housekeeping services for a hostel still under construction, the entire sequence of preparation of feasibility report, detailed design and bidding document, the time required for inviting bids for construction work, and award of contract has to be considered so that the housekeeping service provider is mobilised at the right time when the hostel is ready for occupation. Procurement planning is a crucial stage of decision-making in procurement planning for a better outcome and for VfM considerations.
2. **Packaging, Bundling and Slicing:** The procuring authority shall normally neither package nor divide its procurement or take any other action to limit competition among bidders or to avoid the necessity of obtaining the sanction of higher authority required with reference to the estimated value of the total demand. Provided that in the interest of efficiency, economy, timely completion or supply, wider competition, or access to MSEs, a procuring authority may, for reasons to be recorded in writing, divide its procurement into appropriate packages or club requirements of other users for procurement. Packaging of the contract and procurement planning should be done keeping in view the availability and possibility of eliciting the interest of the qualified firms, effective competition for the type and size of the contract, and access to MSEs. For example, for a particular contract, material to be procured may constitute more than 50 (fifty) per cent of the total cost of works, or there are services that are a mix of consultancy services with substantial elements of goods, such as procurement of an IT system. Such procurement could be

done as a single composite contract comprising all components or divided into separate contracts for each category of procurement. In all such situations, the dominant aspect of the requirement and value for money aspects of a composite all-inclusive contract versus dividing the contract into respective categories should be carefully examined at the time of Need assessment/ Procurement Planning. This is a crucial stage of decision-making in procurement planning for a better outcome and for VfM considerations;

3. **Eligibility for Participation in Tender:** Determine and declare in documents any limitation on participation of bidders as per the Government's procurement policy regarding preference to certain sections of industry, if any. The procuring entity shall not establish any requirement aimed at limiting the participation of bidders in the procurement process that discriminates against or amongst bidders or against any category thereof except to lay down a reasonable and justifiable eligibility or pre-qualification criteria for the bidders;
4. **System of Tendering and Mode of Procurement**:
   a) Selection of a system of tendering (single/two stage; single/two bids; suitability for e-procurement or reverse auction);
   b) Select the mode of procurement (open tenders, limited tenders, single tenders, and so on);
5. **Time Frame:** Decisions on the timeframe for completing various stages of procurement, which should be declared in the pre-qualification/bidder registration or tender documents. The procuring entity should endeavour to adhere to the time limit so decided and record reasons for any modification of such limits. (Rule 144(ix), GFR 2017)
6. **Annual Procurement plans:** 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. An integrated annual procurement plan should be prepared for Goods, Works, and Services for the ensuing financial year based on the latest cost estimates and realistic time schedule for procurement activities and contract implementation and thus schedule and stagger the procurements over the year with a view to ensure an even load on the procuring entity and the market and to co-ordinate matching procurements of Goods, Works, and Services for a project. The procuring entity may publish information regarding the planned procurement activities for the forthcoming year or years on CPPP and website/ e-procurement portal used by the procuring entity with a caveat that such publication shall not be construed as the initiation of a procurement process and cast any obligation on the procuring entity to issue the tender document or confer any right on prospective bidders.
7. **Mitigating Cartel Formation**: Need Assessment and Procurement Planning is the main stage where this menace can be addressed effectively:
   a) Inadequate competition, due to an inadequate number of service providers in the list/ panel of registered service providers, may empower bidders to conspire against the Procuring Entity:
      i) New firms may be encouraged to register themselves for the subject services.
      ii) Various services and activities in the Services and Activities Schedule may be reviewed so that more service providers become eligible. Insisting on costly machinery to be used may reduce competition and encourage cartel formation.
   b) Processes, e.g., pre-bid conferences (where a considerable number of competing bidders come together on a platform), may facilitate such cartel formation. This may

be avoided as far as feasible or be held only virtually. However, a pre-bid conference may be advantageous in the case of turnkey contract (s) and sophisticated and costly equipment, large works, and complex service assignments, as detailed in para 5.2.3 below.

c) Tendering similar Services and Activity Schedule with similar conditions, year on year, provides a stable conspiring environment for the bidders to come to an agreement for quoting prices and quantities. Therefore, the following action can be considered to vary quantity and conditions to make it difficult for cartels:
    i) Change the mode of procurement - OTE instead of LTE, or GTE instead of OTE; or bypass the pre-qualification stage and vice versa.
    ii) Change the packaging/slicing by clubbing/ slicing services/ activities in a tender.
    iii) Change the pre-qualification criteria, especially in the case of slicing/ packaging, to broaden the target bidders.

8. **Strategizing Large Procurement:** Large procurements warrant strategies to achieve competition and VfM. Large procurements require the application of mind during need assessment, cost estimation and procurement planning, where the blind application of rules may not bring VfM. Formal market research can reveal important parameters of the market that can be used for designing optimal procurement strategies (alternative methods of procurement, slicing/ packaging, mitigating cartels, optimising various features/ specifications of the item) to maximise VfM and competition. Some of the market parameters to look for are:
    a) **Total Production Capacities and total demand** for the NC Services in the region or the State. Is there an unbalanced demand/ supply?
    b) **Volumes of procurement:** How significant is our requirement vis-à-vis the market? Would clubbing demands increase bargaining power? Can we collaborate with another large public-sector buyer? Has there been a recent major procurement that may constrict available capacity?
    c) **Level of competition** – location-wise number of service providers, co-ordination/ cartelisation among them, major service providers/ buyers controlling the market
    d) **Manpower constraints**, Skills/Manpower bottlenecks, logistics, geopolitical issues.
    e) **Statutory Constraints**: patents, manufacturing processes, pollution, and other legal restrictions, etc. Should we tinker with specifications to get VfM?

2.4.2. Procurement Planning - Risks and Mitigations

Risk	Mitigation
1. Packaging, bundling, and slicing of requirements are done to avoid open competition or reduce competition. Or it is too large to make it difficult for MSEs to participate. Possible clubbing/collaboration among different units having the same needs has not been explored.	**Lay down** a clear policy for packaging and bundling of requirements. In large packages, the affordability of EMD and resultant restriction on competition may be kept in view, and bidders may be allowed to bid for slices of the package by depositing proportional EMD.

Chapter 3: Participation of Bidders and Governance Issues

3.1. Eligibility Criteria for Participation in Tender Process

1. Normally, participation in the Tender Process should be open to all bidders. However, the procuring entity should lay down 'Eligibility' criteria based on the requirements of the procurement and Government Policies. 'Eligibility' and 'Qualification' criteria (Experience, Performance, and Financial Capabilities) are entirely different criteria and should not be mixed up. 'Eligibility' criteria regulate the participation of bidders in the Tender process, while 'Qualification' criteria are for the evaluation of bidders for the award of the contract. The bidder should meet the eligibility criteria as of the date of his bid submission (and should continue to meet these till the award of the contract); otherwise, his bid would be rejected as non-responsive and would not be evaluated for the award of the contract. The bidder shall be required to declare fulfilment of Eligibility Criteria in his bid document. Some of the eligibility criteria are related to the following issues (for details, refer to relevant Model Tender Documents):
   a) **Legal status of the bidder:** Individual bidder - a natural person or a private entity or a public entity (State-owned enterprise or institution), or a Joint Venture/ Consortium (an association of several persons, firms, or companies - hereinafter referred to as JV/C). JV/C may be permitted to participate in the procurement of Non-consultancy services only in specific situations where the credentials required are not likely to be available with an individual bidder. Participation of JV/C is specifically discouraged in the case of Quality Oriented Procurement (QOP) with QCBS evaluation (Please refer to para 4.3.2 below).
   b) **Participation of demerged entities**[20] (by virtue of a corporate restructuring exercise etc.): Tender documents must clearly mention if (and under what conditions) the demerged entity will be permitted to use credentials of original/parent entity (for initial five years from the incorporation of the demerged entities) to satisfy the eligibility criteria or not in the specific tender.
   c) Requirement of various registrations/ licences from various statutory authorities required for the subject matter of procurement: GSTIN, PAN, EPF, ESI, Labour, Private Security Agencies (PASARA), etc.
   d) Submission of requisite Bid Security (or Bid Security Declaration, if allowed) or proof of exemption therefrom
   e) free from Financial insolvency, Debarment, or Convictions;
   f) A consistent history of litigation or arbitration by the bidder may result in disqualification;
   g) free from 'Conflict of Interest' with other bidders, which may affect fair competition.
   h) Restriction on participation as per Government Policies:
      i) For Class-II Local Suppliers and Non-Local bidders as per the Make-in-India policy.
      ii) Any bidder from a country sharing a land border with India (but not in development partnership with India), or any bidder (including Indian) with a

[20] As per DoE's OM No. No. F .8/78/2023-PPD dated 12.10.2023, in suitable cases procuring entity may consider the credentials based on the merit and circumstances of the cases like type of procurement, nature of demerger, number of eligible bidders available etc.

Specified Transfer of Technology (ToT) arrangement with such a country, shall be eligible subject to certain conditions.

3.2. Legal Status of Bidders

3.2.1. Individual Persons

1. **Individual service providers:** Individual service providers are recruited for similar activities as Service providing firms when a full team is not considered necessary. They may be independent experts not permanently associated with any particular firm, or they may be employees of a firm recruited on an individual basis. They may also be employees of an agency, institution, or university. They are normally recruited for project implementation supervision, training, provision of specific expert advice on a highly technical subject, policy guidance, special studies, compliance supervision, or implementation monitoring. Individual service providers are not normally recruited for project preparation unless the proposed project is simple and, generally, a repeat of an already established and successful project. If more than three experts are required, then the assignment should normally be undertaken by a team from a firm. As with firms, individual service providers are classed as either international or national, depending on their level of expertise and their international experience and exposure.
2. **Retired Government Servants:** As Service Providers, retired Government servants can be hired/ engaged only for a specific task and for a specific duration. They should be assigned clear output related goals. For such engagements on a full-time basis (when they are not allowed to concurrently do any other assignment) on a monthly basis, their remuneration should be fixed as last pay drawn minus pension, as per extant DOPT guidelines. However, for part-time non-exclusive engagements, the Procuring Ministry/ department may fix remuneration on a per day/ month or lump-sum basis. They should not be engaged as consultants against regular vacant posts, such engagements should be handled as a personnel matter.

3.2.2. Private and Public Entities:

1. **Service Providing Firms:** The main source of service providers is service providing firms with diverse specialisations that provide non-consultancy services to clients. Such firms are normally classified as either international – firms that have international experience and are capable of undertaking work at the international level at international rates or national – firms that may not have international exposure and normally undertake assignments only within that country, usually at significantly lower rates.
2. **Non-governmental Organizations (NGO)**: There may be distinct advantage in use of Non-governmental organizations (NGOs) in Projects which emphasize experience in community participation and in-depth local knowledge – for example, Projects related to Corporate Social Responsibility (CSR) or Government Social Initiatives like ‘Swatch Bharat Abhiyan’ etc.
3. **Specialized Agencies and Institutions:** Specialized agencies or institutions (including Government/ Semi-Government agencies, universities, research, and professional institutions) may also, from time to time, be recruited to provide Non-consultancy services. These services may be provided by individuals (as discussed above) or by teams. Nonetheless, there are, at times, distinct advantages to using such agencies. Experts and teams from such agencies and institutions may undertake a variety of roles across the whole field of possible Non-consultancy services. These may range from project

preparation through project supervision and policy advice to project benefit monitoring and evaluation.

3.2.3. Association of several Bidders

1. **Sub-contracting:** A bidder who is capable of being selected for the award of the contract on his own credentials may propose to sub-contract a part of the contract for specialised items of services as a financial or technical strategy. The names and details of the sub-contracts are to be clearly stated in the bid submitted by Bidder, provided further that such sub-contractor should not circumvent the eligibility criteria. Qualifications of these sub-contractors shall not be considered in the evaluation of qualification criteria for the bid. Despite any approval granted by the Procuring Entity for such arrangements, the Bidder/ Contractor shall be solely and directly responsible for executing sub-contracted portions of the contract. The total value of the sub-contracting portion of services must not exceed the per cent of the contract price as specified in the Tender Document/ Contract (if not so specified 25 (twenty-five) percent). Sub-contracting by the contractor without the approval of the Procuring Entity shall be a breach of contract.
2. **Consortium of service providers:**
   a) In large and complex assignments, service providers may associate with each other to form a consortium to complement their respective areas of expertise, to increase the technical responsiveness of their proposal, and make larger pools of experts available or for other reasons. Such an association may be for the long term (independent of any particular assignment) or for a specific assignment.
   b) Such associations are called Consortium or Joint Ventures (JVs) for the purpose of this Manual. In case of consortium or JVs, The consortium may take the form of a Joint Venture (JV). In which case, all members of the JV shall sign the contract and shall be jointly and severally liable for the entire assignment. However, the Procuring Entity only deals with the lead member of consortiums/ JVs for all the purposes. After the short list is finalised, and the Request for Proposal (RfP) is issued, any association in the form of a consortiums/ JVs or sub consultancy among the short-listed firms shall be permissible in accordance with provisions stated in the RfP. Under such circumstance, one of the shortlisted consultants must become the lead member of the consortium/ JV.
   c) Bid documents should clearly specify whether consortiums/ JVs are allowed to bid (in case of complex and large assignments, say above certain values (say - Rs. 5 (Rupees five) crore). A maximum number of partners in a consortium/ JV shall be limited (say – three). In case consortiums/ JVs are permitted to bid, it should be clarified what qualifications are to be collectively (clubbed together) met by the consortium/ JV partners (say experience of non-consultancy service, etc) and what each partner has to meet individually and separately (say financial capacity). In the case of each member meeting credentials individually, it should also be specified that each partner should meet at least 25% (and the lead partner at least 50%) out of the qualifying limit (say financial capacity/ turnover).
   d) If consortiums/ JVs are allowed, measures should be taken to ensure that all the consortium/ JV partners are present and deliver services all through the contract period. An Implementation Board with participation of all consortium/ JV partners may be provided for wherein the Project Manager from the procuring entity shall also be allowed audience when required. Meeting of consortium/ 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.

3.3. Governance Issues in Procurement of Services

3.3.1. 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 authorising expenditure from public moneys should be guided by high standards of financial propriety. Every officer should also enforce financial order and strict economy and ensure 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 that will be directly or indirectly to its own advantage.*
>
> *iv) Expenditure from public moneys should not be incurred for the benefit of a particular person or a section of the people unless —*
>
> a) a claim for the amount could be enforced in a Court of Law, or
> b) the expenditure is in pursuance of a recognized policy or custom.

3.3.2. Right to Information and Proactive Information Disclosures

Section 4(1) (b) of the RTI Act lays down the information to be disclosed by public authorities on a suo-motu or proactive basis, and Section 4(2) and Section 4(3) prescribe the method of its dissemination to enhance transparency and also to reduce the need for filing individual RTI applications. The Department of Personnel & Training, Ministry of Personnel, Public Grievances & Pensions, Government of India, has issued "Guidelines on suo motu disclosure under Section 4 of the RTI Act" vide their OM No.1/6/2011-IR dated April 15, 2013.[21]. The relevant guidelines relating to information disclosure relating to procurement are reproduced below:

> *"Information relating to procurement made by public authorities, including publication of notice/tender enquiries, corrigenda thereon, and details of bid awards detailing the name of the Vendor/ Contractor of goods/services being procured or the works contracts entered, or any such combination of these and the rate and total amount at which such procurement or works contract is to be done should be disclosed. All information disclosable as per Ministry of Finance, Department of Expenditure's O.M. No 10/1/2011-PPC dated 30th November, 2011[22] (and 05th March 2012[23]) on Mandatory Publication of Tender Enquiries on the*

[21] http://cic.gov.in/GuidelinesOnProActive.pdf

[22] http://finmin.nic.in/the_ministry/dept_expenditure/gfrs/pub_tender_enq_cppportal.pdf

[23] http://eprocure.gov.in/cppp/sites/default/files/instruction_contents/INST_DOC_NO_7/OM_DoE_5thMarch2012.pdf

Central Public Procurement Portal and O.M. No. 10/3/2012- PPC dated 09th January 2014 on implementation of comprehensive end-to-end e-procurement should be disclosed under Section 4 of the Right to Information Act.

3.3.3. Code of Integrity for Public Procurement (CIPP)

1. Public procurement is perceived to be prone to corruption and ethical risks. To mitigate this, the officials of Procuring Entities and the bidders/ suppliers/ contractors/ service providers involved in the procurement process must abide by the following Code of Integrity for Public Procurement (CIPP). All Procuring officials may be asked to sign declarations to this effect periodically and in various Procurement decisions (including Need Assessment). The bidders/ suppliers/ contractors/ service providers should be asked to sign a declaration for abiding by a Code of Integrity for Public Procurement in registration applications and in bid documents, with a warning that, in case of any transgression of this code, its name is not only liable to be removed from the list of registered suppliers/ contractors/ service providers, but it would be liable for other punitive actions as detailed in sub-para 3) below. (Rule 175 (2) of GFR 2017).
2. **Code of Integrity for Public Procurement**: Procuring authorities, as well as bidders, suppliers, contractors, consultants, and service providers, should observe the highest standard of ethics and should:
   a) **not indulge** in the following prohibited practices, either directly or indirectly, at any stage during the procurement process or during the execution of resultant contracts:
      i) **"Corrupt practice":** making offers, solicitation or acceptance of bribes, 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 declarations or providing false information for participation in a tender process or to secure a contract or in the execution of the contract;
      iii) **"Anti-competitive practice":** any collusion, bid rigging or anti-competitive arrangement, or any other practice coming under the purview of The Competition Act, 2002, between two or more bidders, with or without the knowledge of the Procuring Entity, that may impair the transparency, fairness, and the progress of the procurement process or to establish bid prices at artificial, non-competitive levels;
      iv) **"Coercive practice"**: harming or threatening to harm persons or their property to influence their participation in the procurement process or affect the execution of a contract;
      v) **"Conflict of interest" (COI)**: any personal, financial, or business relationship between the bidder and any personnel of the procuring entity who are directly or indirectly related to the procurement or execution process of the contract, which can affect the decision of the procuring entity directly or indirectly;
      vi) **"Undue Advantage"**: improper use of information obtained by the bidder from the procuring entity with an intent to gain an unfair advantage in the procurement process or for personal gain. This also includes if the bidder (or

his allied firm[24]) provided services for the need assessment/ procurement planning[25] of the tender process in which he is participating;

vii) **"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.

b) **proactively disclose**[26]**,** whether asked or not, in a tender document:

i) Procuring authorities[27] as well as bidders, suppliers, contractors, consultants, and service providers, are obliged under the Code of Integrity for Public Procurement to suo-moto proactively declare any Conflicts of Interest as per sub-para-a)-v) above– pre-existing or as soon as these arise at any stage in any procurement process or execution of the contract. Please refer to para 5.2.2-3 below;

ii) Bidders must declare any previous transgressions with respect to the provisions of sub-para a) above 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 a violation of this code of integrity;

iii) The bidder/contractor must disclose any commissions or fees that may have been paid or are to be paid to agents, representatives, or commission agents concerning the selection process or execution of the Contract. The information disclosed must include the name and address of the agent, representative, or commission agent, the amount and currency, and the purpose of the commission or fee in a format given in the Tender Document.

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

a) if his bids are under consideration in any procurement:

i) Forfeiture or encashment of bid security;

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[24] Please see definition in 'Procurement Glossary" section

[25] inter-alia need assessment, preparation of - feasibility/ cost estimates/ Detailed Project Report (DPR), design/ technical specifications, terms of reference (ToR)/ Activity Schedule/ schedule of requirements or the Tender Document etc.

[26] 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 the Code of Integrity elsewhere may be evaluated, and barring cases of debarment, an alert watch may be kept on the bidder's actions in the tender and subsequent contract.

[27] Please refer to example in para 3.10-5) for clarification of conflict of interest relating to personnel of procuring Entity.

ii) Calling off of any pre-contract negotiations and;
iii) Rejection and exclusion of the bidder from the procurement process.

b) if a contract has already been awarded:
   i) Cancellation of the relevant contract and recovery of compensation for loss incurred by the Procuring Entity,
   ii) Forfeiture or encashment of any other security or bond relating to the procurement;
   iii) Recovery of payments made by the Procuring Entity along with interest thereon at the prevailing rate;

c) Provisions in addition to the above:
   i) Removal from the list of registered service providers and debarment of the bidder from participation in future procurements of the Procuring Entity for a period not exceeding two years and not less than six months;
   ii) In case of anti-competitive practices, information for further processing may be filed by the Competent Authority with the Competition Commission of India;
   iii) Initiation of suitable disciplinary or criminal proceedings against any individual or staff found responsible.

3.4. Integrity Pact (IP)

1. The Pre-bid Integrity Pact is a tool to help Governments, businesses, and civil society fight corruption in public contracting. It binds both buyers and sellers to ethical conduct and transparency in all activities, from pre-selection of bidders, bidding and contracting, implementation, completion and operation related to the contract. This removes the insecurity of Bidders, that while they themselves may abjure Bribery, their competitors may resort to it and win contracts by unfair means.
2. Ministries/ Departments and their attached/ subordinate offices (including autonomous bodies) should incorporate the Integrity Pact[28] in the procurements/ contracts of the nature and of a threshold value, decided by the Ministries/ Departments with the approval of the Minister in charge. As guidance, the threshold should cover bulk (80-90% - eighty to ninety percent by value) of its annual procurement expenditure. The format of the Integrity Pact is included in Annexure 12. Ministries/ Departments including their attached/ sub-ordinate offices and CPSEs may use this format of Integrity Pact, with the suitable changes specific to the situations in which pact is to be used.
3. CVC issued a revised Standard Operating procedure[29] and has further stated[30] that in view of the increasing procurement activities of Public Sector Banks (PSBs), Public Sector Insurance Companies (PSICs) and Public Sector Financial Institutions (FIs) shall also adopt and implement the suggested format of the Integrity Pact. In the case of sub-contractors, the IP shall be a tri-partite arrangement to be signed by the organization, the contractor, and the sub-contractor. Please refer to Annex-2 of Annexure 12 for details.

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

[29] vide CVC Circular No.04/06/23 (015/VGL/091 dtd 14/06/2023)

[30] vide CVC Circular No.06/05/21 (015/VGL/091 dtd 03/06/2021)

3.5. Grievances and its Redressal:

1. Procuring Entities shall provide a suitable clause in their Tender Documents for the redressal of grievances of bidders.
2. Any supplier, contractor, consultant or service provider that claims to have suffered or is likely to suffer loss or injury as a result of a decision/ action/ omission of the Procuring Entity may make an application for its review within a period of Five (5) days from its date, or any other time period, that may be specified in the tender documents, to the designated officer named in the tender documents in this regard (or the Head of the Procuring Entity, if not so specified), specifying the ground(s) and the relevant clauses of the tender documents. Unsuccessful Bidders may seek de-briefing regarding the rejection of their bid, in writing or electronically, within Five (5) days, or any other time period, that may be specified in the tender documents, of the declaration of techno-commercial or financial evaluation results.
3. Only a directly affected bidder can represent in this regard:
   a) Only a bidder who has participated in the concerned procurement process, i.e., pre-qualification, bidder registration or bidding, as the case may be, can make such representation.
   b) In case the pre-qualification bid has been evaluated before the bidding of Technical/ financial bids, an application for review in relation to the technical/ financial bid may be filed only by a bidder who has qualified in the pre-qualification bid;
   c) In case the 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.
   d) The following decisions of the procuring entity in accordance with the provision of internal guidelines shall not be subject to review:
      i) Determination of the need for procurement;
      ii) Selection of the mode of procurement or tendering system;
      iii) Choice of selection procedure;
      iv) Complaints against specifications except under the premise that they are either vague or too specific to limit competition may be permissible.
      v) Provisions limiting the participation of bidders in the procurement process in terms of government policies.
      vi) Provisions regarding purchase preferences to specific categories of bidders in terms of policies of the Government
      vii) The decision to enter into negotiations with the L1 bidder;
      viii) Cancellation of the procurement process except where it is intended to subsequently re-tender the same requirements;
      ix) Issues related to ambiguity in contract terms shall not be taken up after a contract has been signed; all such issues should be highlighted before the vendor/contractor consummates the contract.
4. This grievance redressal is beside the avenue of complaints to the vigilance department of the procuring organisation or judicial remedies.
5. If received during the processing of the tender, the officer receiving the application shall forward it to the TC/Convener of TC for its examination on merits and action as considered necessary. An interim reply may be sent that the application will be kept in view in the tender evaluation, and a final response shall be given only after the declaration of the

award of the contract. The Tender Committee shall place the application on record, including its analysis and action taken thereon, in the TC minutes/ report to the Competent Authority. After the award, the competent authority shall respond to the aggrieved party as per sub-para 6) below.

6. If such grievance is received after the declaration of the award of the contract, the officer receiving the application shall forward the application to the Competent Authority of the tender for his examination on merits and action as considered necessary. Such post award grievance must be redressed and closed within 30 days of receipt of the grievance. If the Competent Authority finds the complaint to have substance, appropriate and feasible remedial measures should be initiated as per sub-para 7) or 8) below.
7. If the grievance is resolved or if the grievance is found to be unwarranted, the aggrieved party shall be informed by the officer receiving the application of the final decision without disclosing confidential details.
8. Based on such representation, if the Competent Authority is satisfied that there has been a contravention of procurement guidelines in this case, he may initiate such action as, in his opinion, is necessary to rectify the contravention, including:
   a) If the grievance is due to inadequacy of procurement guidelines or a lack of understanding of the staff, remedial action to address such lacunae may be initiated without repercussions to the concerned staff.
   b) Annulment or reconsideration of the procurement proceedings;
   c) cancellation of the resultant procurement contract, if legally feasible;
   d) In case any individual staff is found responsible, suitable disciplinary proceedings should be initiated against such staff under the conduct rules.
   e) In case the complicity of any bidder is proved,
      i) removal of the concerned firm from the list of registered firms
      ii) debarment of the bidders, if warranted
      iii) reporting the matter to the Competition Commission of India (CCI) in case of anti-competitive actions by the bidder.
   f) Handing over the case to CVO if there are aspects that require investigations.

3.6. Conduct of Public Servants in Public Procurement – Risks and Mitigations

Risk	Mitigation
1. **Hospitality:** Hospitality (including facilitation of travel, lodging, boarding and entertainment during official or unofficial programs) from service providers may tend to cross the limits of ethical/ occasional/ routine/modest/ normal business practice. Officials sent to the firm's premises for inspections/ meetings may mistakenly presume entitlement to hospitality from the firm, even if other	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 their execution) who

Risk	Mitigation
arrangements are available at the location.	stand to derive a personal or commercial benefit from their relationship with the recipient.
2. **Gifts:** Gifts from service providers may tend to cross the limits of ethical/ occasional/ routine/modest/ normal business practice, especially during the festive season. Since the value of the gift may not be known to the recipient, it may cause an inadvertent violation of Conduct rules.	Gifts must never be solicited, directly or indirectly. An official should not accept and retain gifts that are 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 their execution) who stand to derive a personal or commercial benefit from their relationship with the recipient. Any gift received inadvertently in violation of the above must immediately either be returned or reported and deposited in Toshakhana/ Treasury.
3. **Private Purchases from Official Service Providers:** Procuring Officials may mistakenly consider it innocuous to seek discounts in private procurements from service providers having official dealings or its allied firms (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 the same items that are being ordered officially on rate contracts).
4. **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 cultural, social, charitable, religious, or sporting events in the false belief that since they are 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.
5. **Conflict of Interest (COI):** para 3.3.3-2-a-v) Code of Integrity for Public Procurement has a provision that defines Conflict of Interest as:" *"…any personal, financial, or business relationship between the bidder and any personnel of the procuring entity who are*	Interpretation of Conflict of Interest would depend on the organisational structure and its unique circumstances and cannot be laid down universally. However, some illustrative examples are given below to provide context. a) Officers that can be considered to be related to the tender or execution process would depend on the organisational structure and sensitivity of

Risk	Mitigation
directly or indirectly related to procurement or execution process of the contract, which can affect the decision of the procuring entity directly or indirectly……" There may be dilemmas regarding the officers related to the tender or execution process and, even if minor, routine transactions.	their role in procurement. It may cover key officials (and any external consultants/ advisors) involved in making a recommendation, various approvals, or making a major decision at any stage in procurement – i.e., during need determination/ indenting, Tender Document preparation/ preparation of comparative tabulation; Technical and Financial evaluation of Bids; negotiation/ signing of Contract; execution of the contract; payments to the contractor. b) As an illustration – COI (actual, potential, or perceived) can arise if such officers (or his close family[31]) have: i) Substantial business interests in the firm[31] (e.g., shares more than 0.1% of market cap), taken a loan or other financial obligation (say discounts) from the firm or its personnel), etc. ii) Business relationships with the firm – say previously worked for the firm or availed hospitality/ gifts beyond the limits laid down in the Code of Conduct of the organisation, etc. iii) Familial relationship[31] with the personnel of the firm. iv) close personal friendships or regular (say, more than once in a quarter) social interactions (e.g., clubs, games, social associations) with the Firm's personnel, etc. c) **Resolution of COI**: It shall be the responsibility of such officials to declare COI (to the extent he is aware of, in normal course) with reference to a procurement process to the Competent Authority/ next higher officer. The competent officer may evaluate the level of COI and the sensitivity of the function assigned to the official. He may either determine i) COI is insignificant enough to influence the type of function

[31] Close family for this purpose shall be officer's spouse, parents, children, and their families. As far as extended family - Siblings/ Uncles/ Aunts/ Cousins and their families are concerned, the situation would depend on closeness of relationships and whether the officer would in normal course be aware of their activities.

Risk	Mitigation
	performed by the official and ask the officer to continue his function. ii) If COI or the type of function is significant, nominate any alternative officer to perform the function (partly or fully) of this official in that procurement process.

3.7. Development of New Sources and Registration/ Empanelment/ Pre-qualification of Firms

1. Normally, in open tendering, there should be no restriction of prior registration. Entities may provide for registration after selection in unrestricted open tendering. Difference may be noted between registration, empanelment (maintaining a classified list of firms based on their experience usually required in case of limited tenders), and prequalification.
   a) **Registration** is to establish genuine identification of the firm (e.g., for e-procurement portals, preferential procurement, and so on).
   b) **Empanelment** is to establish prima-facie capability for restricted tendering (not open tendering, e.g., limited tendering panels, also useful in special limited tenders).
   c) Pre-qualification and Multi-use Lists:
      i) **Pre-qualification**: Wherever the nature of the requirement dictates competition only among prequalified bidders (without vitiation of prices offered by unqualified bidders), prequalification may be done with open tendering in the prequalification bidding stage.
      ii) **Approved List/ Multi-use List**: If there are frequent requirements of such nature, prequalification may be done through an open process with an extended validity of the Shortlist of Qualified Bidders (called List of approved Sources, in some organisations, e.g., Ministry of Railways), for example, one year or longer. The use of a List of Qualified Bidders is also known as a Multi-use list in many countries, as distinct from empanelment (e.g. Limited Tender Panel – which does not undergo a formal open tender pre-qualification/ EoI process). In such long-term Multi-use lists or Approved Lists, if any competent bidder applies for inclusion at any time, it should be examined as per the criteria of the original multi-use list. For further details please refer to Chapter 3 of Manual for Procurement of Goods, 2024.
2. However, since in common parlance, registration is a word interchangeably for the above three concepts, used by most of departments, this usage is being retained, though the distinction would be clear from the context of usage.
3. *For goods and services not available on GeM* and for Works, the Head of Ministry/ Department may periodically register suppliers of goods and services that the Department or Office specifically requires. Ensuring an up-to-date and current list of registered, capable, and competent suppliers/ service providers facilitates efficiency, economy, and promotion of competition in public procurement, especially while floating a limited tender/ local purchase/ direct contracting. For such tenders, it may be possible to skip bidder

qualification to avoid unnecessary repetition/ duplication of efforts, thereby saving time, especially in the case of emergency procurement. Registration of the supplier/ service provider should be done following a fair, transparent, and reasonable procedure and after giving due publicity. Such registered suppliers/ service providers should be on-boarded on GeM as and when the item or service gets listed on GeM.[32] The list of registered Firms for the subject matter of procurement should be exhibited on the websites of the Procuring Entity/ their e-procurement portals.

4. All Ministries/ Department may use such lists prepared by other Ministries / Departments as and when necessary. Empanelled Firms are ordinarily exempted from furnishing earnest money deposit/ bid security with their tenders for items, and Monetary Limits for which they are empanelled.
5. In cases where the firm is not considered capable and registration cannot be granted, the authority concerned shall communicate the deficiencies and shortcomings directly to the firms under intimation to the appellate authority. Where a request for re- verification and review is made by the firm (such a request can be made only after six months), 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.
6. Procuring Entity shall retain its option to reassess firms already registered, at any later date, to satisfy itself with the current financial soundness/ credit worthiness, facilities available, and so on. Thereafter, the Procuring Entity may decide to retain them as registered suppliers/ service providers 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's officers who reassess the firm, Procuring Entity shall delete/ downgrade such firm from the registered suppliers/ service providers list
7. Further details about procedure for registration is given in para 3.6 of the Manual for Procurement of Goods, 2024.

(Rule 150 of GFR 2017)

3.8. Debarment of Service Providers

3.8.1. GFR Provisions

1. Registration of service providers and their eligibility to participate in Procurement Entity's procurements is subject to compliance with the Code of Integrity for Public Procurement and satisfactory performance in contracts. Rule 151 of General Financial Rules (GFR), 2017 states the following regarding the 'Debarment from Bidding': -
   a) A bidder shall be debarred if he has been convicted of an offence-
      i) under the Prevention of Corruption Act, 1988; or
      ii) the Bhartiya Nyaya Sanhita (BNS), 2023 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 the execution of a public procurement contract.

[32] Amended vide DoE OM No. F.1/26/2018-PPD dated 02.04.2019.

b) A bidder debarred under sub-section (a), 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[33] commencing from the date of debarment. The

c) 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.

d) The bidder shall not be debarred unless such bidder has been given a reasonable opportunity to represent against such debarment.

3.8.2. Current Guidelines on Debarment:

1. PPD, DoE did consultations on the issue of Debarment with major procuring Ministries/ Departments and issued the following 'Debarment Guidelines' in suppression to all earlier instructions on this subject[34]. Public Procurement organisations who have existing guidelines for Debarment (by any name) should revise their guideline in conformity with these guidelines issued by PPD, DoE.
2. **Guidelines on Debarment of Firms from Bidding**:
   a) The guidelines are classified under the following two types: -
      i) In cases where debarment is proposed to be limited to a single Ministry, the Ministry itself can issue the appropriate Orders, thereby banning all its business dealing with the debarred firm.
      ii) Where it is proposed to extend the debarment beyond the jurisdiction of the Ministry, i.e., covering all central Ministries/ Departments, the requisite Orders shall be issued by the Department of Expenditure (DoE), Ministry of Finance (MoF).
   b) 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 factors listed in its definition in the 'Procurement Glossary' section may be kept in view.
      iii) The terms "banning of a firm," 'suspension,' 'Black-Listing' etc. convey the same meaning as "Debarment".
   c) All ministries/departments must align their existing debarment guidelines with these guidelines. Further, tender documents must also be suitably amended if required.
3. **Debarment by a Single Ministry/ Department**: Orders for Debarment of a firm(s) shall be passed by a Ministry/ Department, keeping in view the following:
   a) A bidder (including its successors/ allied firms) may be debarred from participating in any procurement process for a period not exceeding two years (along with such other actions as may be permissible under law) for the following reasons:
      i) If it is determined that the bidder has breached the code of integrity as per Rule 175 (2) of GFR 2017. (Refer to para 3.3.3 of this Manual for Code of Integrity).

[33] Now two years is applicable as mentioned below in para 8.7.2-3-a) below.

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

ii) False declaration of local content by Class I/ Class II local suppliers under Public Procurement (Preference to Make in India, Order 2017, dated 19/07/2024 or later, i.e., the Make in India Order) shall also be treated as a breach of the code of integrity. A supplier/ service provider who has been debarred by any procuring entity as per this sub-para:
   1) The fact and duration of debarment for this reason by any procuring entity must be promptly brought to the notice of the Member-Convenor of the Standing Committee (Joint Secretary DPIIT, under the Make in India order) and the Department of Expenditure through the concerned Ministry /Department or in some other manner.
   2) The Standing Committee shall consolidate such cases, and a centralised list or decentralised list of such suppliers/ service providers with the period of debarment must be maintained on a periodical basis and displayed on the website(s).
   3) Such suppliers/ service providers, though debarred by a single Ministry/ Department, shall not be eligible for preference under the Make in India Order for procurement by any other procuring entity for the duration of the debarment. This shall be effective from the date of uploading such debarment to the website(s).

iii) For any other actions or omissions[35] by the firm that, in the opinion of the Ministry/ Department, warrants debarment.

b) The debarment order shall not be circulated to other Ministries/ Departments. It will only be applicable to all the attached/ subordinate offices, Autonomous bodies, Central Public Sector Enterprises (CPSEs), etc. of the Ministry/ Department issuing the debarment Order. Please refer to Annexure 24 for a format for debarment order.

c) 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 a personal hearing if requested by the firm). Please refer to Annexure 23 for the format of the Show-cause notice for debarment.

d) The Secretary of Ministry/ Department may nominate an officer at the rank of Joint Secretary/ Additional Secretary as competent authority (CA) to debar the firms.

e) The 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 the Secretary concerned of the Ministry/ Department

f) The Ministry/ Department will maintain a list of such debarred firms, which will also be displayed on its website. Such a list on the website shall be automatically binding on

35 (Supply of substandard material; non-supply of material; abandonment of works; substandard quality of works; failure to abide by “Bid Securing Declaration”; conviction under the Prevention of Corruption Act, 1988; conviction under any law for causing any loss of life or property or causing a threat to public health as part of executing a public procurement contract; employs a government servant who has been dismissed or removed on account of corruption; employs a non-official convicted for an offence involving corruption or abetment of such an offence in a position where he could corrupt government servants, or employs a government officer within one year of his retirement who has had business dealings with him in an official capacity before retirement.)

the departments, subordinate and attached offices, autonomous bodies, and CPSEs under the Ministry, but in case of doubt, it can be confirmed by the issuing authority.

g) More than one Ministry/ Department may concurrently debar the same firm.

h) Debarment is an executive function and should not be allocated to the Vigilance Department.

i) The period of debarment starts from the date of issue of the debarment order; therefore, the process of debarment should be conducted expeditiously. Considering the quasi-judicial nature of such proceedings and the need to afford a fair hearing to the firm, the following timeline is suggested, which may be suitably modified considering the specifics of an organisation:

   i) Noticing of delinquency of the firm by the Procuring Entity – zero-day
   ii) Evaluation of evidence and proposal to CA for debarment of the firm – 2 Weeks
   iii) Issue of Show Cause Notice to the firm calling for written and oral submission. – 1 week.
   iv) Time for submission, including reminders, etc – 3 weeks.
   v) Evaluation of firm's submission and giving oral hearing to the firm – 3 weeks
   vi) Final Order, indicating an opportunity to the firm, 2 weeks to appeal to the Secretary of Ministry/ Department as an appellate authority – 2 weeks.
   vii) Total 12 weeks from zero-day, after which the debarment period starts.
   viii) Receipt of Appeal and disposal of the same by the appellate authority – 4 weeks.

4. **Debarment by CPSEs, Attached Offices/ Autonomous Bodies, GeM**: Ministries/ Departments, at their option, may also delegate powers to debar bidders to their CPSEs, Attached Offices/ Autonomous Bodies, etc. In such cases, broad principles for debarment in sub-paras 3-a) to h) above are to be kept in mind. Debarments by such bodies shall be applicable only to the procurements made by such bodies. Similarly, the Government e-Marketplace (GeM) can also debar bidders for up to two years on its portal.

5. **Debarment across All Ministries/ Departments**: In the following situations, the Ministry/ Department may consider debarring the firm from taking part in any tendering procedure floated by all the Central Government Ministries/ Departments:

   a) If the bidder has been convicted of an offence (Rule 151 (i) of GFR, 2017), for debarment upto three years:
      i) under the Prevention of Corruption Act, 1988, or
      ii) the Bhartiya Nyaya Sanhita (BNS), 2023 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 the execution of a public procurement contract.

   b) 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.

   c) 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 a personal hearing if requested by the firm). If DoE realizes that sufficient opportunity has not been given to the firm to represent against the debarment, such debarment requests received from Ministries/ Departments shall be rejected.

   d) The firm shall remain debarred during the interim period till the final decision is taken by DoE, only in the Ministry/ Department forwarding such proposal. For this purpose,

the proposing Ministry shall issue an interim order debarring the firm from taking part in tendering procedures floated by their Ministry/ Department following the procedure laid down in sub-para 3) above. Such order inter-alia must mention that the Government reserves its right to further debar the firm from taking part in any tendering procedure floated across all the Central Government Ministries/ Departments, following due procedure.

e) DoE can also give additional opportunity, at their option, to the firm to represent against proposed debarment. DoE can also take suo-moto action to debar the firms in certain circumstances. DoE shall complete the process of Debarment within 12 weeks after receiving the proposal from the concerned Ministry/ Department.

f) DoE will issue the necessary orders for debarment for a period not exceeding three years for offences mentioned in Rule 151 (i) of GFR, 2017, after satisfying itself that the proposed debarment across all the Ministries/ Departments is in accordance with the said rule. This scrutiny is intended to ensure uniformity of treatment in all cases.

g) DoE will maintain a list of such debarred firms, which will be displayed on the Central Public Procurement Portal (CPPP). This list on CPPP shall be applicable to all Ministries/ Departments, Attached and Subordinate Offices, CPSEs, and Autonomous bodies, but in case of doubt, they may confirm it from issuing authority.

h) No contract of any kind whatsoever shall be placed on the firm debarred by DoE, including its allied firms, during the period of debarment by any Ministry/ Department/ Attached/Subordinate offices of the Government of India, including autonomous bodies, CPSEs, etc., after the issue of a debarment order.

6. **Review and Revocation of Orders**:

a) An order for debarment passed shall be deemed to have been automatically revoked on the expiry of the period of debarment specified therein, and it will not be necessary to issue a specific formal order of revocation.

b) The authorised entity (DoE, Ministry/ Department or CPSEs, Attached Offices/ Autonomous Bodies, GeM, etc.) that issued the order of debarment can review or revoke the debarment order before the period of debarment is over, suo-moto (based on new facts that come to light) or on an appeal by the debarred bidder. After a review, an Order for modification of the period of debarment or revocation of debarment, if there is adequate justification for the same, can be issued. Ordinarily, such modification/ revocation of the Order should be done with the approval of the Secretary concerned of DoE or the Ministry/Department that issued such orders. In case of debarments done by CPSEs, attached offices/autonomous bodies, GeM, etc., such modification/ revocation of the debarment orders should be done ordinarily with the approval of a competent authority not below a board-level officer.

7. **Other Provisions (common to both types of debarments)**:

a) The debarment order shall mention the reason(s) in brief that led to the debarment of the firm and the jurisdictional extent to which the order shall be applicable, besides the validity period of debarment.

b) No contract of any kind whatsoever shall be placed with a debarred firm, including its allied firms, after the issue of a debarment order by the entities in the jurisdiction mentioned in the order. Bids from only such firms shall be considered for placement of contract, which are neither debarred on the date of opening of tender (opening of first bid, normally called as technical bid, in case of two packet/two stage tendering) nor

debarred on the date of contract (i.e., date of issue of Letter of Acceptance). Even in the cases of risk purchase, no contract should be placed on such debarred firms.

c) If any debarred firm submits the bid, it will be ignored. In case such firm is lowest (L-1), the next lowest firm shall be considered as L-1. Bid security submitted by such debarred firms shall be returned to them.
d) Contracts concluded before the issue of the debarment order shall not be affected by the debarment Orders.
e) The Debarment shall be automatically extended to all its allied firms. In case a joint venture/ consortium is debarred, all partners will also stand debarred for the period specified in the Debarment Order. The names of partners should be clearly specified in the "Debarment Order."
f) Debarment in any manner does not impact any other contractual or other legal rights of the procuring entities.
g) The period of debarment shall start from the date of issue of the debarment order for the issuing entity. In respect of procuring entities other than the one that has carried out the debarment, the debarment takes effect prospectively from the date of uploading on the website(s) in such a manner that ongoing procurements are not disrupted.
h) Ordinarily, the period of debarment should not be less than six months.
i) The GeM portal also has a provision for Suspension (debarring vendors/ service providers' participation in procurements of all the buyers) under its Incidence Management Policy[36]. The reasons and periods for suspension are different than in the provisions mentioned above. However, if a procuring entity feels that the period of suspension by GeM is not adequate, it may also debar the firm as per the procedure mentioned in this section for a more appropriate period, but such debarment shall be applicable ONLY to procurements by that procuring entity.
j) All Ministries/ Departments must align their existing Debarment Guidelines in conformity with these Guidelines. Further, bidding documents must also be suitably amended, if required.

8. **Safeguarding Procuring Entity's Interests during Debarment of Suppliers/ Service Providers:** Suppliers/ Service Providers are important assets for the procuring entities, and punishing delinquent suppliers/ service providers should be the last resort. It takes a lot of time and effort to develop, register and mature a new supplier/ service provider. In case of a shortage of suppliers/ service providers in a particular group of materials/ equipment/ services, such punishment may also hurt the interest of the Procuring Entity. Therefore, the Procuring Entity may always seek the views of the concerned department regarding the repercussions of such punitive action on the continuity of procurements. Procuring Entity may give due weightage to the past performance of the supplier/ service provider. In case of a shortage of suppliers/ service providers and in cases of less serious misdemeanours, the Procuring Entity may pragmatically analyse the circumstances, reform the supplier/ service provider and get a written commitment from the supplier/ service provider that his performance will improve. If this fails, efforts should be made to see if a shorter period of debarment can serve the purpose. (*Rule 151 of GFR 2017*)

[36] https://assets-bg.gem.gov.in/resources/pdf/incident_management_policy_v12.1.pdf

3.9. Enlistment of Indian Agents

Ministries/ Departments, if they so require, may enlist Indian agents who desire to quote directly on behalf of their foreign principals.[37]. *(Rule 152 of GFR 2017)*

[37]Rule 152 of GFR, 2017 amended vide OM No. F.26/2/2016-PPD issued by Department of Expenditure dated 25.07.2017.

Chapter 4: Bidding Design for Non-Consultancy Services

4.1. Admeasurement of Services

Non-consultancy services are bid and contracted on the total price (unit rate X quantum) of the delivered services (of requisite performance standards), much like procurement of Goods and Works. The quantum of services can be ascertained by either measuring the inputs deployed (input admeasurement) by the service provider or the output of services (output admeasurement) delivered.

4.1.1. Input Admeasurement

1. The quantum of services can be ascertained by measurement of the inputs (Personnel, Equipment, Materials, and miscellaneous inputs) deployed during a period (say per month) by the service provider.
2. The contract specifies the unit rate and the estimated quantum (per period – say per day/ month) of various inputs required to be deployed to deliver the required quantum of services (of requisite performance standards). The contract would also specify the service charges (including profits, overheads, etc.) and taxes over and above such input unit rates. The financial evaluation is based on the total price of the indicated quantum of various inputs at the contracted unit rate plus service charges and taxes.
3. Input admeasurement requires more vigilant and constant monitoring of inputs deployed. The procuring entity must also monitor the performance standards, methodology employed and productivity of inputs to ensure value for money.
4. Input admeasurement is frequently used in Time-based and Indefinite Delivery type of contracts (as described in following paras) for Services like – upkeep and maintenance of office/ buildings/ estates (other than Civil & Electrical Works, etc.), Security Services, Horticultural Services, Janitor/ Cooking/ Catering/ Management Services for Hostels and Guest Houses, Cleaning/ Housekeeping Services, Errand/ Messenger Services etc.
5. **Input Admeasured Contracts – Risks and Mitigations**:

Risk	Mitigation
a) **The quality and Scope of the Output/ deliverables** is not linked to the payment. There may be tendency for the service provider to ignore the quality and scope of the services. Disputes may arise due to different possible interpretations of quality and scope of contract.	The contract should include provision for evaluation of quality, methodology and scope of deliverables and certificate for its acceptability may be recorded. Payments should be released only against such certificates. Therefore, Service Level Agreement (SLA) becomes very important in such contracts.
b) **Productivity of inputs deployed** is not linked to the payment. There may be tendency for the service provider to use paid staff in a dilatory and un-productive manner. This may lead to Time and Cost over-runs.	Such contracts need to be closely monitored and administered by the 'Procuring Entity' to ensure that the progress of the contract is commensurate with the time spent and that the resources for which payment is claimed have actually efficiently and productively been deployed on the contract during the

Risk	Mitigation
	period. It may be worthwhile to lay down productivity linkage between the quantum of the output of services to input deployed in a period (say, cleaning of a quantum of area per day per cleaner deployed) as part of Performance Standards. A system of monthly reporting of payouts and the quantum of work achieved by the service provider to CA should be instituted to enable supervision. Such contracts should include an upper limit of total payments to be made to the service providers for the contract to safeguard against excessive prolonging of time and payments. After this limit is reached or the period of completion is exceeded, the CA should review the justification for the extension of the contract.

4.1.2. Output-Admeasurement

1. Alternatively, the quantum of services can be ascertained by measurement of the quantum of outputs delivered of the required performance standards (output admeasurement – numbers, length, area, volume, weight, value, etc., or a combination thereof), say the area of office cleaned or tonne-Kilometre of transportation or value of goods inspected. Since contracts based on Out-put admeasurement specify the unit rate of service output, it is referred to as Unit-Rate contracts also.
2. The contract specifies a unit rate of the output of services, and the financial evaluation is done based on the total price of the indicated quantum of service at the contracted unit rate plus taxes. In actual practice, this could be more complex – as in taxi hiring for 8 hours with a maximum kilometre of 250 Km included in the price, but every additional Km/ hour may be charged extra. There may also be additional charges for night duty, etc.
3. Output admeasurement contracts are simpler to administer since the procuring entity will only ascertain performance standards and the quantum. It need not monitor the inputs deployed and the methodology employed. Therefore, wherever feasible, output admeasurement should be the preferred choice.
4. However, in many services, it may be part of the quality assurance plan and Service Level Agreement (SLA) to ensure that specified quantum of inputs is deployed for the services, although payments are still based on output admeasurement.
5. Depending on the situation, output admeasurement may be suitable mainly for Lump-sum and Percentage Based types of contracts (as described in following paras) and in special circumstances for Time-based and Indefinite Delivery type of contracts. Output admeasurement may be suitable for Services like - transport services, logistics, clearing and forwarding, courier services, drilling, aerial photography, satellite imagery, mapping, and similar operations.

6. **Output Admeasurement Contracts - Risks and Mitigations**

Risk	Mitigation
a) **Insufficient Deployment of Resources:** Service Provider may not deploy sufficient resources which may lead to poor quality and Time Over run.	Stipulate in the Tender Document that the quantum of input deployments (Personnel, equipment, materials, etc.) shall also be quoted but shall be used only to monitor performance standards.
b) **The quality of the Output/ deliverables** is not linked to the payment. There may be tendency for the service provider to cut corners on quality of the output/ deliverables by saving on resources employed. Disputes may arise due to different possible interpretations of quality and scope of Output/ deliverables.	Such contracts should be used mainly for contracts in which the quality and scope of the required output of the service providers are clearly defined and are measurable. The contract should include provision for evaluation of quality and scope of deliverables and certificate for its acceptability may be recorded. Payment should be made only against certificate of acceptance of deliverables. It's important to include a Service Level Agreement in such contracts.
c) **Time and Cost over-run**: As time is not linked to the payment. There may be tendency for the service provider to save on deployment of resources which may result in time-over-run.	While the payments are not linked to time, the contract should be monitored per month to ensure that the output per month is in line with planned and estimated time-line. This type of contract should include an upper limit of total payments to be made to the service providers for the assignment to safeguard against excessive prolonging of time and payments. After this limit is reached or the period of completion is exceeded, the CA should review the justification for the extension of the contract.

4.2. Types of Contracts:

1. There are various alternative basis for linking payments to the performance of a quantum of services (called types of contracts) – each having different risks and mitigation measures. Bids are called and financial evaluation is 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 the requirement. BOQ of the financial bid is designed specifically for each type of contract. 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.
2. Each type of contract is described briefly in subsequent paras, and criteria are suggested for their adoption, along with risks and mitigation measures. Normally used types of contracts for Non-consultancy Services are:
   a) Lump sum (Firm Fixed Price) contract;
   b) Time based contracts;
   c) Percentage (Success Fee) contract;

d) Indefinite delivery contract.

4.2.1. Lump Sum (Firm Fixed Price) Contract:

1. The lump sum (firm fixed price) contract is the simpler type of contract and wherever feasible; the Procuring Entity shall use this form of contract. In this type of contract service providers are required to quote a lump sum fixed price figure for completing the services in accordance with the given activity and services schedule. Service Provider's proposal is deemed to include all prices - no arithmetical correction or price adjustments are allowed during evaluation. This Type of Contract is based on output admeasurement. Schedule of Requirement shall indicate the scope and quantum of Services required.
2. Lump sum service contracts are easy to administer because there is fixed price for a fixed scope and payments are linked to clearly specified outputs/ Services delivered. Bidders quote lump sum price for the required quantum of services. They may also be asked to quote unit rate for the service, to be used in case of variation etc.
3. Schedule of Requirement shall indicate the quantum of the Services, its performance standards, and the timeline/ milestones of its delivery. Contract may specify parts of payments to be released at specified timelines/ milestones.
4. In view of Risks mentioned below this type of contracts not many services are amenable to lump-sum type of contracts. Depending on the situation, such contracts may be used for transport services, logistics, clearing and forwarding, courier services, drilling, aerial photography, satellite imagery, mapping, and similar operations, and so forth.
5. **Lump Sum Contracts - Risks and Mitigations:** Please see Risk and Mitigations in Output admeasurement contracts in para 4.1.2-6).

4.2.2. Time-Based (Unit-rate) Contract

1. In Time-based (unit-rate) contracts, payments are based on agreed unit prices. This Type of Contract can be based either on input (more often) or output admeasurement. Payments are usually released every month for the quantum of inputs/ output actually performed.
2. In input admeasurement Time- based contracts, the Schedule of Requirement shall indicate the quantum, performance standards, frequency and duration of the Services/ Activities and also key inputs estimated to be required per month (Personnel, Equipment, Materials and Miscellaneous) for performing the Services/ Activities to the stipulated performance standards and quality. It shall also indicate the contract Period (one year unless otherwise stipulated) of the service required. The Bidders shall quote the unit rates of inputs and the quantum of inputs per month he considers necessary to perform the Services/ Activities to the required performance standards and quality. He shall also quote service charges and taxes over and above the cost of inputs. Financial evaluation shall be based on the total cost of all inputs (plus service charges and taxes) over the Contract Period.
3. In output admeasurement Time-based contracts, the Schedule of Requirement shall indicate the quantum of the Services, its performance standards, and the timeline/ milestones of its delivery. It shall also indicate the contract Period (one year unless otherwise stipulated) of the service required. Bidders shall quote per unit rate of the outputs of services, timelines/ milestones, and taxes.
4. In both variations (input or output admeasurement) of Time-based – Unit-rate contracts, the procuring entity may possess a realistic and validated database of rates for standard services or activities, supported by their own internal costing. In such cases, it may be

advantageous to specify a 'Schedule of Rates' (SoR) along with an estimated volume for each service or activity in the Services and Activity Schedule. In the Bill of Quantities (BOQ), the entity can then request bidders to quote a single lump-sum percentage above or below the specified 'Schedule of Rates', on the lines of percentage based SoR contracts in Works. This approach simplifies financial evaluation, particularly when the number of services or activities is large. However, it is crucial to ensure that the Schedule of Rates is regularly updated to reflect current market conditions.

5. Both time-based contracts and indefinite delivery contracts are used when Lump sum contract is not feasible due to difficulties in specifying the scope/ length of services or the quantum of individual activities either because the inputs required for attaining the objectives of the requirement is difficult to assess or because the services are tied up to contracts/ activities by others for which the completion period may vary. As differentiated from the Indefinite Delivery type of contracts (discussed below), Time-based contracts are suitable for non-consultancy services that are ***continuously needed,*** while Indefinite Delivery type of contracts is suitable for services which are ***infrequently needed*** but service provider is needed to be always on beck and call.
6. Because of the risks and mitigations mentioned below, this type of contract is especially suitable for outsourcing of services, e.g. upkeep and maintenance of office/ buildings/ estates (other than Civil & Electrical Works, etc.), Security Services, Horticultural Services, Janitor/ Cooking/ Catering/ Management/ housekeeping Services for Hostels and Guest Houses, errand/ Messenger Services, transport/ logistics/ clearing and forwarding, courier services, etc.
7. **Time-Based Contracts - Risks and Mitigations:** Please see Risk and Mitigations in Input and Output admeasurement contracts in para 4.1.1-5) and 4.1.2-6) respectively.

4.2.3. Percentage (Success/ contingency Fee) Contract

1. Percentage (Success/ Contingency Fee) contracts directly relate the fees/ service charge paid to the service provider to the estimated or actual value of assets/ transactions to be handled – e.g., project cost or the cost of the goods procured or inspected. This Type of Contract is based on output admeasurement (value of assets/ transactions handled). Since the payment is made after the successful realisation of objectives, it is also called success (or contingency) fee contract. The payment is made based on the value of assets/ transactions handled during the period.
2. Schedule of Requirement shall indicate the estimated value of assets/ transactions to be handled as well as the contract Period (one year, unless otherwise stipulated) over which such volume shall be availed. However, there shall be no firm commitment to avail the entire value of transactions within the contract period. The final selection is made among the technically qualified service providers who have quoted the lowest percentage (as service charge) while the notional value of assets/ transactions to be handled is fixed.
3. Due to Risks and mitigations discussed below, these contracts are commonly used for appropriate architectural/ engineering services; procurement and inspection agents.
4. **Percentage Contracts - Risks and Mitigations:** Please also see Risk and Mitigations in Output admeasurement contracts in para 4.1.2-6).

Risk	Mitigation
a) **The quality and Scope of the Output/ deliverables** as in Lump-sum Contracts,	The contract should include provision for evaluation of quality, scope and the timing of

Risk	Mitigation
is not linked to the payment. There may be a tendency for the service provider to cut corners on the quality and scope of the output/ deliverables by saving on resources employed.	deliverables and certificate for its acceptability may be recorded. Payment should be made only against certificate of acceptance of deliverables.
b) **Time over-run**: As time is not linked to the payment. There may be tendency for the service provider to save on deployment of resources which may result in time-over-run.	While the payments are not linked to time, the assignment should be monitored per month to ensure that the output per month is in line with planned and estimated time-line.
c) **Bias against Economic solutions:** Since the percentage payment is linked to the total cost of the transactions, (say architectural or engineering or procurement services) percentage contracts implicitly lack incentive for economical transactions and are hence discouraged.	Therefore, the use of such a contract for architectural or engineering or procurement services is recommended only if it is based on a fixed target cost and covers precisely defined services.

4.2.4. Indefinite Delivery Contract – Output or Input Admeasurement

1. These contracts are used when the Procuring Entity need to have “on call” specialised services, the extent and timing of which cannot be defined in advance. This is akin to the system of 'Rate Contracts' or framework contracts in the procurement of Goods. The Procuring Entity and the firm agree on the unit rates to be paid. This Type of Contract can be based either on input (more often) or output admeasurement. Payments are made periodically on the basis of the quantum of service or inputs actually utilised during the period.
2. Schedule of Requirement shall indicate only a tentative estimate of the volume of required outputs/ inputs as well as the contract Period (one year, unless otherwise stipulated) over which such volume is likely to be availed. The Services shall be availed on-call as and when needed by the procuring entity without any commitment regarding the volume of services. The service provider shall be selected based on the total price (unit rate multiplied by indicative volume) of such Services/ Inputs (including service charges and taxes) over the period of contract.
3. In case of output admeasurement contracts, if expressly stipulated in the Tender Document, quantum of Input deployments (Personnel, equipment etc.) shall also be called for but shall be used only to monitor performance standards. Similarly in case of input admeasurement contracts, quantum of services to be delivered per quantum of inputs deployed per day/ month may also be called for to evaluate the quality and productivity of deployed inputs.
4. Please read the para 4.2.2-5) for differences between Time-based and Indefinite Delivery contracts.
5. Due to risks and mitigations discussed below, Indefinite Delivery contracts are commonly used to retain “advisers” or avail services 'on-call' - for example; expert adjudicators for dispute resolution panels, procurement advice, technical troubleshooting, Document

Management, Taxi Services, Temporary Manpower Deployment and so forth – normally over a period of a year or more.

6. **Indefinite Delivery Contracts - Risks and Mitigations:** Please also see Risk and Mitigations in Input and Output admeasurement contracts in para 4.1.1-5) and 4.1.2-6) respectively.

Risk	**Mitigation**
a) **The quality and Scope of the Output/ deliverables,** as in Lump-sum Contracts, is not linked to the payment. There may be tendency for the service provider to cut corners on quality, scope and timing of the output/ deliverables by saving on resources employed.	The contract should include provision for evaluation of quality and scope of deliverables and certificate for its acceptability may be recorded. Payments should be released only against such certificates.
b) **Performance in each time period** is not linked to the payment. There may be tendency for the service provider to use resources in a dilatory and un-productive manner.	Contracts need to be closely monitored and administered by the 'Procuring Entity' to ensure that the progress of assignment is commensurate with the time spent and that the resources for which payment is claimed have actually efficiently and productively been deployed on the assignment during the period. A system of monthly reporting of payouts and quantum of work achieved by the service provider to CA should be instituted to enable supervision.
c) **Time and Cost over-run** is a major risk in such contracts, as the output may not be achieved in the estimated time.	This type of contract should include an upper limit of total payments to be made to the service providers to safeguard against excessive prolonging of time and payments. After this limit is reached, or the period of completion is exceeded, CA should review justification for extension of the contract.
d) **Risk of over-utilization:** Indefinite Delivery Contracts are at risk of being over-utilized in excess of actual need since the scrutiny of service need may not be as intense as in case of other types of contracts.	The need assessment of utilised services should be subject to some scrutiny to ensure that there is no abnormal, unexplainable trend in utilisation. Such contracts need to be closely monitored and administered by the 'Procuring Entity' to ensure that the there is no indiscriminate or unwarranted usage, and a maximum contract value may be laid down to keep control over usage and approval of CA may be obtained to extend it beyond such limit. A system of monthly reporting of payouts and quantum of work achieved by the service provider to CA should be instituted to enable supervision. In the report a monthly payout benchmark may be kept, above which

Risk	Mitigation
	the report may be required to be sent to a level above CA.

4.3. Systems of Selection of service providers

1. The relative importance of Quality and Price aspects may vary from service to service depending on the complexities/ criticality of quality requirements, the internal capability of Procuring Entity to engage and supervise the contract, as well as the value of procurements. Hence different systems of selection of service providers are designed to achieve appropriate relative importance (weightage) of Quality and Price aspects. Decision on the system of selection is normally preceded by an assessment of the capacity of the user to engage and supervise the implementation of the proposed contract. The selection method chosen depends to some extent on this assessment. Selection of system of selection also should consider the likely field of Bidders.
2. The nomenclature of various selection methods below is in line with generally prevalent practice:
   a) Price based System - Least Cost Selection (LCS);
   b) Quality and Cost Based Selection (QCBS);
   c) Direct Selection: Single Source Selection (SSS)
3. Unlike Procurement of Consultancy Services, procurement of Non-consultancy services is done by a simpler process akin to those of Procurement of Goods and Works. In the procurement of Non-consultancy services, the normal system of selection used is Price-based – Least Cost Selection (L1) as in the procurement of Goods/ works for technically responsive offers. Under very special circumstances, Single Source Selection may also be used. However, the QCBS method of selection has been allowed to be used for procurement of Non-consultancy Services for highly technically complex and critical assignments where it is justifiable to pay appropriately higher prices for a higher quality proposal.

4.3.1. Price based System - Least Cost Selection (LCS)

1. In this method of selection, service providers submit both a technical proposal and a financial proposal at the same time. Minimum qualifying marks for the quality of the technical proposal are prescribed as a benchmark (normally 75 (seventy-five) out of a maximum of 100 (hundred)) and indicated in the Tender Document along with a scheme for allotting marks for various technical criteria/ attributes. Alternatively, since in LCS selection, technical offers *do not require to be ranked (or to be added of weighted technical score to financial score – as in QCBS selection), it would suffice in appropriately simple cases if the evaluation criteria is only a fail/ pass criteria prescribing only the minimum qualifying benchmark. Thus, in LCS, simplified evaluation criteria may also be used where instead of a marking scheme, a minimum fail/pass benchmark of technical evaluation may be prescribed (i.e. must have completed at least two similar assignments; must have a turnover of at least Rs 10 (Rupees Ten) Crore etc). Any bidder that passes these benchmarks is declared as technically qualified for the opening of their financial bids.* The technical proposals are opened first and evaluated, and the offers that qualify as per these technical evaluation criteria will only be considered as technically responsive, and the rest

will be considered technically nonresponsive and will be dropped from the list. Financial proposals are then opened for only eligible and responsive offers (Financial bids of other unresponsive bidders remain unopened) and ranked. L-1 offer out of the responsive offers is selected on price criteria alone without giving any additional weightage to marks/ ranking of Technical proposal. *This system of selection is roughly the same as the price-based selection of an L-1 offer (among the technically responsive offers) in the procurement of Goods/ Works. (Rule 193 of GFR 2017, also see para 7.4.2 below)*

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

Risk	**Mitigation**
a) **Technical criteria** may not be relevant to the realisation of the quality of the assignment.	Technical criteria selected should be relevant and proportional to the requirement of quality of assignment, and the selection process should be rigorous enough to ensure that, on the one hand, no technically unsatisfactory bids should be able to get past a loose criterion and, on the other hand, no technically satisfactory offer should get ruled out by tight criteria.
b) **Marking Subjectivity:** The scheme of marking or its application may be subjective.	It is important to lay down as objective a scheme of marking as possible. Cases where subjectivity is unavoidable (as in evaluation of methodology etc), a system of grading responses and their marking may be laid down in the bidding documents. Procuring Entity should also have a system of conciliation and moderation of widely disparate markings by different members of evaluation committee. As mentioned above in most of Services, a fail/ pass criteria is sufficient, and it avoids subjectivity.

4.3.2. Quality and Cost Based Selection (QCBS)

1. In the QCBS system of selection, both the quality of the proposal and the cost of the services are considered as deciding factors. This approach is employed when the quality of deliverables is crucial, but the cost of service or work cannot be ignored.
2. Quality/ Technical scores are assigned to proposals based on specified quality criteria. Minimum qualifying marks (normally 70-80 (seventy – eighty) out of a maximum of 100 (hundred) marks) as a benchmark for the quality of the technical proposal is prescribed, and proposals below this benchmark are not considered for Financial evaluation. The

Financial Proposals are also given cost-score based on the relative ranking of prices, with 100 (hundred) marks for the lowest and pro-rated lower marks for higher priced offers. The total score shall be obtained by weighting the quality and cost scores and adding them. For example, the weightage given to the cost score may be 80% (Eighty percent), and the technical score may be given a weightage of 20% (twenty percent but should never be more than 30%), etc. However, the weight for the "quality" shall be chosen, considering the complexity of the assignment and the relative importance of quality. The proposed weightings for quality and cost shall be specified in the RfP. The firm obtaining the highest total score shall be selected. It may be noted that theoretically QCBS system with weight of 100% (hundred percent) for the 'cost' approximates the price based LCS system. This method of selection shall be used for highly technically complex and critical assignments where it is justifiable to pay appropriately higher price for higher quality of proposal.

3. Procuring entities are allowed [38] to use QCBS for procurement of works and non-consultancy services in the following cases. In this para 4.3.2, instructions containing "shall" are mandatory; any deviation from these instructions shall require relaxation from the Ministry of Finance (for Ministries/ Departments, etc.) or (from the Board of Directors for CPSEs):
   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, this method of selection shall be used for highly technically complex and critical assignments where it is justifiable to pay appropriately higher price for higher quality of proposal.
   c) QCBS shall not be used in the procurements planned to be done through Reverse Auction or through Limited tenders.

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

      i) *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.*

      ii) *In all other cases, the procurement process is to be scrapped and restarted either as QOP or on a non-QCBS basis.*

4. The principles of QCBS shall be as provided in Rule 192(i), (ii), and (iii) of the GFR (Please refer to Manual for Procurement of Consultancy services for such principles). However, the maximum weight of the non-financial parameters shall in no case exceed 30%.

5. **The Competent Authority:** the Competent Authority for allowing the QCBS method in the procurement of works/ NC Services shall be as follows:-
   a) For declaring a procurement as QOP:

[38] General Instructions on Procurement and Project Management - DoE's OM NO.F.1/1/2021-PPD dtd 29th October 2021

i) [39]Where the procuring entity/ project executing authority is covered by Rule 1 of GFR:

1) Secretary of the Ministry/ Department to which the procuring entity belongs or

2) Secretary of Public Authority[40] with the concurrence of the procuring entity/ project executing authority[41] or

Note: Procuring entity/ project executing authority will themselves decide the level at which such concurrence is to be given. Such concurrence need not be obtained at the level of Secretary in charge of Procuring entity/ project executing authority.

3) Where the public authority is any Indian Institute of Technology (IIT) or Indian Institute of Science (IISc), Director of such IIT/ IISc (This provision is applicable for Procurement declared as Q.O.P. on or before 31.03.2027 and will be reviewed thereafter).

ii) Where the procuring entity is a CPSE, the Board of Directors of the CPSE.

iii) In case the authority to approve procurement on a nomination basis is lower than the Secretary of the Ministry/ Department (or Board of Directors in case of CPSEs), such authority will also be competent to approve the procurement as QOP.

b) For Non-consulting Services not exceeding Rs. 10 crores in value:

i) Where the procuring entity/project executing authority is covered by Rule 1 of GFR (i.e., Central Government Ministries/Departments, attached/ subordinate bodies, and Autonomous Bodies (except those Autonomous Bodies with separate Financial Rules approved by the Government)), by the officer or authority two levels above the officer/ authority competent to finalise the particular procurement, or the Secretary of the Ministry/ Department whichever is lower.

ii) Where the procuring entity is a CPSE, the authority or officer two levels above the officer competent to finalise the particular procurement or the Board of Directors of the CPSE, whichever is lower.

6. **Special Technical Committee (STC)**:

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

i) Two or more persons who have expert knowledge and/or long experience relevant to the procurement in question;

ii) One or more persons with extensive experience in handling public projects and/or public finance in the Government or State/Central Public Sector;

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[39] As amended by OM No.F.1 /1/2021-PPD dtd 08/03/2024

40 “Public Authority” means the client organization, which may be asking a “Procuring Entity” or “Project Executing Authority” or “Project Executing Agency” to execute a project or work on their behalf. For example, in case a University executes the works through Central Public Works Department (CPWD), then the said university will be the public authority, and CPWD will be the Procuring Entity or Project Executing Authority or Project Executing Agency. (The public authority and the project executing authority may also be the same.)

[41] “Procuring Entity” or “Project Executing Authority” or “Project Executing Agency” means Central Government Ministries/ Departments, Attached/ Subordinate bodies including Autonomous Bodies or Central Public Sector Enterprises (CPSEs) (etc) executing projects/ works.

iii) One or more persons with experience in financial management/ financial administration/audit/accountancy;
iv) Not more than one member representing the procuring entity who may inter alia provide administrative support to the Committee.
v) Any person who is a member of the STC shall not associate himself in any manner with any bidder for the procurement concerned.

b) The names of members of the Special Technical Committee shall be decided either by the Competent Authority specified in sub-para 5) 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 finalise the particular procurement. Sitting fee may be paid to the members of the STC. Incidental costs including travel shall be paid by the procuring entity.
c) The STC shall make specific recommendations on the following matters:-
    i) The weight to be given to non-financial parameters (not exceeding 30%). However, the weight for the "technical" shall be chosen, considering the complexity of the assignment and the relative importance of quality. The proposed weightings for quality and cost shall be specified in the Tender Document. *It may be noted that theoretically QCBS system with weight of 100% (hundred percent) for the 'cost' is same as the price based LCS system.*
    ii) The specific quality/ technical parameters, their weights, their scoring methodology, the minimum qualification score, etc. and other relevant criteria necessary for ensuring fair and transparent quality/ technical evaluation of the bids.
d) 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 sub-para 5) above who approved the declaration of the procurement as QOP.
e) With respect to QCBS for Non-Consultancy Services not exceeding Rs.10 crore, a Technical Committee shall be constituted to carry out functions mentioned in sub-para c) above in lieu of the STC. The composition of the Technical Committee shall follow the provisions of sub-para a) above.

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

8. **Tender Documents - Fixing/ Selection of the Evaluation/ Qualification Criteria:** 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. Weightage may also be given for the timely completion of past projects of a similar nature by the bidder.

9. **Pre-bid Meeting:** 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.

10. **Fixing of Scoring/ Marking Criteria**:

a) The scoring should not be a variable that relies on the subjective opinion of the evaluating panel. The marking scheme should enable the achievement of almost similar scores irrespective of the persons/ experts involved in the evaluation process. When the outcomes are consistent with the available information, the QCBS parameters are more reliable. Unambiguous descriptions and criteria help to avoid grey areas so as to ensure that there is only one possible score for the item. As far as possible, the criteria should be so specific and clear that bidders can self-mark their own bids.

b) It is better to specify minimum marks for meeting the qualifying criteria specified. In QCBS selection, minimum qualifying marks (normally 70-80 (seventy – eighty) out of a maximum of 100 (hundred) marks) as qualifying benchmark for the quality of the technical proposal shall be prescribed and indicated in the Tender Document along with a scheme for allotting marks for various technical criteria/ attributes. Bids scoring less than the minimum threshold shall not be considered for further evaluation. Since the weightage of the cost element adopted in NC services is as high as 70 (seventy) percent, financial considerations would dominate the selection, though to a lower extent as compared to LCS (Least Cost Selection – L1 basis). In such cases, it is essential to ensure that the minimum qualifying benchmark in the technical evaluation is set sufficiently high to weed out low-quality bids with low prices.

c) Examples of fixed quality parameters that ought not to be considered for relative scoring include organisations' ISO/ standards' accreditation, etc. These are required to establish the credentials of the service provider but cannot be used for relative comparison between various bidders.

d) Bidders should be asked to produce certificates for the past performance. A format may be given in the tender itself outlining the contract details, completion, sustainability of service, etc, and bidders may be asked to fill it and give evidence to that effect.

e) Bidders may be asked to submit a detailed presentation on their proposals in the form of soft copy along with the bid so as to facilitate better understanding of their proposal and to ensure commitment.

f) Besides the Bill of Quantity (BOQ) output criteria for payment, Key Performance Indicators (KPIs) may be specified with minimum achievement levels for payment so as to ensure quality compliance.

11. **Evaluation of QCBS Bids**: Please refer to para 7.4.4 for evaluation of QCBS bids

12. **Caution against consortium/ JV in QCBS Procurements**:

a) Since quality is given weightage in the evaluation itself, in QCBS procurement, therefore, Joint Ventures may be avoided, 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 consortiums/ JVs are allowed, measures should be taken to ensure that all the consortium/ JV partners are present and deliver services all through the contract period. An Implementation Board with the participation of all consortium/ JV partners may be provided for wherein the Project Manager from the procuring entity shall also be allowed an audience when required. Meeting of consortium/ JV partners with the project executing authority for quarterly progress review may be made as a criterion linked to the achievement of key dates or even payment.

13. **QCBS - Risks and Mitigations**:

Risk	Mitigation
a) **Inappropriate Selection of QCBS:** There is a possibility that the QCBS system is selected where LCS or other systems would have been more appropriate considering the quality requirements or the capability of the Procuring Entity to monitor the assignment.	The selection of QCBS should be justified and applied only under the circumstances mentioned above.
b) **Weightage of Technical:** Cost may not be proportional to quality requirements	Maximum weightage different from 30:70 (Thirty:Seventy) for technical to financial weightage, should be adequately examined and justified.
c) **Technical criteria** may not be relevant to the realisation of the quality of the assignment.	Technical criteria selected should be relevant and proportional to the requirement of quality of assignment, and the selection process should be rigorous enough to ensure that, on the one hand, no technically unsatisfactory bids should be able to get past a loose criterion and, on the other hand, no technically satisfactory offer should get ruled out by tight criteria.
d) **Marking Subjectivity:** The scheme of marking or its application may be subjective.	It is important to lay down as objective a scheme of marking as possible. Cases where subjectivity is unavoidable (as in evaluation of methodology etc), a system of grading responses and their marking may be laid down in the bidding documents. The procuring Entity should also have a system of conciliation and moderation of widely disparate markings by different members of the evaluation committee.

4.3.3. Direct Selection: Single Source Selection (SSS)

1. Under some special circumstances, it may become necessary to select a particular service provider where adequate justification is available for such single-source selection in the context of the overall interest of the Procuring Entity. *(Rule 194 of GFR 2017, also see para 7.4.3).* Direct selection is also called the Nomination mode of procurement (Please refer to para 4.4-4-d) below). The selection by SSS/ nomination is permissible under exceptional circumstances such as:

a) tasks that represent a natural continuation of previous work carried out by the firm;
b) in case of an emergency situation, situations arising after natural disasters, situations where timely completion of the assignment is of utmost importance;
c) situations where execution of the assignment may involve the use of proprietary techniques or only one service provider has the requisite expertise. This includes situations where services (repair, renovation, upgradation, etc.) are required from OEM

(may be due to quality or warranty considerations) of the Mechanical or Electrical assets (of the nature of non-machinery and plant)

d) At times, other PSUs or Government Organizations are used to provide technical expertise. It is possible to use the expertise of such institutions on an SSS basis;

e) Under some special circumstances, it may become necessary to select a particular service provider where adequate justification is available for such single-source selection in the context of the overall interest of the Ministry or Department. Full justification for single source selection should be recorded in the file and approval of the competent authority obtained before resorting to such single-source selection.

2. The Procuring Entity shall ensure fairness and equity and shall have a procedure in place to ensure that:

a) the prices are reasonable and consistent with market rates for tasks of a similar nature and

b) the required NC services are not split into smaller sized procurement.

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

a) The Secretary, in the case of ministries/departments.

b) The Board of directors or equivalent managing body, in case of Public Sector Undertakings, Public Sector Banks, Insurance companies, etc;

c) The Chief Executive of the organisation where such a managing body is not in existence.

i) The report relating to such awards on a nomination basis shall be submitted to the Secretary/Board/Chief Executive /equivalent managing body every quarter.

ii) The audit committee or similar unit in the organisation may be required to check at least 10% of such cases.

4. **SSS - Risks and Mitigations**:

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

4.4. Modes of Procurement

1. 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 the one hand, and the complexity, time, effort, and cost of the procedure, on the other hand*. Different modes of procurement and tendering systems are used to suit various procurement circumstances to achieve this balance. Various modes of procurement vary the extent of competition (width and specificity of catchment area of bidders) to suit different procurement situations. *Mode of Procurement addresses the 'Right Source' of the 5Rs*.
2. There is a laid down delegation of powers of procurement to various competent authorities under different modes of procurement, as shown in DFPR (Annexure 1). Each procuring entity may also publish its own Schedule of Procurement Powers (SoPP), delegating such powers within the entity. A suggested format for SoPP is given in Annexure 2.
3. The various modes of procurement that can be used in the procurement of Non-consultancy Services are (GFR 2017[42]):
   a) **Advertised Modes**: The advertised modes of procurement are designed to foster a spirit of healthy competition. These modes ensure the broadest possible competition by widely publicising procurement opportunities. (Rule 161 GFR 2017):
      i) Open Tender Enquiry (OTE): Also known as National Competitive Bidding (NCB), this mode involves inviting bids through public advertisements to maximise participation for procurement above Rs 50 Lakhs.
      ii) Global Tender Enquiry (GTE): Also referred to as International Competitive Bidding (ICB), this mode invites bids from international vendors to ensure global competition. There is a restriction on the use of this mode below Rs 200 crores.
      iii) Electronic Reverse Auction (eRA): Not appropriate where QCBS system of evaluation is used in the procurement of Non-consultancy services.
   b) **Pre-qualification Modes**: These modes of procurement are restricted to shortlisted pre-qualified bidders. The shortlisting is done transparently, based on qualification criteria to identify bidders who have the capability to perform the contract. Shortlisting itself is done through wide publicity akin to advertised tenders.
      i) Pre-Qualification Bidding Mode (PQB): In this mode, only those bidders who meet specific qualifications are invited to submit bids.
      ii) Approved Vendor Lists (AVL): Procurement is restricted to vendors who have been pre-approved and included on a long-term multi-use list based on their demonstrated ability to meet the required standards. (Please refer to Para 4.7 of the Manual for Procurement of Goods, Second Edition, 2024 for details on the AVL).
   c) **Restricted Modes**: In restricted modes, the bidding is limited to known and selected bidders without the public advertisements seen in advertised modes. Unlike the Pre-qualification mode, the shortlisting or registration of bidders is based on less rigorous

[42] Various thresholds for these Modes of procurements have been revised upwards vide PPD's OM No. F.1/3/2014-PPD dt. 10.07.2024

checks of capability and past experience, without relying on wide publicity or stringent qualification criteria. (Rule 162 GFR 2017):

i) Limited Tender Enquiry (LTE): This mode invites bids from a select group of suppliers/ service providers and is used for procurements up to Rs. 50 lakhs. (Refer Annexure 9)

ii) Special Limited Tender Enquiry (SLTE): LTE type of process applicable for procurements above Rs. Fifty lakhs in exceptional circumstances, where limited competition is justified.

d) **Nomination Modes**: If, in an exceptional situation, it becomes necessary to procure a non-consulting service from a specifically chosen contractor, the Competent Authority in the Ministry or Department may do so in consultation with the Financial Adviser. In such cases, detailed justification, the circumstances leading to the selection, and the special interest or purpose served by this procurement must form an integral part of the proposal. (Rule 204 GFR 2017):

i) Proprietary Article Certificate (PAC): This is used when procurement is required from a specific vendor due to the proprietary nature of the goods or services (say, from OEMs).

ii) Single Tender Enquiry (STE) without PAC: This allows procurement from a single source without a PAC under specific conditions. In case of Single Tender procurements:

1). a report relating to such awards on nomination basis shall be submitted every quarter to:

- The Secretary, in case of Ministries/Departments.
- The Board of Directors or equivalent managing body, in case of Public Sector Undertakings, Public Sector Banks, Insurance companies, etc;
- The Chief Executive of the organisation where such a managing body is not in existence.

2). The audit committee or similar unit in the organisation may be required to check at least 10% of such cases.

e) **Shopping Modes**: These are used for small-value procurements where formal tendering is not practical. (Rules 154, 155 GFR 2017):

i) - Direct Procurement without Quotation: Small purchases (upto Rs 50,000) made directly without soliciting formal bids. (refer Annexure 7)

ii) Direct Procurement by Purchase Committee: A committee-based approach for direct purchases, typically used for low-value (upto Rs 5 Lakhs) items. (Refer Annexure 8)

f) **Rate Contracts**: Also known as Framework Agreements, are agreements with suppliers/ service providers to provide goods or services at pre-agreed rates for a specified period.

4. Applicability, Terms and Conditions, Risks, and mitigations of these modes of procurements (including restrictions regarding GTE mode for procurements below Rs 200 Crore) are detailed in Chapter 4 of the Manual for Procurement of Goods, 2024 which may be referred to. For the sake of brevity, these are not repeated here.

5. **Mode of Procurement of Higher Value Non-consultancy Services:** In procurements of Non-consultancy services above Rs 50 (Rupees Fifty-five) Lakhs, it should normally by an

advertise mode (i.e. OTE). Services which are available on GeM have to be mandatorily procured through that portal (please refer to para 4.6.3)). (Rule 201 (ii) of GFR, 2017)

6. **Mode of Procurement of Lower Value Non-consultancy Services:** For procurement below Rs 50 (Rupees Fifty) Lakhs, LTE can be issued to a selected shortlist of likely service providers. To start with preparation of a long list of potential service providers may be done on the basis of formal or informal enquiries from other Ministries or Departments or Organisations involved in similar activities, Chambers of Commerce & Industry, Association of non-consultancy firms etc. The Procuring Entity should scrutinise the preliminary long list of likely service providers as identified above and shortlist the prima facie eligible and capable service providers from the long list. The number of service providers in this moderated long-list should be more than three. To smoothen this shortlisting of service providers, Procuring entities who do frequent procurement of non-consultancy services may consider the preparation of a Panel of qualified service providers, after evaluation of their credentials, on the lines of registration of vendors in the procurement of goods. *(Rules 199 and 201 (i) of GFR 2017).* Services that are available on GeM have to be mandatorily procured through that portal (please refer to para 4.6.3).
7. **Mode of Procurement of Small Value Non-consultancy Services:** In small value, procurement of Non-consultancy services, the service provider may neither be capable of handling the bidding process, nor procurement may be done by shopping mode of procurement. For procurement upto Rs 50,000 (Fifty thousand), the 'Direct Procurement without Quotation' mode of procurement used in Procurement of goods may very well be utilised in such cases. Similarly, for procurement of services upto Rs 5 (Rupees Five) Lakhs, 'Direct Procurement by a Purchase Committee' mode as used in procurement of Goods may be utilised. In all such modes of procurement, the procedure prescribed in the Manual for Procurement of Goods, 2024 may be followed. Please refer to Annexures 7 & 8 for certificates to be recorded for such procurements.

4.5. Tendering Systems

1. Tendering systems are designed to achieve an appropriate balance between the countervailing needs for the 'Right Quality' and the 'Right Price' (while the Mode of Procurement addresses the 'Right Source', and the Tender Document addresses the Right quantity and 'Right Time and Place') under different complexities/ criticality of Technical requirements and value of procurements. Depending on the complexity and criticality of technical requirements, as well as the value of procurement, the following types of tendering systems may be used. Please note that the selection of a Tendering System has to be based on the two factors mentioned above; hence, just a value threshold for their use is discouraged. Selection should be based on professional judgement of the two factors mentioned above. The various Tendering Systems that are used in public procurement are:
   a) Single Stage Tendering System:
      i) Single Stage Single Envelop System
      ii) Single Stage Two Envelops System (Two Bid System) (*Rule 163 of GFR 2017*)
   b) **Two Stage Bidding** - Expression of Interest Tenders – Market Exploration/ Short-listing (*Rule 164 of GFR 2017*)
2. Details of these Bidding Systems are explained in Chapter 4 of the Manual for Procurement of Goods, 2024, which may be referred to. For the sake of brevity, these are not repeated here.

4.6. Channels of Procurement

Public Procurement can be channelled by way of Manual Bids, eProcurement Platforms, GeM Portal or through third-party agencies.

4.6.1. Electronic Procurement (e-Procurement - *Rule 160 of GFR 2017*)

1. Electronic procurement (e-procurement) is the use of information and communication technology (especially the internet) by the buyer (through a third-party e-procurement portal) 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. A generic description of how e-Procurement is conducted is detailed in 'Appendix 3: Electronic Procurement (e-Procurement) and e-Auction' of the Manual for Procurement of Goods, 2024.
2. It is mandatory for ministries/departments to receive all bids through e-procurement portals that are GCQE[43] compliant for all procurements. This condition will not be applicable for the procurement made without quotation (under Rule 154 of GFR, 2017) or through purchase committee (under Rule 155 of GFR, 2017).
3. Normally, in e-procurement, no manual Tender Documents are provided, nor any manual bids are accepted. It is not a good practice to call both electronic as well as manual bids in the same tender. Sub-paras 4) and 5) below allow exemptions in specific situations mentioned therein from e-procurement in cases where it is not convenient or feasible.
4. In Global Tender Enquiry (by any mode – Open Tender, Limited Tender or Single Tender), e-procurement may not be mandatorily insisted upon. However, e-Publishing would still be mandatory.
5. In individual cases where national security and strategic considerations demand confidentiality, Ministries/ Departments may exempt such cases from e-procurement after seeking the approval of the concerned Secretary and with the concurrence of Financial Advisers. In case of tenders floated by Indian Missions and CPSE units abroad, the Competent Authority for deciding the tender may exempt such cases from e-procurement.
6. The National Informatics Centre (NIC) has an e-procurement portal called the Central Public Procurement Portal (CPPP). There are other service providers in the Public Sector (e.g., MSTC) and the Private sector that can be utilised for e-procurement. Details about the process of e-procurement are available from the service providers. *'Appendix 3: Electronic Procurement (e-Procurement) and e-Auction' of the Manual for Procurement of Goods, 2024 also gives such generic details of the e-Procurement process.*
7. Ministries/ Departments that do not have a large volume of procurement or carry out procurements required only for the day-to-day running of offices and have not initiated e-procurement through any other solution provided so far may use e-procurement solution developed by NIC. Other Ministries/ Departments may either use an e-procurement

[43] Guidelines for Compliance to Quality Requirements of eProcurement (GCQE), July 2021 issued by Systems Standardisation Testing and Quality Certification (STQC) Directorate (an attached office of the Ministry of Electronics and Information Technology (MeitY), Government of India).

solution developed by NIC or engage any other service provider (GCQE[44] compliant) following due process.

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

(Rule 160 of GFR 2017)

4.6.2. Dynamic Price Discovery - Electronic Reverse Auction (eRA)

Electronic Reverse Auction (eRA, a type of auction classified as a dynamic procurement mode) is an online real-time purchasing technique used to select a successful bid. eRA is an iterative process with automatic evaluation of bids, where bidders can offer successively more favourable bids to displace the lowest bid at any given moment within the duration of the eRA. The starting price, minimum bid decrement, duration of the auction, and the maximum number of automatic extensions are announced before the start of the online reverse auction. If a new lower bid is received within the last few minutes (pre-announced, say five minutes) of closing time, the closing time may get automatically extended by a few minutes (pre-announced, say ten minutes) for others to respond. A maximum number of such extensions may be pre-announced (say 50). The most favourable bid at the end of the stipulated/ extended time is declared as successful. It has, however, to be ensured that the entire process is conducted transparently and fairly. Electronic reverse auctions can be a powerful tool for procuring goods and services, but they also come with potential risks and drawbacks. Procedure, applicability, and counter-indications for eRA are detailed in para 4.16.2 of the Manual for Procurement of Goods, 2024, which are not being repeated here for the sake of brevity.

4.6.3. Mandatory Procurement of Goods and Services through Government e-Marketplace (GeM)

(Rule 149 of GFR 2017)

1. Government Electronic Marketplace is a type of e-commerce site where several sellers offer common use products or services, and all the buyers can select the product/ services offered by any one of the sellers based on his own criteria. In an online marketplace, Purchaser's transactions are processed by the marketplace operator, and then products/ services are delivered and fulfilled directly by the participating retailers. Other capabilities included are auctioning (forward or reverse), catalogues, ordering, posting requirements by purchasers, payment gateways, etc. The procurement process on GeM is end to end, from the placement of supply orders to payment to suppliers. This is to ensure better transparency and higher efficiency.
2. <u>The Procurement of Goods and Services by Ministries or Departments is mandatory for Goods or Services available on GeM as per Rule 149 of GFR, 2017.</u> The GeM portal shall be utilized by the Government buyers for direct online purchases (of Goods and Services) as follows:-
   a) Up to Rs.50,000/- through any of the available suppliers on the GeM, meeting the requisite quality, specification, and delivery period.

      Note 1: In the case of automobiles, direct procurement under this sub-para is permitted without any ceiling limit.

[44] Guidelines for Compliance to Quality Requirements of eProcurement (GCQE), July 2021 issued by Systems Standardisation Testing and Quality Certification (STQC) Directorate (an attached office of the Ministry of Electronics and Information Technology (MeitY), Government of India).

Note 2: In case the item is available on GeM, it is not permitted to purchase the same under Rule 154 of the GFR, 2017 (Purchase without quotation).

b) Above Rs.50,000/- and up to Rs.10,00,000/- through the GeM Seller having the lowest price amongst the available sellers, of at least three different manufacturers of goods or service providers (in case of services), on GeM, meeting the requisite quality, specification, and delivery period. The tools for online bidding and online reverse auction available on GeM can be used by the Buyer even for procurements less than Rs. 10,00,000/-.

Note 1: In case the item/ service is available on GeM, it is not permitted to purchase the same under Rule 155 of the GFR, 2017 (Purchase by Purchase Committee).

c) Above Rs. 10,00,000/- through the supplier having the lowest price meeting the requisite quality, specification, and delivery period after mandatorily obtaining bids, using online bidding or reverse auction tool provided on GeM.

d) The invitation for the online e-bidding/reverse auction will be available to all the existing Sellers or other Sellers registered on the portal and who have offered their goods/services under the particular product/service category, as per the terms and conditions of GeM.

e) The above-mentioned monetary ceiling is applicable only for purchases made through GeM. For purchases, if any, outside GeM, relevant GFR Rules shall apply.

f) The Ministries/Departments shall work out their procurement requirements of Goods and Services on either "OPEX" model or "CAPEX" model as per their requirement/suitability at the time of preparation of Budget Estimates (BE) and shall project their Annual Procurement Plan of goods and services on GeM portal within 30 (thirty) days of Budget approval.

g) It may be noted that it is the responsibility of the Procuring Entity to do due diligence to ensure the reasonableness of rates. The government buyers may ascertain the reasonableness of prices before placing an order using the Business Analytics (BA) tools available on GeM, including the last purchase price on GeM, the department's own last purchase price, etc.

h) Demand shall not be divided into small quantities to make piecemeal purchases to avoid procurement through L-1 Buying / bidding / reverse auction on GeM or the necessity of obtaining the sanction of higher authorities required with reference to the estimated value of the total demand."

3. Further details for procurement on GeM are detailed in Chapter 4 of the Manual for Procurement of Goods, 2024, which may be referred to. For the sake of brevity, these are not repeated here.

4.6.4. Procurement through Centralized Agencies or other Organizations

Departments/ Organisations that have not built up their own infrastructure for purchase may engage procurement agents (for individual procurement or as outsourcing of service) with the approval of its Secretary. Many canalised agencies authorised by the Government and some CPSEs [45] do provide such end-to-end procurement services, i.e., framing procurement

[45] Examples (not an exhaustive or recommendatory list) of such agencies are – Rail India Technical and Economic Services (RITES), Delhi Metro Rail Corporation (DMRC), Engineers India Limited (EIL), Indian Railway Institute of Logistics and Materials management (IRILMM), Institute of Public Auditors of India (IPAI) etc.

documents, bidding process, evaluation, and contract management. *Procurements by such agencies would have to conform to these Procurement Guidelines.* In such cases, a contract can be placed on them for procurement services, under mutually agreed terms. Guidelines for procurement through such agencies are detailed in Chapter 4 of the Manual for Procurement of Goods, 2024, which may be referred to. For the sake of brevity, these are not repeated here.

Chapter 5: Bid Invitation Process

5.1. Preparation and Uploading/ Floating of Tender Documents

5.1.1. Model Tender Documents

Department of Expenditure (DoE), Ministry of Finance, Government of India has issued Model Tender Documents for Procurement of Goods.[46] (October 2021), Procurement of Non-Consultancy Services[47] (October 2021) and Procurement of Consultancy Services[48] (April 2023). Procuring Entities are urged to customise relevant MTD to prepare tender documents for their procurements. Guidance notes annexed to the MTDs detail the process of customisation of MTD for an Organisation and each procurement.

5.1.2. Tender Documents[49]

1. 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. A carefully prepared tender document avoids delays and complaints. This will also attract more bidders to formulate and submit their competitive bids with confidence. Hence, it is worth spending time and effort on this, even in cases of urgency.
2. Provisions/ clauses in the tender document should be clear, self-contained, and comprehensive, without any ambiguity. to avoid differences in interpretation and possible disputes, time overrun, cost overrun and quality compromises. While tender document should be complete in themselves and may be slightly different for various categories of procurements, these must necessarily address the essential aspects mentioned below (Rule 200 of GFR 2017). Model Tender Documents, issued by the DoE, which comply with all these requirements, may be used, with due customisation, as per the guidance notes annexed to the MTDs:
   a) The details of the work or service to be performed by the contractor;
   b) The facilities and the inputs which will be provided to the contractor by the Ministry of Department;
   c) Eligibility and qualification criteria to be met by the contractor for performing the required work/ service. The eligibility criteria should take care of the service provider's limitation/ preference to participate in the Tender process. Criteria for determining the responsiveness of bids, criteria as well as factors to be considered 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;
   d) The statutory and contractual obligations to be complied with by the contractor.;
3. Procuring entities may issue instructions regarding appropriate delegation of authority for approval of the Tender Documents before these are floated/ uploaded.

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[46] Accessible from https://doe.gov.in/files/circulars_document/Model_Tender_Document_for_Procurement_of_Goods.pdf

[47] Accessible from https://doe.gov.in/files/circulars_document/Model_Tender_Document_for_Procurement_of_Non_Consultancy_Services.pdf

[48] https://eprocure.gov.in/cppp/sites/default/files/standard_biddingdocs/Procurement_Consultancy_Services.pdf

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

4. **Eligibility criteria** specify the very basic criteria that a bidder should meet to be considered a responsive bid to be evaluated further beyond the preliminary evaluation/ screening of bids.
5. **Qualification Criteria:** Technical and Financial qualification Criteria determine the capability of bidders (who have passed the eligibility criteria) to perform the contract. Only those bidders who meet the qualification criteria, go to the next step of evaluation for award of contract. They shall be clear and fair, having regard to the specific circumstances of the procurement. Public authorities should also keep the experience, technical and financial criteria broad-based so that bidders with experience in Services of a similar nature can participate. Appropriate parameters should be prescribed in the qualification criteria for bidders, to enable selection of the right type of bidders in public interest, balancing considerations of quality, time and cost.
6. **Evaluation Criteria:** Evaluation criteria are the final filter used to select the bidders (who have passed the qualification criteria) for the award of the contract. Depending on the requirement and value-for-money (VfM) considerations, the Procuring Entity may consider including, besides price, in the evaluation criteria in the Tender Document, one or more additional criteria, e.g. quality, technical merit, aesthetic and functional characteristics, environmental characteristics, running costs, cost-effectiveness and service level parameters, etc. No criteria shall be used for evaluation of tenders that cannot be verified or has not been specified in the Tender Document.
7. 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 services can participate.
8. The Procuring Entity should allow the bidders enough time to prepare their proposals. The time allowed shall depend on the assignment but normally shall not be less than three weeks. In cases where the participation of international service providers is contemplated, a period of not less than four weeks should normally be allowed.
9. Tender documents should invariably reserve the Procuring Entity's right without assigning any reason to:
    a) reject any or all of the Bids or
    b) cancel the tender process; or
    c) abandon the procurement of the Services; or
    d) issue another tender for identical or similar Services.

5.1.3. Contents of Tender Documents (*Rule 168 of GFR 2017*)

1. The Tender Document has the following main sections. A reading of the sections of the tender document will make the purpose and instructions clear:
    a) Section I: Notice Inviting Tender (NIT) and its Appendix: Tender Information Summary (TIS)
    b) Section II: Instructions to Bidders (ITB)
    c) Section III: Appendix to Instructions to Bidders (AITB)
    d) Section IV: General Conditions of Contract (GCC)
    e) Section V: Special Conditions of Contract (SCC)
    f) Section VI: Schedule of Requirements
        i) Section VI-1: Services and Activities Schedule
    g) Section VII: Performance Standards and Quality Assurance
        i) Section VII-1: Method Statement

ii) Section VII-2: Work Plan
iii) Section VII-3: Critical Material Schedule

h) Section VIII: Qualification Criteria
i) Section VIII-1: Personnel Schedule
ii) Section VIII-2: Critical Equipment Schedule

i) Financial Bid (BOQ Excel Sheet)
j) Submission forms and formats, including Bid Form (Cover letter), bank guarantees and contract format, etc.

5.1.4. Notice Inviting Tender

1. NIT has legal importance, since it is this part of tender document, which is soliciting offers from the bidders. The model NIT format in MTD should be used for publishing the tender notice.
2. The Notice Inviting Tender (NIT) is crucial for attracting wide competition in the tender. The NIT (and its appendix TIS) must contain sufficient information in brief for a prospective bidder to decide whether to participate in the tender or not and, if he decides to participate, how to go about it. To ensure competition, the attention of all likely bidders, for example, registered vendors, past service providers, and other known potential service providers, should be invited to the NIT through email/ SMSs/ letters. In e-procurement, the website may be programmed to generate these alerts automatically.
3. In case of procurement through a limited tender, the NIT may be uploaded on the CPPP Portal and Procuring Entity's website with a note saying:

   "This notice is being published for information only and is not an open invitation to quote in this limited tender. Participation in this tender is by invitation only and is limited to the selected Procuring Entity's registered suppliers/ service providers. Unsolicited offers are liable to be ignored. However, suppliers/ service providers who desire to participate in such tenders in future may apply for registration with Procuring Entity as per procedure."

4. Time-stamped audit trails for the e-publication shall be maintained by the procurement portal. Printouts/ soft-copies may be taken/ downloaded only in case of off-line tenders, if required, apart from ensuring maintenance of time stamped audit trail of e-publication. The complete details of the dates on which advertisements appeared on the website should be indicated when sending cases to higher authorities.

5.1.5. Instructions to Bidders (ITB) and its Appendix (AITB)

ITB contain all relevant information as well as guidance to the prospective bidders regarding - obtaining tender documents, preparing and submitting a responsive process of establishing the eligibility/ qualification credentials of the bidders as well as evaluation and comparison of tenders and award of contract but should not contain information on processes after the announcement of the award which should be covered in GCC, for example, the arbitration clause, resolution of disputes, and so on. ITB also contains an introduction/ overview of the contents of the tender document. Instead of modifying ITB every time, any changes warranted by exceptional circumstances may be indicated with the prior approval of CA on a separate Appendix to ITB (AITB) and ITB may be included unchanged in every tender document. It should also be indicated therein that the provisions in the AITB shall supersede the corresponding provisions in the ITB.

5.1.6. General and Special Conditions of the Contract (GCC and SCC)

The General Conditions of Contract (GCC) details the terms and conditions that would govern the resultant contract. GCC covers all information on aspects after the announcement of the tender award till the closure of the contract and dispute resolution. It should not cover any aspect up to the announcement of the award. Instead of modifying the GCC every time, any changes warranted by exceptional circumstances may be indicated in a separate section - Special Conditions of Contract (SCC)- with the prior approval of the CA and GCC and may be included unchanged in every tender document. It is also to be indicated therein that the provisions in the SCC will supersede the corresponding provisions in the GCC.

5.1.7. Schedule of Requirements and Services and Activities Schedule

Schedule of Requirements and its sub-schedule - Service and Activities Schedule describes the background, purpose/ objectives, description/ scope, deliverables/ outcomes, quantum, timelines of Services required, etc. The requirements may consist of more than one schedule. Each schedule may contain more than one Service. In case of multiple schedules of requirement in a tender of Services, it should be clarified how bids for multiple schedules would be evaluated for award of contract – either schedule by schedule or in total. Bidders must fill up Compliance regarding these Schedules.

5.1.8. Performance Standards and Quality Assurance – Method Statement; Work Plan; Critical Material Schedule

1. Performance Standards and Quality Assurance stipulates the quantitative/ qualitative parameters/ limits/ thresholds for Performance standards/ Service Levels and functional/ technical specifications to which the service must be performed. It shall stipulate procedures for the measurement, reporting and monitoring of performance parameters, including institutional or third-party arrangements for this purpose. It shall also stipulate the procedure for resolution and escalation in case of deficiency in performance/ quality/ service levels. In the case of long-term and complex services, it may stipulate a Service-Level Agreement (SLA) agreement which must be complied with during delivery of Services. Performance Standards shall also include statutory compliance required for Occupational Safety, Health and Working Conditions requirements during delivery of Services.
2. Procuring Entity may, if considered necessary, specify sub-schedules: Method Statement, Work Plan, and Critical Material Schedules required for the performance of services to desired quality and standards. Otherwise, these may be left to be quoted by the Bidder.
3. Bidders must fill up the relevant forms regarding this Schedule.

5.1.9. Qualification Criteria - Personnel Schedule; Critical Equipment Schedule

1. **Qualification criteria** are needed to determine whether a bidder has the required capacity/ capability and credentials to successfully perform the contract. These Sections lay down the Qualifying Criteria for a bid/ Bidder to be considered a responsive bid/ bidder for further evaluation. Bids/ bidders not meeting these Qualification criteria shall be rejected as nonresponsive. Unless otherwise stipulated, the Qualification Criteria shall include:
   a) Criteria 1: Experience and Past Performance
      i) Experience of providing similar services
      ii) Volume of similar services
         1) 3 services > each 40% of the estimated cost; or

2) 2 services > each 50% of the estimated cost; or
3) 1 service > 80% of the estimated cost

b) Criteria 2: Performance Capability – managerial and Equipment
   i) Contract Manager 5 years' experience (3 as a manager)
   ii) Ownership/ proposals for acquisition/ hiring the essential equipment

c) Criteria 3: Financial Capability
   i) Avg annual turnover at least 3-7 times the estimated cost
   ii) Financial Liquidity

2. The type of service, scope, delivery and value of the procurement shall be kept in view while fixing the Qualification criteria. However, a sample example is given below for illustration:

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

   b) Performance Capability:
      i) Managerial Capability: a Contract Manager with five years' experience in Services of an equivalent nature and volume, including no less than three years as Manager;
      ii) Equipment Capability: Ownership/ proposals for the timely acquisition (own, lease, hire, etc.) of the essential equipment listed in the Tender Information Summary (TIS);

   c) Financial Capability:
      i) Average Annual gross billing during the last three years, ending 31st March of the previous financial year, should be at least 3 times (for 1-3 years contracts) to 7 times (for contracts longer than 3 years) the estimated annual cost - as far as feasible based on the nature of service and market condition.

      Generally, the financial capability required in Non-consultancy services as a multiple of annual Tender value should be higher than the multiple in works because the service provider has to sustain the services over a long period of time. That is why a multiple of 3 to 7 is mentioned above.

      ii) Liquid assets and/or credit facilities, net of other contractual commitments and exclusive of any advance payments which may be made under the Contract, of no less than the amount specified in the Tender Document.

3. In higher value procurements, the minimum annual turnover should not be blindly a multiplier of the assignment value, but there may be an upper cap on demanded turnover, so as not to restrict competition only to the big or foreign firms.
4. The bidder must ensure that he fills up all forms and formats relevant for the compliance to the Qualification Criteria and provides convincing proof of having fulfilled these criteria.
5. **Relaxation for Start-ups:** The condition of prior turnover and prior experience may be relaxed[50] for startups (only to startups recognised by the Department of Industry & Internal Trade (DPIIT)) subject to meeting quality & technical specifications and making suitable provisions in the tender document (Rule 173 (i) of GFR 2017). Startups may be MSEs or otherwise. It is further clarified that such relaxation is not optional but has to be ensured, except in case of procurement of items related to public safety, health, critical security operations and equipment, etc) where adequate justification exists for the Procuring Entity to not relax such criteria. Please also refer to para 1.10.1-4-b), 1.10.4-2-b) and 7.3.4-2-c).
6. Qualification Criteria shall be based entirely upon the capability and resources required to perform the particular contract satisfactorily, considering bidders' experience and past performance, capabilities with respect to personnel, equipment and manufacturing facilities, financial standing and relevant compliance with environmental protection regulations/ Environment Management System. There should be no qualification criteria that would be advantageous to foreign manufactured goods at the cost of domestically manufactured goods.
7. **Qualification of demerged entities[51] (by virtue of a corporate restructuring exercise etc.)**: Tender documents must clearly mention if (and under what conditions) the demerged entity will be permitted to use credentials of original/parent entity (for initial five years from the incorporation of the demerged entities) to satisfy the qualification criteria or not.

5.1.10. Financial Bid (BOQ Excel Sheet)

1. The Procuring Entity should select an appropriate format of BOQ from the eProcurement Portal and upload it after filling up the entries for the complete schedule of requirements and various price components to enable the system to automatically calculate the all-inclusive price of a bid to generate a comparative tabulation of all bids. Any procurement portal that does not have a facility for Financial bids to be uploaded in Excel format (providing detailed break-up in line with the type of contract and system of selection) should endeavour to build such functionality, which is crucial for Non-consultancy and Consultancy Services.
2. The Bidder should fill in rates and prices for all items of the Services described in the Services and Activities Schedule. Items for which no rate or price is entered by the Bidder will not be paid for by the Procuring Entity when executed and shall be deemed covered by the other rates and prices in the Services and Activities Schedule. The priced Services and Activities Schedule contains sections on Remuneration for Staff deployed, Reimbursable Expenses and Miscellaneous Expenses. All duties, taxes, and other levies payable by the service provider under the Contract, or for any other cause, as in the month prior to the month of the deadline for submission of bids, should be included in the total

[50] OM No.F.20/2/2014-PPD (Pt.) dated 20.09.2016.

[51] As per DoE's OM No. No. F .8/78/2023-PPD dated 12.10.2023, in suitable cases procuring entity may consider the credentials based on the merit and circumstances of the cases like type of procurement, nature of demerger, number of eligible bidders available etc.

Bid price submitted by the Bidder. Even in tenders for Lump-sum contracts, for the purpose of determining the price of additional Services during the contract, a breakdown of remuneration, reimbursables and miscellaneous expenses in the lump-sum price shall be provided by the Bidder.

3. Bidders are to upload only the downloaded BOQ (in Excel format) after entering the relevant fields without any alteration/ deletion/ modification of other portions of the Excel sheet. The quoted price shall be considered to include all relevant financial implications, including inter-alia the scope of the services to be supplied, location of the bidder, location of the consignee(s), terms of delivery, extant rules and regulations relating to taxes, duties, customs, transportation, environment, labour of the bidder's country and in India.
4. **Restrictions regarding Personnel Deployed**:
   a) The quoted rates shall not be less than the minimum wage fixed/notified by the Central/ State Government (whichever is higher) – where the service is performed and shall include all statutory obligations and service charges/ margin (including transaction charges) over such minimum wage.
   b) Bids without any element of cost over and above such minimum wage shall be treated as 'Nil' price quotations and would be rejected.
   c) Least Cost System (LCS) should be considered for procurement of Manpower Outsourcing Service, wherever appropriate, especially in high value cases.
   d) The service provider shall be liable for all kinds of dues payable in respect of all personnel provided under the contract and the Procuring Entity shall not be liable for any dues for availing the services of the personnel. The service provider should ensure that the persons to be deployed are not alcoholics or drug addicts and do not indulge in any activity prejudicial to the interest of the Procuring Entity. The service provider shall ensure to get the Police verification for all the manpower deployed by them, and the contractor should ensure that the manpower deputed should bear good moral character.

5.1.11. Submission Forms and Formats

This section contains the relevant forms for tender submission: various declarations by bidder, formats for the bank guarantee, financial bid forms (BOQ Excel Sheet), exception and deviation forms, contract forms and manufacture's authorisation form, Integrity Pact (if applicable) and so on.

5.1.12. Important provisions of ITB

As already mentioned, ITB contains all relevant information as well as guidance to the prospective bidders regarding - obtaining tender documents, preparing and submitting a responsive bid, the process of establishing the eligibility/ qualification credentials of the bidders, Code of Integrity in Public Procurement (CIPP), the process of grievance redressal, as well as evaluation and comparison of tenders and award of contract. It also contains an introduction/ overview of its contents. It mentions the type of entities that may participate, specifically if Consortium/ JV/C are permitted to participate. It shall also mention that the consulting company should be registered under the applicable act with registered offices in India. It also excludes insolvent, bankrupt, debarred, and convicted firms with conflict of interest from participation. Restriction of participation of bidders from certain countries with land borders with India is also applicable. Other important provisions in an ITB are:

1. **Eligibility and Preferential policies:** Provisions relating to Eligibility Criteria, Conflict of Interest and applicable preferential policies regulate the participation of bidders of various categories and their agents, if any.
2. **Period of Contract**:
   a) A very short period of contract would require spending needless administrative time in repeating the exercise at short intervals while a very lengthy contract period may affect service quality. The period of contract would depend on the nature of services to be procured, however, in the normal course, the period of initial contract may be fixed normally for two years.
   b) **Extension of Contract:** The clause of extension of the contract beyond the period of two years may be for a further period of one year, subject to the service provider providing satisfactory service. Thereafter, fresh bidding for a new tender for the said service may be undertaken. In all cases where the Service Provider has been levied a cumulative penalty of 5 (five) percent (or any other %age specified for the upper limit of LD) of the total contract value, extension beyond the initial period may be considered after obtaining assurance for timely delivery of services.
3. **Bid Prices, Taxes and Duties:** Provisions regarding Price components, Price Schedule, GST, Currencies of Bid, Firm/ Variable prices, Payments are detailed in the ITB.
4. **Bid Security and Performance Security:** Provisions relating to Bid Security and Performance security are detailed in ITB. Please refer to para 6.1 for details in this regard.
5. **Proposed form of contract**:
   a) The contract includes Description of Services - accepted activities, methodology, deployment of resources (Personnel, Equipment and Material), Price Schedule, as well as general and specific conditions of contract, etc. Wherever possible, the Procuring Entity shall use the Standard Form of Contract. The general conditions of contract shall include all such conditions which are common in nature and not project specific. Such conditions include clauses pertaining to sub-contracting, methods of payment, termination and extension of contracts, arbitration, variation in quantities, indemnity and insurance, force majeure, conflict of interest, compliance with local laws and taxes and duties, etc. The project specific conditions include clauses relating to the assignment in hand. These clauses should be carefully developed to protect the interest of the Procuring Entity.
   b) **Applicable Law and Settlement of Disputes:** The contract shall include provisions dealing with the applicable law, which should be the law applicable in India and the forum for the settlement of disputes – applicable Arbitration Clause and procedures.

5.1.13. Uploading of Tender Documents: Mandatory e-Publishing (*Rule 159 of GFR 2017*)

1. 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 thereof and details of bid awards online on the Central Public Procurement Portal (CPPP) and also on their website. These instructions apply to all Tender Enquiries, Requests for Proposals, Requests for Expressions of Interest, Notice for pre-qualification/ Registration or any other notice inviting bids or proposals in any form, whether they are advertised, issued to a limited number of parties or to a single party. These instructions would not apply to the purchase of services without quotations or the Purchase of services by the purchase committee.

2. Individual cases, where confidentiality is required for reasons of national security, would be exempted from the mandatory e-publishing requirement. The decisions to exempt any case on the said grounds should be approved by the Secretary of the Ministry/ Department with the concurrence of the concerned Financial Advisor. In the case of 'Autonomous Bodies' and 'Statutory bodies' approval of the head of the body with the concurrence of the head of the finance should be obtained in each such case. Statistical information on the number of cases in which exemption was granted and the value of the concerned contract should be intimated on a Quarterly basis to the Ministry of Finance, Department of Expenditure.

5.1.14. Amendment of Tender Documents (Rule 173 (iii) of GFR 2017)

At any time prior to the date of submission of bids, the procuring entity may, Suo-moto or in response to a clarification sought by a prospective bidder (directly or in a pre-bid conference), amend tender documents by issuing a corrigendum. Copies of such amendment / modification should be uploaded on the E-publishing portal and Procuring Entity's own website. In case of off-line tenders, the copies of such amendment / modification are to be simultaneously despatched, free of cost, by registered/ speed post/ courier/ e-mail, to all the parties who have already purchased the tender documents and copies of such amendments are also to be prominently attached in the unsold sets of the tender documents (which are available for sale). When the amendment/ modification changes the requirement significantly and/ or when there is not much time left for the bidders to respond to such amendments and prepare a revised tender, the time and date of submission of tenders are also to be suitably extended (not less than 3 days) as per para 5.1.15 below.

5.1.15. Extension of Deadline of Bid Submission

1. To give sufficient time to bidders to prepare and submit their bids, the Procuring entity may suo-moto or based on the justifiable request of bidder(s) or due to significant modification of tender documents (as per para 5.1.14 above), extend the time and date of submission of tenders suitably (not less than three (3) days), along with suitable changes in the corresponding time-frames for receipt of tender, bid validity period etc and validity period of the corresponding EMD/ bid security. Depending on the situation, such an amendment may also need fresh publication adopting the same procedure as for publication of the original tender enquiry.
2. **Auto-Extension of Bids – in case of lack of Response**: The e-Procurement portal/ GeM should not provide anybody, including the Procuring Entity, with the bid count before the tender opening time, even at their request. The eProcurement portal/ GeM may facilitate the Procuring Entity in specifying the minimum number of bids considered sufficient and the pre-specified number of days for automatic extension of bid opening (ordinarily not less than 7 days) at the time of tender upload. The system shall declare in the tender details that in case of low competition (without specifying the number), the tender closing time shall be automatically extended by the specified number of days. If bids received till the bid opening time are less than the specified minimum bids, the system should automatically extend the tender opening by the specified number of days without seeking any input from or sharing any information with anyone, including the Procuring Entity. Purchasers and bidders shall only be informed that due to less competition, the tender closing time has been extended up to (date and time). However, this automatic extension of bid opening shall be done only once, not repeatedly. If a Procuring Entity wants to go ahead even with low competition (e.g., due to urgency), they may mention 'one' as the

minimum bid. So that if no bid is received, the tender is automatically extended; otherwise, it is not. The procuring entity is free to cancel and retender the procurement after auto-extension. In the case of e-reverse auctions as well, the provisions mentioned above regarding auto extension shall be applicable. GeM and eProcurement portals shall update their systems accordingly.

5.2. Obtaining Tender Documents and Submitting Bids

5.2.1. Availability and Cost of Tender Documents (Rule 161 (v) of GFR 2017)

1. Tender documents should preferably be sold or available for download after the date and time of the start of availability till the deadline for availability as mentioned in tender document (say up to last date of bid submission) and this should be clearly indicated in the documents. The organisation should also post the complete tender document on the website and on CPPP and permit prospective bidders to make use of the document downloaded from the website/ CPPP.
2. Normally, no tender document fee should be charged. In exceptional cases, a procuring entity may fix a bare minimum cost of tender documents to defray the expenses/ effort of preparing documents, drawings, etc. The cost of the tender document is to be submitted to the authority nominated therein by the prospective bidder in the form of a demand draft/ banker's cheque/ pay order/ online payment gateway. Firms that are eligible for exemption from the tender document cost, such as MSEs and Procuring Entity's registered units (for relevant items and monetary limit), have to submit/ upload scanned copies of documents in support of this exemption.

5.2.2. Participation of Bidders

1. **Eligibility Criteria**: The tender document may lay down eligibility criteria for participating in the tender process, e.g., restrictions on participation by bidders relating to - type of commercial entity, insolvency, ineligibility/ debarment/ convictions/ conflict of interest, Class of bidders (as per Make in India Order), bidders from countries having land borders with India etc. Except for the eligibility criteria, participation shall be open to all bidders in Open/ Global Tender Enquiries. In the case of the Second Stage (of two Stage Bidding or PQB - please refer to para 8.1 for details) or Limited Tenders, participation shall be open only to such bidders who have been previously shortlisted or specifically invited.
2. **Purchase Preference Policies:** The Procuring Entity shall stipulate in tender document the available preferences to eligible Bidders under various Government Policies/ directives (policies relating to Make in India, MSME, Start-ups, etc.).
3. **Conflict of Interest**: Bidders having a conflict of interest shall not be eligible to participate in the tender process unless the conflict stemming from such relationship has been resolved in a manner acceptable to the Procuring Entity throughout the Tender process and execution of the Contract. Please also refer to para 3.3.3 above. The bidder shall be considered to have a conflict of interest in this tender process and execution of the resultant contract in the following situations:
   a) If its personnel have a close personal, financial, or business relationship[52] with any personnel of the procuring entity who are directly or indirectly related to the

[52] Please refer to para 3.5-5 for clarification

procurement or execution process of the contract, which can affect the decision of the procuring entity directly or indirectly;

b) The bidder (or his allied firm [53]) provided services for the need assessment/ procurement planning[54] of the Tender process in which it is participating;

c) Participation in any capacity by a Bidder (including the participation of a Bidder as a partner/ JV/ consortium member or sub-contractor in another bid or vice-versa) in more than one bid shall result in the disqualification of the bid in which he is a main/ principal/ lead bidder. However, this does not limit the participation of an entity as a sub-contractor in more than one bid if he is not bidding independently in his own name or as a member of a consortium/ JV;

5.2.3. Pre-bid Conference and Pre-NIT Conference

(Rule 173 (x) of GFR 2017)

1. **Pre-Notice Inviting Tender (NIT) Conference (Market Consultation)**: In complex and innovative procurement cases or where the procuring entity may not have complete knowledge to formulate tender provisions (e.g., Two-Stage Tendering (with EoI) - refer to para 4.5-1-b) above), a pre-NIT conference (Market Consultation) is a key step allowing procuring entities to refine specifications and terms by engaging with potential service providers and industry experts. Such conferences should be publicised so that different potential service providers can attend[55]. This process helps align tender requirements with current market capabilities and technological advancements. By gathering insights on feasibility and trends, the procuring entity can craft realistic specifications that encourage competitive and cutting-edge solutions. The findings from these consultations inform the final tender documents, ensuring a transparent and effective procurement process.

2. **Pre-bid Conference:** In all cases of large value or complex assignments, a suitable provision shall be kept in the tender documents for one or more pre-bid conferences for clarifying issues/clearing doubts, if any, and for ensuring a level playing field, relating to the specifications and other allied technical/commercial details. During this conference, the technical/ commercial details, scope of requirements, responsibilities of either parties or other details should be clearly explained to the prospective bidders so that there is no ambiguity later at the time of submission of technical/financial bids

a) Participation is not mandatory. However, if a bidder chooses not to (or fails to) participate in the Pre-bid conference or does not submit a written query, it shall be assumed that they have no issues regarding the techno/ commercial conditions.

b) The date and time for such a meeting should normally be after 7 to 21 (seven to twenty-one) days of issue of the Tender Document and should be specified therein. The date and time by which the written queries for the Pre-bid must reach the authority and the last date for registration for participation in the Pre-bid conference are also mentioned in the tender Document (3 days before the date of the conference, if not specified). The pre-bid conference may also be held online at the discretion of the Procuring Entity.

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[53] Please see definition in ‘Procurement Glossary” section

[54] inter-alia need assessment, preparation of - feasibility/ cost estimates/ Detailed Project Report (DPR), design/ technical specifications, terms of reference (ToR)/ Activity Schedule/ schedule of requirements or the Tender Document etc.

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

c) Timelines for response to the pre-bid conference, e.g. Replies to Questions, issue of minutes of the pre-bid conference, Corrigenda, etc, should be mandatorily mentioned in the tender document and complied with.
d) Delegates participating in the Pre-bid conference must provide a photo identity and an authorisation letter as per the specified format from their Company/ principals; else, they shall not be allowed to participate.
e) After the Pre-bid conference, Minutes of the Pre-bid conference shall be published on the Procuring Entity's portal within seven days from the conference. Where some significant changes are made in the terms/scope of the Tender Document as a result of the pre-bid meeting or otherwise considered necessary by the Procuring Entity, a formal corrigendum may be issued to all bidders, which shall form part of the Tender Document. To give reasonable time to the prospective bidders to take such clarifications into account in preparing their bids, the Procuring Entity may suitably extend, as necessary, the deadline for the bid submission.

5.2.4. Site Visit

The Bidder, at its own cost, responsibility and risk, may visit and examine the Site of required Services and its surroundings and obtain all information that may be necessary for preparing the Bid and entering into a contract for the Services.

5.2.5. Clarification of Tender Documents

A prospective bidder requiring clarification on the tender documents may ask questions in writing/ electronically from the Office/ Contact Person as mentioned in the tender document, provided the questions are raised before the clarification end date mentioned therein (or if not mentioned, before 7 days of the deadline for the bid submission). This deadline shall not be extended in case of any intervening holidays. A response will be sent in writing/ digitally to the clarifications sought prior to the date of opening of the tenders. Only material queries and their responses shall be uploaded on the website without revealing the identity of the bidder making the query. When the response to clarification changes the requirement significantly and /or when there is not much time left for the bidders to respond to such responses, the time and date of submission of tenders may also be suitably extended (not less than 3 days) as per para 5.1.15 above.

5.2.6. Withdraw/ Amendments / Modifications to Bids by Bidders

The bidder, after submitting its bid, is permitted to substitute/ alter/ modify it, superseding an earlier bid, so long such a revised bid is uploaded/ received duly sealed and marked like the original bid up to the bid submission deadline. Resubmission of a bid shall require uploading all documents, including the financial bid, afresh. The system shall consider only the last bid submitted as a valid bid. The bidder may withdraw his bid before the bid submission deadline, and it shall be marked as withdrawn and shall not get opened during the Bid opening. Any such action after that deadline is not permitted. Withdrawal/ amendment/ modification/ alteration/ impairment/ derogation of a bid, in any respect, by its bidders between the deadline for submission of bids and the expiration of the period of bid validity, his bid security/ EMD shall be forfeited besides imposition of any other punitive remedy available to the procuring entity. In such cases, tender evaluation shall be proceeded with in terms of para 7.2.6-3) below.

5.2.7. Sealing/ Marking of Bids in off-line Tenders

The tender document should indicate the manner of submission/ uploading of bids. In the case of off-line tenders, the total number of bid copies (for example, in duplicate or in triplicate, and so on) is required to be submitted. The bidder is to seal the original and each copy of the bid in separate envelopes, duly marking the same as "original", "duplicate," and so on, and printing the address of the purchase office and the tender reference number on the envelopes. Further, the sentence "NOT TO BE OPENED" before (due date and time of tender opening) is also to be printed on these envelopes. The inner envelopes are then to be put inside a bigger outer envelope, which will also be duly sealed, marked, and so on, as above. If the outer envelope is not sealed and marked properly as above, the procuring entity does not assume any responsibility for its misplacement, premature opening, late opening, and so on.

5.2.8. Uploading/ Submission of Bids

1. **Uploading Bids in eProcurement:** Different eProcurement portals[56] may have different provisions, but the following is the generic description:
   a) The Procuring Entity is neither a party nor a principal in the relationship between Bidder and the organisation hosting the e-procurement portal (hereinafter called the Portal). Bidders must acquaint and train themselves with the rules, regulations, procedures, and implied conditions/ agreements of the Portal. Bidders intending to participate in the bid shall be required to register with the portal. Bidder must comply with the conditions of the eProcurement portal, including registration, compatible Digital Signature Certificate (DSC), etc. In the case of downloaded documents, Bidder must not make any changes to the contents of the documents while uploading, except for filling in the required information.
   b) Any query/ clarification/ complaint regarding downloading Tender Documents and uploading Bids on the e-Procurement portal may be addressed to the Help Desk of the portal.
   c) In case of conflict between provisions of the Portal with the Tender Document, provisions of the Portal shall prevail. Bidders may study the resources provided by the Portal for Bidders.
   d) Bids must be uploaded till the deadline for submission mentioned in the Tender Document. If the office happens to be closed on the deadline to submit the bids as specified above, this deadline shall not be extended.
   e) Only one copy of the bid can be uploaded, and Bidder shall digitally sign all statements, documents, and certificates uploaded by him, owning sole and complete responsibility for their correctness/ authenticity as per the provisions of the IT Act 2000 as amended from time to time.
   f) Regarding the protected Price Schedule (excel format, Cover-2), the Bidder shall write his name in the space provided in the specified location only. Bidder shall type rates in the figure only in the rate column of respective item(s) without any blank cell or zero values in the rate column and without any alteration/ deletion/ modification of other portions of the Excel sheet. If space is inadequate, Bidder may upload additional documents under "Additional Documents" in the "bid Cover Content."

[56] These portals must be compliant with 'Guidelines for Compliance to Quality Requirements of eProcurement' (GCQE), July 2021 issued by Systems Standardisation Testing and Quality Certification (STQC) Directorate (an attached office of the Ministry of Electronics and Information Technology (MeitY), Government of India).

g) The date and time of the e-procurement server clock, which is also displayed on the bidders' dashboard, shall be used as the reference time for deciding the closing time of bid submission. Bidders are advised to ensure they submit their bid within the deadline and time of bid submission, taking the server clock as a reference, failing which the portal shall not accept the Bids. No request on the account that the server clock was not showing the correct time and that a particular bidder could not submit their bid because of this shall be entertained. Failure or defects on the internet or heavy traffic at the server shall not be accepted as a reason for a complaint. The Procuring Entity shall not be responsible for any failure, malfunction or breakdown of the electronic system used during the eProcurement Process.

h) The bidder should ensure the correctness of the bid before uploading and take a printout of the system-generated submission summary to confirm the successful bid upload. All bids uploaded by Bidder to the portal shall be automatically encrypted. The encrypted bid can only be decrypted/ opened by the authorised persons on or after the due date and time.

i) Bidder must upload scanned copies of originals (or self-attested copies of originals – as specified). The bidder should ensure the clarity/ legibility of the scanned documents uploaded by him. The Procuring Entity reserves its right to call for verification of originals of all such self-certified documents from the Bidders at any stage of evaluation, especially from the successful Bidder(s) before the issue of Letter of Award (LoA).

j) If so specified in the tender document, originals (or self-attested copies of originals – e.g., exemption/ proof of EMD (in the form of Bank Guarantee, DD etc.) or., as specified therein) of specified scanned, uploaded documents must be physically submitted before the deadline specified for it (before the bid submission deadline, if not so specified) sealed in double cover, and acknowledgement must be obtained before the bid submission deadline at the mentioned venue. Failure to do so is likely to result in the bid being rejected. If the office is closed on the deadline for the physical submission of originals, it shall stand extended to the next working day at the same time and venue.

k) No manual Bids shall be made available or accepted for submission in eProcurement (except for originals of scanned copies as per sub-para above).

2. **Submission of Bids in offline Tender Process:** 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:

a) The technical and financial proposals shall be submitted at the same time. To safeguard the integrity of the process, the technical and financial proposals shall be submitted in separate sealed envelopes, kept in an outer sealed envelope.

b) The procuring entity shall maintain tender boxes for receiving the bids at suitable locations, which would facilitate security and easy access for 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. The key of one lock will be with the head of the office, and the other key with the official nominated by him;

c) 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

d) 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 tender documents.

3. **Bid security:** Bid Security or if permitted Bid Securing Declaration (BSD) must accompany the bid as per instructions in the Tender Document. A self-attested scan of the original Bid Security/ BSD should be uploaded along with bids. Bids not complying with these provisions shall be rejected. Please refer para 6.1.1 below.

5.2.9. Bid Validity

A bid shall remain valid for the period mentioned in the Tender Document (90 days if not so specified). A bid valid for a shorter period shall be rejected as nonresponsive. In case the day up to which the bids are to remain valid falls on or is subsequently declared a holiday/ closed day for the Procuring Entity, the bid validity shall automatically be deemed to be extended upto the next working day. 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 bidders. (Please see para 7.2.6 below for an extension of the Bid Validity Period)

5.3. Opening of Bids

1. Immediately after the deadline for bid submission, the procuring entity shall proceed to the bid opening. If the specified date of Bid Opening falls on is subsequently declared a holiday or closed day for the Procuring Entity, the Bids shall be opened at the appointed time on the next working day. In offline tenders, the BOC shall comprise one officer each from the procuring entity and Associated/ integrated Finance.
2. In e-procurement, all tenders uploaded by bidders are received, safeguarded, and opened online on the portal as detailed in ‘Appendix 3: Electronic Procurement (e-Procurement) and e-Auction’ of the Manual for Procurement of Goods, 2024.
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:
   a) The authorised representatives of bidders, who intend to attend the tender opening in OTE/ GTE/ SLTE are to bring with them letters of authority from the corresponding bidder. The prescribed format for the letter of authority for attending the bid opening should be given in the tender 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 is given in Annexure 5;
   b) At a prescheduled date and time, the BOC of the day should get the tender box opened after ensuring and demonstrating that the seal on the box has not been tampered with. All bids should be collected from the tender box. Bids for tenders not opening on that day should be put back into the box, and the box resealed. Sometimes, there would be tenders dropped wrongly into this tender box. Such wrongly dropped tenders with appropriate endorsement should be put into the appropriate box or sent to the Tender Committee (TC) concerned if the date of opening is over. The bids for different tenders opening on the day (including oversized bids, which were submitted to designated officers) should be sorted, and a count for each tender should be announced and

recorded, particularly noting any modifying/altering/withdrawal of bids. BOC should ensure and demonstrate that bid envelopes are duly sealed and untampered. Late bids should be separately counted but kept aside and not opened. In the case of an advertised tender enquiry or limited tender enquiry, late bids (that is, bids received after the specified date and time for receipt of bids) should not be considered (Rule 202 of GFR 2017);

c) The technical bids will be opened on the pre-announced date and the financial proposals shall remain sealed and shall be opened publicly only for those firms that have qualified technically.
d) 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;
e) Erasure/cutting/overwriting/use of whitener/columns left unfilled in tenders, if any, shall be initialled along with the 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;”
f) The BOC is to announce the salient features of the tenders such as description and specification of the services, terms of delivery, delivery period, if any, whether EMD furnished or not, and any other distinctive feature of the tender for the information of the representatives attending the tender opening. No clarifications by bidders should be entertained or allowed to be recorded during the bid opening. BOC has no authority to reject any tender at the tender opening stage;
g) Proper sealing and codification need to be done on reference samples as well for samples which accompany the bid[57]. These should be kept for reference under lock and key. Details should be recorded in the sample register maintained in the opening section.
h) Financial instruments should be noted in the bid opening report/register and handed over to the Finance Section for safe custody and monitoring; and
i) A bid opening report containing the names of the bidders (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. The name of the bidder proposed prices shall be read aloud and recorded when the financial proposals are opened. No modification to financial proposals is permitted. The Procuring Entity shall

57 Please note that as detailed in para 2.2.1 (x), calling for a sample along with the bid for evaluation is strictly discouraged.

prepare the minutes of the public opening. Format at Annexure 5 may be used for this purpose. When electronic submission of proposals is used, this information shall be posted online.

j) Similar procedure shall later be followed during Financial Bid Opening in case of multiple-envelop bidding.

5.4. Transparency and Protecting Third-Party Rights of Bidders

1. Objectives of transparency in eProcurement are amply served if all data relating to the Tender and Award of Contract are accessible to public.
2. As far as the bidders who have participated in a tender (participating bidders), for purpose of transparency, comparative summary of Technical (compliance details) and of Financials bids (including QCBS calculations, wherever applicable) should also be accessible to them, but not necessarily to public at large, unless sought and is permissible under the RTI act.
3. Bidders may have genuine concern about Techno-commercial and operational trade secrets, if their full technical and financial bids are accessible to their competitors or public at large. This concern may get aggravated in complicated EPC/ PPP/ Consultancy procurements. Technical/ financial bids should not be made accessible to public at large, and a call needs to be taken based on sensitivity of details in the bids to restrict access of even participating bidders to full technical/ financial bids of their competitors. Decision of procuring Entity to share or not share the full technical bids with other participating bidders, should be clearly brought out in the Tender Documents.
4. However, a clause may be added to the tender documents reserving right of the Procurement Entity and the eProcurement portal to provide access to bidders' technical/ financial bids to other participating bidders, in addition to comparative summary of Technical and financial bids of all participating bidders.

5.5. Bidding Invitation Process- Risks and Mitigations

Risk	**Mitigation**
1. Exceptions to an open tender process are abused, leading to single source processes.	**Rigorously follow the conditions** under which open tendering can be dispensed with**.**
2. 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.	**Registration of bidders/contractors:** All major procuring Departments must keep a list of registered bidders for use in restricted tendering. Publicise even restricted bids on your website. Bidders for LTE/ SLTE may be transparently selected with the approval of CA.
3. 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	**Lay down** criteria when two stage tendering is warranted. Also lay down model PQC criteria for diverse types of procurements.

Risk	Mitigation
quality requirements, and neither be very stringent nor very lax to restrict/facilitate the entry of bidders. These criteria should be clear, unambiguous, exhaustive, and yet specific. Also, there should be fair competition.	
4. 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.
5. Evaluation criteria are not set from the beginning or are not objective or not clearly stated in the tender documents, thereby making them prone to being abused.	**Objective, relevant and clearly** stated evaluation criteria must be specified in the tender document.

Chapter 6: Forms of Securities, Prices, Payment Terms and Price Variations

6.1. Forms of Security

6.1.1. Bid Security (Rule 170 of GFR 2017)

1. To safeguard against a bidder with drawing or altering its/ his bid during the bid validity period in the case of advertised (OTE and GTE tenders) or special limited tender enquiry Bid Security (also known as Earnest Money Deposit (EMD)) is to be obtained from the bidders along with their bids.
2. The bidders should be asked to furnish bid security along with their bids[58]..Amount of bid security should ordinarily range between two (2) to five (5) per cent of the estimated value of the services 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 tender documents. The procuring Entity may, if considered justified, stipulate an upper ceiling on the bid security amount, in larger tenders, so as not to restrict competition.
3. Form of Security: The bid security may be obtained in the form of Insurance Surety Bonds[59],account payee demand draft, or banker's cheque or Bank Guarantee (including e-Bank Guarantee)[60] issued/ confirmed[61] by any of the Scheduled Banks (as defined in section 2(e) of the RBI Act 1934) or payment online in an acceptable form, safeguarding the purchaser's interest in all respects. In case the bid security is more than a threshold (Rupees five lakh) and in case of foreign bidders in GTE tenders it may be in the form of a bank guarantee (in equivalent Foreign Exchange amount and must conform to the Uniform Rules for Demand Guarantees (URDG 758) – an international convention regulating international securities[62]) issued/ confirmed by any of the scheduled bank in India in an acceptable form. The bid security is normally to remain valid for a period of 45(forty-five) days beyond the final bid validity period.
4. In place of a Bid security, Procuring Entities after seeking approval of the competent authority may consider asking Bidders to sign a Bid securing declaration (BSD), 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 submit a performance security, or to sign the contract, before the deadline defined in the tender documents, they shall be suspended for the period of time specified in the BSD from being eligible to submit Bids/Proposals for contracts with the procuring entity.
5. In appropriate cases, Submission of the bid security may be exempted with the Competent Authority's (CA's) approval, especially in the case of indigenisation/development tenders, limited tenders, and procurements directly from the manufacturer or authorised agents, bidders that are currently registered (firms should normally be registered for the particular trade group (group of services) and monetary values, as decided by the procuring entity),

[58]Notified vide OM No F.20/2/2014-PPD(Pt.) issued by Department of Expenditure dated 25.07.2017.
[59]Notified vide OM No. F.1/1/2022-PPD issued by Department of Expenditure dated 02.02.2022.
[60] Notified vide OM No. F.1/4/2022-PPD issued by Department of Expenditure dated 05.08.2022.
[61] A bank guarantee merely advised by a scheduled bank is not acceptable, in lieu of being confirmed.
[62] 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.

and will also continue to remain registered during the bid validity period with the concerned Ministry/ Department/ Procuring Entity. Micro and Small Enterprises (MSEs) as defined in MSE Procurement Policy issued by Department of Micro, Small and Medium Enterprises (MSME) and registered Startups as recognized by Department for Promotion of Industry and Internal Trade (DPIIT) (please refer to para 1.10.4) are exempt from payment of EMD. In case the bidder falls in these categories, the bidder should furnish a certified copy of its valid registration details.

6. A bidder's bid security shall be forfeited if the bidder withdraws or amends its/his tender or impairs or derogates from the tender in any respect within the period of validity of the tender or if the successful bidder fails to furnish the required performance security, or to sign the contract within the specified period.
7. Bid securities of the unsuccessful bidders should be returned to them at the earliest after expiry of the final bid validity period and latest by the 30th day after the award of the contract. Bid security should be refunded to the successful bidder on receipt of a performance security. However, in case of two packet or two stage tendering, Bid securities of unsuccessful bidders during first stage i.e., technical evaluation etc. should be returned within 30 days of declaration of result of first stage i.e., technical evaluation etc.[63]

6.1.2. Performance Security (*Rule 171 of GFR 2017*)

1. To ensure due performance of the contract, performance security (or Performance Bank Guarantee (PBG) or Security Deposit (SD)) is to be obtained from the successful bidder awarded the contract. Performance security should be for an amount of three (3) to five (5) per cent (3 to 10% for Works) of the contract value, as specified in the tender documents[64]. The procuring Entity may stipulate an upper ceiling for the Performance Security amount, in larger tenders, so as not to restrict competition. For an illustrative example, the ceiling can be Rs 75 Lakhs for tenders upto Rs 50 Crores and Rs 3 Crore for tenders above Rs 50 Cr but below Rs 300 Cr. For tenders of higher value than this, the Procuring Entity may decide the amount of Performance Security (but not less than Rs 3 Cr mentioned above). However, Procuring Entities are free to decide their own quantum for performance security, or dispense with it, with the approval of Competent authority and finance concurrence, based on their perception of performance risks vis-a vis need for competition.
2. **Form of Security**: Performance security may be furnished in the form of an Insurance Surety Bond[65], account payee demand draft from a commercial bank, bank guarantee (including e-bank guarantee[66]) issued/confirmed[67] from any of the scheduled banks in India, or online payment in an acceptable form, safeguarding the purchaser's interest.
3. 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 the case of GTE tenders, the performance security should be in the same currency as the contract and must conform to the Uniform

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

[64] Notified vide OM No. F.1/2/2023-PPD issued by Department of Expenditure dated 01.01.2024.

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

[66] Notified vide OM No. F.1/4/2022-PPD issued by Department of Expenditure dated 05.08.2022.

[67] A bank guarantee merely advised by a scheduled bank is not acceptable in lieu of being confirmed.

Rules for Demand Guarantees (URDG 758) – an international convention regulating international securities[68].

4. Securities in the existing contracts in form of bank guarantee may be permitted by Procuring Entity to be replaced by the contractors to Insurance Surety Bonds or e-Bank Guarantee. Adequate safeguards such as such requiring prior submission of new forms of security before releasing the original forms of security shall be ensured. (For further details on Insurance Surety Bond and e-bank guarantee, please refer to para 6.1.3 and 6.1.4 of Manual for Procurement of Goods, 2024)
5. Submission of Performance Security may not be insisted upon in lower valued contracts (say upto Rupees 50 (Fifty) lakh).
6. Procuring Entity may exempt the following entities (on their specific requests or otherwise) from submission of Performance Security:
   a) [69] Govt. Ministries, Departments, Attached and Subordinate Offices, Autonomous bodies,
   b) OEM in whose favour PAC, in tenders issued against PAC.
7. Performance Security is to be furnished by a specified date (generally 14 (fourteen) to 28 (twenty-eight) days after notification of the award, depending on the amount) and it should remain valid for a period of 60 (sixty, or any other period mentioned in the tender Documents) days beyond the date of completion of all contractual obligations of the contractor, including warranty obligations.
8. The performance security will be forfeited and credited to the procuring entity's account in the event of a breach of contract by the contractor. It should be refunded to the contractor without interest, after he duly performs and completes the contract in all respects but not later than 60(sixty) days of completion of all such obligations including the warranty under the contract. Return of Bid/ Performance Securities should be monitored by the senior officers and delays should be avoided. If feasible, the details of these securities may be listed in the e-Procurement Portal/ website of the Procuring entity, to make the process transparent and visible.
9. In the case of service contracts spanning over multiple number of the years, care needs to be taken to decide on the amount of performance security being sought along with the duration. It has been observed that procuring entities retain the performance security over the complete service contract period which may be of 5-7 years or more. This practice puts the service provider in a difficult situation as they have to block a substantial amount of their working capital as security for the entire duration of the contract. In such cases the following is suggested:
   a) The right quantum of performance security has to strike a balance between protecting the procuring entity's interest in case of default in performance vs. avoiding increase in tendered price and /or reduced competition. If the security is low, the procuring entity may be adversely affected if and when default occurs. If it is high, the extra financial

[68] 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.

[69] There is no bar from taking Performance Security from CPSEs

cost of furnishing such security will be factored in by bidders when quoting prices & hence the cost may increase.

b) Sufficient flexibility is already available in the GFR to design the performance security for procurement of services, both value and duration, duly considering the market conditions and commercial practice for the particular kind of service.

c) Procuring entities may consider to proportionately keep reducing performance security in proportion to the balance service period, wherever feasible. Wherever, it is decided to take lower or proportionally reducing PS, tender conditions may be suitably modified for the future cases.

6.1.3. Verification of Bank Guarantees

1. Bank guarantees submitted by the bidders/ suppliers/ service providers 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:
   a) BG shall be as per the prescribed formats.
   b) The BG contains the name, designation and code number of the Bank officer(s) signing the guarantee(s);
   c) 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);
   d) The confirmation from the issuing branch of the bank is obtained in writing through registered post/speed post/courier/ official email-id of the Bank/ SFMS on the official portal of the procuring entity. 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;
   e) 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.
2. 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.
3. Corporate Guarantee or Indemnity Bond shall not be accepted for Bid Security (EMD) or performance Security, or in lieu of any other Bank Guarantee (e.g., for advance payment/ warranty obligations).
4. Please note the ease with which an e-bank guarantee can be verified. (For further details on e-bank guarantee, please refer to para 6.1.4 of Manual for Procurement of Goods, 2024).

6.1.4. Safe Custody and Monitoring of EMDs, Performance Securities and Other Instruments

1. A suitable mechanism for safe custody and monitoring of EMDs and performance securities and other instruments should be evolved and implemented by each Procuring Entity. The Ministries/ Departments shall also make institutional arrangements for taking all necessary actions on time for extension or forfeiture/ encashment or refund of EMDs and performance securities, as the case may be.
2. 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.
3. 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 service provider for propose of extension of validity. Such a system of monitoring of securities and other instruments may be computerised with automatic alerts about lapse of validity etc.

6.2. Payment Clause

1. The elements of price included in the quotation of a bidder depend on the nature of the services to be performed, terms of delivery, extant rules and regulations about taxes, duties, and so on, of the seller's country and the buyer's country.
2. In case of Non consultancy services, the elements of price would depend on whether it is an input or output admeasurement contract. In case of input admeasurements unit price of each element, service charges and taxes thereon shall be the elements of price schedule. There may be miscellaneous costs also other than inputs. In case of output admeasurements unit price of services delivered and taxes thereon shall be the elements of price schedule.
3. It is, therefore, necessary that, to enable the bidders to frame their quotations properly in a meaningful manner, the tender documents should clearly specify the desired terms of delivery, respective duties and responsibilities to be performed by the service provider and the procuring entities.
4. **Elements of Price:** Where the price has several components, bidders should be asked to furnish a cost break-up indicating the applicable prices and taxes for each of such components along with the overall price. The payment schedule and terms will be linked to this cost break-up; and
5. **Currency:** The tender documents are to specify the currency (currencies) in which the tenders are to be priced. As a general rule, domestic bidders are to quote and accept their payment in Indian currency; Indian agents of foreign service providers are to receive their agency commission in Indian currency; costs of services, which are delivered from abroad or by foreign nationals against the contract, may be quoted in foreign currency (currencies) and paid accordingly in that currency; and the portion of the services, which are to be undertaken in India are to be quoted and paid in Indian currency.

6.3. Terms of Payment

1. In non-consultancy services contracts, the usual payment term is 100 (hundred) per cent on acceptance of delivered services by the ultimate user and on production of all required documents by the service provider.
2. Payment provisions, including amounts to be paid, schedule of payments, and payment procedures, shall be indicated in Tender Document and also in the contract. Payments may be made at regular intervals (as under time-based contracts) or for agreed outputs (as under lump sum contracts).
3. **Modes of Payment**:
   a) Procuring Entities should make payments through the Electronic Clearance System (ECS), e.g., Real-Time Gross Settlement systems (RTGS), National Electronic Funds Transfer (NEFT) or Electronic Payment Gateways. As per RBI guidelines, the ECS mandate in RBI's format may be obtained at the time-of-service providers' registration and in the tender document. The Format is available with all Banks.
   b) However, if ECS payments are not feasible, payments may be made in exceptional circumstances by cheque/demand draft drawn on a Government treasury or branch of RBI or any Scheduled Bank authorised by RBI for transacting Government business.
   c) Trade Receivables Discounting System (TReDS) is an electronic platform for facilitating the financing / discounting of trade receivables of Micro, Small and Medium Enterprises (MSMEs) through multiple financiers. These receivables can be due from corporates and other buyers, including Government Departments and Public Sector Undertakings (PSUs). Payments can also be made through this platform to MSE suppliers/ service providers.

6.4. Advance Payment

(Rule 172(1) GFR 2017)

6.4.1. Conditions for Advance Payments

1. **Conditions:** As per Rule 172 (1) of General Financial Rules (GFR) 2017, ordinarily, payments for services rendered or supplies made should be released only after the services have been rendered or supplies made. However, in exceptional situations where substantial funds are to be sunk by the contractor before payment becomes due, considering the lower cost of funds for the Government entity as compared to the higher cost of funds for the bidder, advance payment with safeguards (BG) may be considered. So advance payments may be considered only in the following exceptional situations:
   a) Advance payment demanded by firms holding maintenance contracts for servicing of air-conditioners, computers, other costly equipment, etc.;
   b) Advance payment demanded by firms against fabrication contracts, turn-key contracts, or supply of complicated tailor-made goods and so on;
2. **Quantum:** The quantum of such advance payments should not exceed the quantum of funds to be sunk by the contractor before payment becomes due in the contract. The quantum of advance payments should not generally exceed the following limits:
   a) Thirty per cent of the contract value to private firms;
   b) Forty per cent of the contract value to a state or central Government agency or PSE;
   c) In the case of the maintenance contract, the amount should not exceed the amount payable for six months under the contract.

d) In exceptional cases, the competent authority may relax the ceilings mentioned above with prior concurrence of the Associated/Integrated Finance.

3. **Interest-free:** Since the provision of advance payment leverages the difference in interest rate as argued in sub-para 1) above and considering the additional cost of Bank Guarantee for advances for the bidder, interest-free advance payments may be considered with the approval of competent authority and finance concurrence. Where an interest-free advance is permitted, a clause in the tender enquiry and the contract may be stipulated that if the contract is terminated due to default of the contractor, the advance payment would be deemed as an interest-bearing advance at the interest rate (e.g., the interest rate of the General Provident Fund – GPF) prevailing on the date of release of advance payment, plus 2% to be compounded quarterly. In appropriate cases, the competent authority may stipulate advance payments with suitable interest rates (e.g., the interest rate of the General Provident Fund – GPF) to be recovered along with the instalments of recovery of advance payment.
4. **Instalments**: The advance payment should not be made in less than two instalments, as per the expected infusion of funds required in the contract, except in exceptional circumstances for the reasons to be recorded. This will keep a check on contractor misutilisation of full advance when the contract is delayed considerably.
5. **Recovery**: Advance payments, especially interest-free advances, should be recovered (from either running bills or from the Performance/ Advance payment Bank Guarantees) in instalments linked to milestones or specified periods, whichever is earlier. 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 the scope for misuse of such advance could be reduced.
6. **Bank Guarantee**: While making any advance payment as above, adequate safeguards in the form of a bank guarantee (or e-Bank Guarantee of at least 110% of advance) should be obtained from the firm. In case the advances are to be paid/ recovered in instalments, an equal number of part BGs (with proportionate amount and validity) may be taken instead of lumpsum BG, with each BG released after a related recovery is made. An Indemnity Bond is not to be considered in place of a Bank Guarantee. However, no Bank Guarantee should be insisted in case advance is being given to Central Ministry/ Department, there attached/ subordinate offices or the Autonomous Bodies attached with them. The BG may also not be taken, wherever a contract has been placed on a CPSE on nomination basis.
7. Milestone/ stage payments or part payments against proof of dispatch documents should not be considered as advance payments for the purpose of this para, as these payments are made after the sinking of funds by the contractor for achieving these milestones/ stage/ dispatches. These should be provisioned in the tender document/ contract, including Bank Guarantee to be taken, if any, in case of milestone/ stage payments. (Rule 172(2) GFR 2017)
8. Provision of advance payment should be anticipated at the procurement planning stage. The quantum of Advance payment and related conditions should be declared in the Tender Documents, with the approval of competent authority and concurrence of associated/ integrated finance. If not so declared, the condition of advance payment for a particular bid should not be agreed to.
9. The Government of India has recently approved a revamped Reform based and Results Linked Power Sector scheme, in which installation of smart pre-paid meters will be done

across the country. Advance payment towards electricity usage by Government office through pre-paid metering is central to the envisaged reforms process. Government Departments can make advance payments to authorized DISCOMS for pre-paid metered electricity without insisting on any BGs. However, proper accounting of all the payments must be made[70].

6.4.2. Documents for Advance Payments

Documents, needed from the service provider for release of payment, are to be clearly specified in the contract. The paying authority should also verify the documents received from the service provider with corresponding stipulations made in the contract before releasing the payment.

6.5. Firm Price, and Variable Price

1. **Fixed price:** Short-term contracts where the delivery period does not extend beyond 12 (twelve) months should normally be concluded with a firm and price fixed by inviting tenders accordingly.
2. **Variable Price**:
   a) In tenders with deliveries longer than 12 (twelve) months, a Price Variation Clause (PVC) may be provided to protect the purchaser's interests, particularly for high-value (more than Rupees three crore) procurements. However, even for shorter deliveries or lower value, the PVC may be stipulated for items with inputs (raw material, labour, etc.) prone to short-term price volatility - especially for critical or high-value items/ services – otherwise, there is a possibility of the contract failing or the purchaser having to pay a higher price if market prices fall.
   b) Where it is decided to conclude the contract with a variable price, an appropriate clause incorporating, inter-alia, a suitable price variation formula (to take care of the changes in the input cost of labour, material, and fuel/ power components) should be provided in the tender documents, to calculate the price variation between the base level and delivery date. It is best to proactively provide our own PVC formula and base dates of indices, 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.
   c) The variations are to be calculated periodically (usually quarterly) 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 various applicable inputs e.g., material/ fuel/ labour (for which reliable indices are available), in the price variation formula. If the performance of services needs more than one raw material, the input cost of material may be further sub-divided for various categories of material, for which cost indices are published.
   d) Essential elements of PVC:
      i) **Base Date & Time Lag**: The price agreed upon should specify the base date, that is, the month and year to which the contract/ bid price is linked, to enable variations to be calculated with reference to the price indices prevailing in that month and year. This base date should be a few weeks/ months (the period is called time-lag)

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

prior to the last date of submission of bids when the last published price indices would be available. Time lag applies both for the base date and delivery date and must be specified in the Tender Documents;

ii) **Ignorable Variation**: 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 contractor);

iii) **Inordinate Variation**: In rare cases, prices may go up to such an extent that it may render the contract unviable for either party, thus frustrating the contract. Therefore, the price variation clause should provide for a ceiling (a percentage per annum or an overall ceiling or both, say 20%/ 25% of the original price) on price variations, beyond which the price variation would be capped at this level. As soon as it comes to light that price variations are likely to go beyond this ceiling, and if the Contractor is not agreeable to the price variation being capped at that level, he may notify the Purchaser under 'Frustration of Contract' provisions in the Tender Document/ Clause, for short-closing the contract. (Refer para 9.8.5). However, if the short closing is not in the interest of the procuring entity, the competent authority, with the concurrence of associated/ integrated finance, may allow the continuation of the contract by relaxing/ removing the cap on the price variation.

iv) Where advance or stage payments are made, there should be a further stipulation that no price variations will be admissible on such portions of the price after the dates of such payment;

v) Where deliveries are accepted beyond the scheduled delivery date subject to levy of liquidated damages as provided in the contract. The LD (if a percentage of the price) will be recoverable on the price as varied by the operation of the PVC;

vi) No upward price variation will be admissible beyond the originally scheduled delivery date for defaults on the part of the contractor (e.g. when an extension of the delivery date is with denial clause). However, the purchaser would avail a downward price variation as per the denial clause in the letter of extension of the delivery period;

vii) Price variation may be allowed beyond the originally scheduled delivery date in case of refixation of delivery date (which is treated like original delivery period – refer para 9.4.3-2 and 9.4.5) through an amendment to the contract in cases of delays attributable to force majeure or defaults by the procuring entity;

viii) The clause should also contain the mode and terms of payment of the price variation admissible.

ix) 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.

x) An illustrative PVC clause is available in Annexure 10.

6.6. Statutory Taxes/ Duties/ Levies

6.6.1. Goods and Services Tax (GST)

1. **GST Registration Status and GSTIN** (15-digit registration number):
   a) All the bidders/ Bidders should ensure that they are GST compliant and that their quoted tax structure/ rates are as per the GST Act/ Rules.
   b) Bidder should be registered under GST and furnish their GSTIN number and GST Registration Certificate in their offer unless they are specifically exempted from registration under a specific notification/ circular/ section/ rule issued by statutory authorities.
   c) If the bidder has multiple business verticals in a state and has separate registrations for each vertical, the GSTIN of each vertical concerned with the supply and service involved, as per the scope of the Schedule of Requirements and Price Schedule shall be quoted.
   d) If the supply/ service is from multiple states, the bidder should mention GST registration numbers for each state separately.
   e) **Composition scheme:** If the Bidder has opted for a composition levy under Section 10 of CGST, he should declare the fact while bidding along with GSTIN and GST registration certificate.
   f) **Exemption from Registration:** If a bidder is not liable to take GST registration, i.e., having turnover below threshold, he shall submit undertaking/ indemnification against tax liability. The bidder claiming exemption in this respect shall submit a valid certificate from a practising Chartered Accountant (CA)/ Cost Accountant with the Unique Document Identification Number (UDIN) to the effect that the bidder fulfils all conditions prescribed in notification exempting him from registration. Such bidder/ dealer shall not charge any GST and/ or GST Cess in the bill/ invoice. In such case, applicable GST shall be deposited under Reverse Charge Mechanism (RCM) or otherwise as per GST Act by the Procuring Entity directly to concerned authorities. Bidder should note that his offer would be loaded with the payable GST under the RCM. Further, the bidder should notify and submit to the Procuring Entity within 15 days of becoming liable for registration under GST.
   g) Bidders must also consider the benefits of input tax credit under the GST legislations, as amended from time to time, on Input goods/Capital goods / Input Services while quoting the prices.
   h) In their bids, the bidders shall indicate the details of their GST Jurisdictional Assessing Officers (Designation, address, email ID). In case of a contract award, the Purchaser shall immediately forward a copy of the LOA/Purchase Order to the Jurisdictional Assessing Officer mentioned in the bidder's bid.
   i) The Procuring Entity's state-wise GSTINs shall be indicated in Tender Documents.
2. **HSN Code and GST Rate**:
   a) If provided in the Tender Document, the HSN (Harmonized System of Nomenclature) code for the goods/ services is only indicative. The bidder shall be responsible for ensuring that they quote the correct HSN Code and corresponding GST rate for the services they offer.
   b) As per the GST Act, the bid and contract must show the GST Tax Rates (and GST Cess if applicable) and GST Amount explicitly and separately from the bid/ contract price (exclusive of GST). So, if a Bidder asks for GST (and GST Cess if applicable) to

be paid extra, the rate and nature of such applicable taxes should be shown separately. Bidders should quote 'GST' if payable extra on the total basic rate of each cost element and quote GST in ‘%' inclusive of cess.

c) If the price is stated to include GST, the bidder must declare the current GST rate (and GST Cess, as applicable) included in the price.

d) If GST, other taxes, or duties are not specified, or the column is left blank in the price schedule, it shall be presumed that no such tax/ levy is applicable or payable by the Procuring Entity. No Statutory Variation in GST shall be paid in such a case.

3. **Refund from Service Provider:** Sometimes, the service provider, after claiming and receiving reimbursements for GST, from the purchaser, applies to the concerned authorities for refunds, on genuine grounds, of certain portions of such duties and taxes paid by it and receives the allowable refunds. Such refunds contain the purchaser's share also (out of the payments already made by the purchaser to that service provider). The tender enquiry document and the contract are to contain suitable provisions for obtaining such refunds from the service provider.

   a) Alternatively, a certificate may be taken from the service provider that the service provider has submitted the bill considering future refunds/ credits/ adjustments.

4. **Statutory Duties/ Taxes/ Levies** that are to be borne by the bidder:

Following Statutory Duties/ Taxes/ Levies are to be entirely borne by the bidder, including any statutory variations thereon and the Procuring Entity would not be responsible for these:

a) **Personal and Corporate Tax:** Bidder shall bear all Personal/ Corporate taxes imposed on owners/ company/ Joint Venture/Subcontractors or their employees.

b) **Taxes on Sub-Contractors**, **Vendors:** Bidder shall bear all taxes, including GST, as may be imposed on Contractor or supply-chain (sub-Contractors, Vendors, etc.).

c) **Duties/ Taxes on Raw Materials:** The Procuring Entity is not liable for any claim from the contractor on account of fresh imposition and/ or increase (including statutory increase) of GST, customs duty, or other duties on raw materials and/ or components used directly in performance of services during the pendency of the contract unless such liability is expressly agreed to in terms of the contract.

6.6.2. Deduction of Income Tax, etc., from Payments

If applicable under relevant tax laws and rules, the Procuring Entity shall deduct from all payments and deposit required taxes to respective authorities as per para 9.5.3-2) below.

6.6.3. Statutory Variation Clause:

Unless otherwise stated in the contract, statutory variation in applicable GST rate, only during the period from the date of submission of the tender to the date of acceptance of the tender (that is, placement of the contract) and during the original/ re-fixed delivery period of the contract shall be borne by the Procuring Entity. The benefit of any reduction in the GST rate must be passed on to the Procuring Entity during the original and extended delivery period. However, GST rate amendments shall be considered for the quoted HSN code only, against documentary evidence, provided such an increase in GST rates is after the tender submission date. However, the Statutory Variation shall not be applicable for any misquotation of the HSN number or incorrect GST rate by the bidder.

(Note: Re-fixed delivery period means the fresh delivery period, which is arrived at by recasting the original contractual delivery period after taking

care of the lost period, for which the service provider was not responsible. Refer para 9.4.3-2)

6.7. Recovery of Public Money from Service Provider's Bill

Sometimes, requests are received from a different Ministry/ Department for withholding some payment of a service provider out of the payment or Securities due to it against a contract. Such requests are to be examined by the Procuring Entity (which has received the request) on the merits of the case for further action. It will, however, be the responsibility of the Ministry/Department asking for withholding of payment to defend the Government against any legal procedure arising out of such withholding as also for payment of any interest thereof.

6.8. Payment against Time Barred Claims

Ordinarily, all claims against the Government are time barred after a period of three years calculated from the date when the payment falls due unless the payment claim has been under correspondence. However, the limitation is saved if there is an admission of liability to pay, and fresh period of limitation starts from the time such admission is made. The drill to be followed while dealing with time barred claims will be decided by the Procuring Entity concerned in consultation with the paying authority. The paying authority is to ensure that no payment against such time barred claim is made till a decision has been taken in this regard by the CA.

Chapter 7: Bid Evaluation and Award of Contract

7.1. Bid Evaluation Process

7.1.1. Importance of Evaluation of Bids

The evaluation of tenders is one of the most significant areas of purchase management and the process must be transparent. All tenders are to be evaluated strictly based on the terms and conditions incorporated in the tender document and those stipulated by the bidders in their tenders. All tenders are to be evaluated strictly based on the terms and conditions incorporated in the tender document and those stipulated by the bidders in their tenders. The Contracting Authority may include in the evaluation criteria in the Tender Document, 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 hearsay information or hitherto undeclared condition should be brought in while evaluating the tenders. Care should be taken that 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 bidder gets undue advantage at the cost of other bidders and/or at the cost of Procuring Entity.

7.1.2. Evaluation in Different Tendering Systems

1. In case of single stage single envelop tendering, the evaluation of eligibility/ qualification of bidders, technical, commercial, and financial aspect is done simultaneously. The lowest priced bid that meets the eligibility/ qualification criteria, technical and commercial conditions laid down in the tender documents is declared as successful.
2. In single stage two envelops, initially only the techno-commercial bids would be opened and evaluated for bids which successfully meet the eligibility/ qualification criteria and techno-commercial aspects. Financial bids of such successful bidders only would be opened. TC shall evaluate financial bids with a view to select the lowest (L1) bidder who meets the eligibility/ qualification criteria and techno-commercial aspects. Evaluators of technical proposals shall not have access to the financial proposals until the technical evaluation is concluded. It is of utmost importance that the authenticity, integrity, and sanctity of unopened Financial Bids must be ensured before their opening. All the financial bids may preferably be put in a large envelop, which may be dated, sealed, and signed (including by some of the bidders present), to show that none of the bids were accessed during the custody.
3. In two stage bids, the PQB/ EoI stage would have already been evaluated as detailed in Chapter 8 and this second stage is for evaluation of responses to the second stage two envelops from the shortlisted qualified bidders, following procedure described in sub-para 2) above.

7.1.3. Preparation and Vetting of Comparative Statement

Except in cases upto Rs 50 Lakh (Rupees Fifty Lakh) the Procuring Entity should prepare a comparative statement of quotations (Technical and Financial) 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, however in case the comparative statement is prepared by the eProcurement portal, vetting by associated/ integrated Finance is not required.

7.1.4. The Stages of Evaluation

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

7.1.5. Contacting Procuring Entity during the evaluation:

From the time of bid submission to awarding the contract, no Bidder shall contact the Procuring Entity on any matter relating to the submitted bid. If a Bidder needs to contact the Procuring Entity for any reason relating to this tender and/ or its bid, it should do so only in writing or electronically. Any effort by a Bidder to influence the Procuring Entity during the processing of bids, evaluation, bid comparison or award decisions shall be construed as a violation of the Code of Integrity, and bid shall be liable to be rejected as nonresponsive in addition to other punitive actions for violation of Code of Integrity as per the Tender Document.

7.2. Composition and Role of Tender Committee (TC)

7.2.1. Composition of Tender Committee

1. There are delegations upto a threshold value (called direct acceptance threshold – normally LTE threshold of Rs 50 Lakhs) below which the evaluation of the Bids may be entrusted solely and directly to the individual competent authority, without the involvement of a Tender committee or any evaluation report. He would carry out all the steps in the evaluation described in this chapter, instead of the TC and directly record reasons and decisions in the file itself (or online, where such systems exist). He may ask for a Technical Suitability report from user departments if needed.
2. In procurements (including nomination mode or by special limited tender mode) above such a threshold, evaluation of bids is to be done by a Tender Committee (TC or called Tender Evaluation Committee TEC in some organisations). TC should normally comprise three members including a finance member (nominated by the Financial Advisor) and a representative of the user, shall be constituted as per SoPP.
3. As per Rule 173 (xxii) of GFR 2017 no member of the tender committee (or the accepting authority) should be reporting directly to any other member of such committee in case estimated value of the procurement exceeds Rs. 50 lakhs. The Tender Committee to consider bids may be so constituted that an authority holding powers for recommending the bids by virtue of his position as a member of the Tender Committee shall not also be the accepting authority for such tenders.
4. The representative of the Procuring Entity will work as a convenor (Member Secretary) of the TC. The TC should not be very large as it may slow down the evaluation process. However, suitable domain/technical experts from the user department (or otherwise) may be included in the committee to render assistance in evaluation of the bids. There is no

need to constitute any other committee for technical evaluation, preliminary evaluation, etc.

5. Tender committees may be constituted with the approval of one level higher than the competent authority. It is advantageous for organisations doing procurements regularly to have pre-nominated (by designation) Tender committees and lay down their powers, jurisdiction, composition and corresponding Competent Authority for various categories of procurement and different threshold values of procurements. Procuring Entity should lay down a Schedule of Procurement Powers (SoPP) detailing such thresholds. It can also lay down the powers, jurisdiction, and composition of various levels of Tender Committee and corresponding Competent Authority for various categories of procurement and different threshold values of procurements. A suggested format for SoPP is at Annexure 2, however, the exact values of thresholds may have to be decided by the Procuring Entity in conformity with DFPR (Annexure 1).

7.2.2. Role of Tender Committee

1. Member secretary of the Tender Committee (or competent authority, in direct acceptance cases) shall receive the bids opened along with other documents from the tender opening officials and are responsible for safe-custody of the documents and for processing involved at all steps in finalising the Procurement.

2. The TC shall be responsible for all aspects and stages of the evaluation of technical and financial proposals, negotiations, and final award of contract. There is no need to constitute any other committee for technical evaluation, preliminary evaluation, etc.

3. TC 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.

4. After the proposals have been opened, the evaluation process can begin. Before starting the evaluation, the TC members should ensure that they

a) have no conflict of interest as defined in the tender document;
b) understand the evaluation criteria;
c) have been provided with evaluation worksheets; and
d) Agree on how to evaluate the proposals.

5. Competent Authority (authority competent to approve the procurement of that value as per the SoPP)'s written approval must be taken at various stages of procurement, before proceeding ahead e.g.:

a) Administrative/ financial sanctions/ Issue of tender
b) Approval of Techno commercial evaluation and Opening of price bids in case of two packet system
c) Price Negotiations if permitted under specified circumstances.
d) Approval of Financial Evaluation and Award of contract to the selected bidder(s)
e) Cancellation of Procurement and Re-tendering
f) In some special cases during Contract execution e.g. - exercise of the option clause or any variation beyond the laid down %age; forfeiture/ release of performance securities; premature termination/ foreclosure of Contract etc.

6. Wherever such competent authority is a Minister of the Central Government (or Board of Director in a CPSE), obtaining approvals at so many stages, may delay the process and

un-necessarily overburden the onerous tasks of such authorities. Therefore, in such cases their approval may only be taken at the stage of "Approval of Financial Evaluation and Award of contract". At other stages approval may be taken from the officer to whom such powers are delegated by the Minister (or Board of Director, in case of CPSE).

7.2.3. Handling Dissent among Tender Committee

1. All members of the TC should resolve their differences through personal discussions instead of making to and fro references in writing. In cases where it is not possible to come to a consensus and differences persist amongst TC members, the reasons for dissent of a member should be recorded in a balanced manner along with the majority's views on the dissent note. The final recommendations should be that of the majority view. However, such situations should be rare. The Competent Authority (CA) can overrule such dissent notes after recording reasons for doing so clearly. His decision would be final.
2. In cases where the CA does not agree with the majority or unanimous recommendations of the TC, he should record his views and, if possible, firstly send it back to TC to reconsider along the lines of the tender accepting authority's views. However, if the TC, after considering the views of the CA, sticks to its own earlier recommendations, the CA can finally decide as deemed fit, duly recording detailed reasons. He will be responsible for such decisions. However, such situations should be rare.

7.2.4. Independence, Impartiality, Confidentiality and 'No Conflict of Interest' at all Stages of Evaluation of Bids

1. Members of the TC should not have any conflict of interest and should not directly engage in any communication with bidders from the date of their appointment to the date on which the contract is awarded.

2. Information relating to the evaluation of bids and the Tender Committee's (TC's) deliberations should be confidential and not be shared with persons not officially connected with the process until the award of the contract is notified to the successful firm, except that after technical evaluation, the list of successful bidders may be published, as required in the Tender document. Under no circumstances should the tender file or confidential information contained therein be provided for scrutiny or for decision to any person/ office who is not involved in decision-making.

3. All technical, commercial and finance officials who have contributed to the techno-commercial or financial evaluation of bids, even though they may not be part of the TC should deal with the procurement in an independent, impartial manner and should have no conflict of interest with any of the bidder involved in the procurement. They should also maintain confidentiality of the information processed during the evaluation process and not allow it to reach any unauthorised person. They should sign a declaration at the end of their reports/notings stating that, "I declare that I have no conflict of interest with any of the bidder in this tender." TC members may also make such a declaration at the end of their reports.

4. During the processing of the tender, all references/grievances/ complaints/ directives/ request for information from any sources including higher level officials/ authorities within the Ministry or from outside may be forwarded to the TC/Convener of TC for its examination on merits and action as considered necessary, maintaining independence, impartiality, confidentiality and 'No Conflict of Interest.' An interim reply may be provided that the Tender is still under consideration and that final response would be given after the declaration of the award of contract.

7.2.5. Timely Processing of Tenders:

1. Delays in finalising procurement deprive the public of the intended benefits and results in lost revenues and cost over-run. To enable timely decision making, complete Time schedule of finalising the Tender process from the date of issuing the tender to date of issuing the contract, should be published in the Tender Documents. Every official in the chain of the procurement operation is accountable for acting 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. As a check, the proposed schedule of tender process may be printed on the inside cover of the Procurement File, where actual date of completion of various stages may be recorded. The suggestive time schedule in Table 2 is a guideline for finalising contracts against various modes of procurements.

	Table 2. Indicative time schedule		
	Mode of Procurement	**Indigenous**	**Imported**
1	Open tender/ (e-tendering)	45 days	60 days
2	Procurement through registered vendors/ (Special) limited tenders	30 days	45 days
3	Proprietary basis/nomination basis	21days	30 days

2. This time schedule is only indicative, and the schedule shall be subject to change based on the nature of requirements, sourcing, sample evaluation, site visit/pre-bid meeting with prospective bidders and Government, guidelines, and so on.

7.2.6. Extension of Bid Validity Period

1. 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 bid validity period (Rule 174 (iii) of GFR 2017).

2. 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 request, preferably before expiry of the original validity period, all the responsive bidders to extend validity of their bids up to a suitable period. They may also be requested to extend the validity of the Bid Security for the corresponding additional period. But the bidders, 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 at the time of taking such decisions. A bidder may not agree to such a request, and this will not entail forfeiture of its Bid Security.

3. In case such a refusal by bidder(s) to extend validity (hereinafter called not-extended bids) or withdrawal of offer within validity as per para 5.2.6 (hereinafter referred as withdrawn bids), happens:

a) before completion of the Techno-commercial evaluation, then the Techno-commercial evaluation (including the not-extended and withdrawn bids) shall be completed. If a not-extended or withdrawn bid qualifies in techno-commercial evaluation, financial bid(s) of such bidders shall also be opened, and action shall be taken as per sub-para below.

b) after the techno-commercial evaluation but before the completion of the financial bid evaluation, then the financial bid evaluation (including not-extended and withdrawn bids) shall be completed.
    i) If a not-extended or withdrawn bid happens to be the L1 bidder (lowest acceptable bidder, who is techno-commercially qualified for the supply of a bulk quantity and would have been awarded a contract, but for his refusal to extend validity or withdrawal of bid within validity), the tender must be re-tendered.
    ii) Since this may take some time, Procuring Entity may cover their immediate short-term needs through an appropriate mode of procurement.
    iii) However, such L1 price of the not-extended or withdrawn bids shall not be taken as precedence for determining price estimates or reasonableness.
    iv) In certain cases, there may be multiple L-1 bidders, for example, in manpower hiring tenders that are evaluated on the basis of the minimum service charge. In such cases, where a withdrawn bid also happens to be L-1, re-tendering may not be necessary. The procuring entity may continue with tender finalization, proceeding with the remaining L-1 bids.

c) In case of QCBS system of evaluation, the proposal obtaining the highest total combined score in evaluation of quality and cost is identified which is ranked as H-1 (please refer to para 7.4.4 for the QCBS evaluation methodology). If a not-extended or withdrawn bid happens to be the H-1 bidder, the tender must be re-tendered

7.2.7. Consideration of Lack of Competition in OTE/ GTE and LTE (Rule 173 (xx), and (xxi) of GFR 2017):

1. The number of bids received, which can indicate adequate competition, depends on the parameters of procurement (value, specification, mode of procurement, tendering system, etc.) and the market situation. This has to be judged by the Tender Committee. However, less than three independent bids (without suspicion of the cartel) may indicate a lack of competition. TC must record a paragraph in its report about the adequacy or otherwise of competition in the tender.
2. Sometimes, against advertised/limited tender cases, the procuring entity may not receive enough bids and/or after analysing the bids, ends up with only one responsive bid – a situation referred to as 'Single Offer.' As per Rule 173(xxi) of GFR, 2017, such situation of 'Single Offer' is to be treated as Single Tender. It has become a practice among some procuring entities to routinely assume that open tenders which result in single bids are not acceptable, and to go for re-tender as a 'safe' course of action. This is not correct. Re-tendering 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[71]. Even when only one Bid is submitted, the contract can be placed provided following conditions are satisfied:
    a) The procurement was satisfactorily advertised, and sufficient time was given for submission of bids.
    b) The qualification criteria were not unduly restrictive; and
    c) Prices are reasonable in comparison to market values.

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

3. However, as far as delegation/schedule of procurement powers (SoPP, refer Annexure 2) is concerned, competent authority would be as in Single tender mode. In case of price not being reasonable, negotiations (being L1) or retender may be considered as justifiable.
4. Unsolicited offers against LTEs should be ignored; however, Ministries/Departments should evolve a system by which interested firms can register and bid in next round of tendering. However, under the following exceptional circumstances, these may be considered for acceptance at the next higher level of competency:
    a) Inadequate competition
    b) Non-availability of suitable quotations from registered contractors
    c) Urgent demand and capacity/ capability of the firm offering the unsolicited being known, etc.

7.2.8. Tender Committee Recommendations/Report

1. The TC must make formal recommendations (Annexure 6) 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.
2. It is a good practice for TC to spell out salient terms and conditions of the offer(s) recommended for acceptance. The TC should also ensure that any deviation/variation quoted by the service provider in his bid is not left undiscussed and ruled upon in the recommendations; otherwise, the service provider may delay acceptance of the contract. These recommendations are submitted for approval to the tender accepting authority.
3. 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 by ensuring whether:
    a) Offers have been invited in accordance with this manual and after following fair and reasonable procedures in prevailing circumstances;
    b) He is satisfied that the selected offer will adequately meet the requirement for which it is being procured;
    c) The price of the offer is reasonable and consistent with the quality required; and
    d) The accepted offer is the most appropriate taking all relevant factors into account in keeping with the standards of financial propriety.
4. After the acceptance of these recommendations by the tender accepting authority, the Letter (Notification) of Award (LoA) can be issued.

7.3. Preliminary and Techno-commercial Evaluation

(Rule 189 of GFR 2017)

7.3.1. Preliminary Examination of Bids - Evaluation of responsiveness of Bids

1. A substantively responsive bid is complete and conforms to the Tender Document's essential terms, conditions, and requirements without substantive deviation, reservation, or omission. Only substantively responsive bids shall be considered for further evaluation. Other bids shall be treated as unresponsive and ignored. All bids received shall first be scrutinised to identify unresponsive bids, if any. Some important points based on which a bid may be declared as unresponsive and be ignored during the evaluation are:

a) The bid is not in the prescribed format or is unsigned or not signed as per the stipulations in the tender document;
b) The required EMD has not been provided or exemption from EMD is claimed without acceptable proof of exemption;
c) The bidder is not eligible to participate in the bid as per the eligibility criteria that have been laid down (including conflict of interest and other provisions of CIPP). In case procurement is on a limited tender basis or where procurement is restricted to pre-approved vendors, it should be especially ensured that there is no conflict of interest;
d) The bid departs from the essential requirements specified in the tender document (for example, the bidder has not agreed to give the required performance security); or
e) Against a schedule in the list of requirements in the tender enquiry, the bidder has not quoted for the entire requirement as specified in that schedule (example: in a schedule, it has been stipulated that the bidder will supply the equipment, install, and commission it and also train the purchaser's operators for operating the equipment. The bidder has, however, quoted only for supply of the equipment).
f) Bidder has quoted conditional bids or more than one bid or alternative bids unless permitted explicitly in the Tender Document.
g) The bid validity is shorter than the required period. However, in case of STE procurement, shorter bid validity may be accepted.
h) Non-submission or submission of illegible scanned copies of stipulated documents/ declarations.
i) The bid has unresolved substantive deviations (please refer to sub-para 4-b below).

2. **Non-conformities between Figures and Words:** Sometimes, non-conformities/errors are also observed in responsive tenders between the quoted prices in figures and in words. This situation normally does not arise in case of e-Procurement. This should be taken care of in the manner indicated below:
   a) If, in the price structure quoted for the required services, there is discrepancy between the unit price and total price (which is obtained by multiplying the unit price by the quantity), the unit price shall prevail and the total price corrected accordingly;
   b) 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
   c) If there is a discrepancy between words and figures, the amount in words shall prevail.
   d) Such a discrepancy in an offer should be conveyed to the bidder asking him to respond by a target date and if the bidder does not agree to Procuring Entity’s observation, the tender is liable to be rejected.
3. **Discrepancies between Original and Additional/ Scanned Copies of a Tender:** Normally, as far as feasible, no submission of original documents in physical format (other than Cost of Tender Documents, if any, (refer Para *5.2.1* Availability and Cost of Tender Documents), Bid Security and statutory certificates if any, should be asked for in e-Procurement. In e-Procurement there could be discrepancies between the uploaded scanned copies and the Originals submitted by the bidder. In offline tenders, discrepancies may be observed in responsive tenders between the original copy and other copies of the same tender set. If discrepancies exist between the uploaded scanned or other copies and the originals submitted by the bidder, the original copy's text, etc., shall prevail. Here also, this issue is to be taken up with the bidder in the same manner as above and subsequent actions taken accordingly. Any substantive discrepancy shall be construed as a violation of the Code of Integrity, and the bid shall be liable to be rejected as nonresponsive in

addition to other punitive actions under the Tender Document for violation of the Code of Conduct.

4. **Deviations/ Reservations / Omissions - Substantive or Minor**:
   a) During the evaluation of Bids, the following definitions apply:
      i) “Deviation” is a departure from the requirements specified in the Tender Document;
      ii) “Reservation” is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the Tender Document; and
      iii) “Omission” is the failure to submit part, or all the information or documentation required in the Tender Document.
   b) **Substantive Deviations**: A deviation/ reservation/ omission from the requirements of the Tender Document shall be considered as a substantive deviation as per the following norm, and the rest shall be considered as Minor deviation:
      i) which affects in any substantive way the scope, quality, or performance of the product;
      ii) which limits in any substantive way, inconsistent with the Tender Document, the Procuring Entity's rights, or the Bidder's obligations under the contract; or
      iii) Whose rectification would unfairly affect the competitive position of other Bidders presenting substantively responsive Bids.
   c) The decision of the Procuring Entity shall be final in this regard. Bids with substantive deviations shall be rejected as nonresponsive.
   d) Variations and deviations and other offered benefits (techno-commercial or financial) above the scope/ quantum of the services specified in the Tender Document shall not influence evaluation Bids. If the bid is otherwise successful, such benefits shall be availed by the Procuring Entity, and these would become part of the contract.
   e) During the preliminary examination, some minor infirmity and/or irregularity and/or non-conformity may also be found in some bids. 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.
   f) **Considering Minor Deviations:** There have also been cases where the bidder submitted the amendment Bank Guarantee but omitted to submit the main portion of the document. The court ruled that this was a minor irregularity. The court has consistently taken the view that the procuring entity is entitled to consider and allow minor deviations that do not amount to substantive deviations. The Procuring Entity reserves the right to accept bids with such minor issues provided they do not constitute any substantive deviation, do not have a fiscal impact, do not prejudice or affect the ranking order of the bidders and do not grant the bidder any undue advantage vis-à-vis other bidders and the Procuring Entity. Wherever necessary, the Procuring Entity shall convey its observation on such ‘minor’ issues to Bidder as per para 7.3.2 below. If the Bidder does not reply by the specified date or gives an evasive reply without clarifying the point at issue in clear terms, that bid shall be liable to be rejected as nonresponsive.

7.3.2. Clarification of Bids/Shortfall Documents:

1. During the evaluation and comparison of bids, the purchaser may, at his discretion, ask the bidder for clarifications on the bid, in a consolidated manner, ordinarily not more than once. The request for clarification shall be given in writing by registered/ speed post/ courier/ email/ eProcurement portal (CPPP/ GeM), asking the bidder to respond by a specified date, mentioning therein that if the bidder does not comply or respond by the date, his tender will be liable to be rejected. Depending on the outcome, such bids are to be ignored or considered further. No change in prices or substance of the bid, which may grant any undue advantage to such bidder, shall be sought, offered, or permitted. No post-bid clarification at the initiative of the bidder shall be entertained.
2. The Procuring Entity reserves its right to, but without any obligation to do so, seek any shortfall information/ documents only in case of historical documents that pre-existed at the time of the Bid Opening, and which have not undergone change since then. Provision may be made by e-Procurement portals to allow shortfall documents to be asked for (specifying a target date for submission, as in sub-para above) and taken from any bidders after the technical bid opening. (Example: if the Permanent Account Number, registration with GST has been asked to be submitted and the bidder has not provided them, these documents may be asked for with a target date as above). As far as the submission of documents is concerned regarding qualification criteria, after submission of the bid, only related shortfall documents should be asked for and considered. For example, if the bidder has submitted a supply order without its completion/performance certificate, the certificate can be asked for and considered. However, no new supply order should be asked for to qualify the bidder.
3. Ministries/ Departments/ CPSUs with a significant volume of procurement may develop a data-base of QR data of different bidders to minimize the time taken to ascertain QR compliance. Bidders may also be given viewing rights for its own data. In such case, over and above the documents submitted by the bidder in its bid, the above data-base may also be considered irrespective of the fact whether or not such data/details have been declared by the bidder in its bid.

7.3.3. Evaluation of eligibility:

Procuring Entity shall determine, to its satisfaction, whether the Bidders are eligible as per the eligibility criteria in the Tender Document to participate in the Tender Process. Tenders that do not meet the required eligibility criteria prescribed shall be rejected as unresponsive.

7.3.4. Evaluation of the Techno-commercial Bids

1. Only substantively responsive bids shall be evaluated for further evaluation.
2. **Evaluation of Qualification Criteria**:
   a) Bids with substantive techno-commercial deviations shall be rejected as nonresponsive. Procuring entity reserves its right to consider and allow minor deviations in technical and Commercial Conditions (refer para 7.3.1-4-f).
   b) In evaluating the techno-commercial bid, conformity to the eligibility/ qualification criteria (subject to dispensation if any, for Start-ups, as per sub-para c) below, technical specifications, and Quality Assurance; and commercial conditions of the offered Services to those in the Tender Document is ascertained. Additional factors incorporated in the Tender Document shall also be considered in the manner indicated therein. Any criteria not specified in the tender shall not be used for evaluation or

qualification. This determination shall, inter-alia, consider the Bidder's Experience/ Past Performance, Performance and Financial Capabilities; for satisfying all requirements incorporated in the Tender Document. The determination shall not consider the qualifications of other firms such as the Bidder's subsidiaries, parent entities, affiliates, subcontractors (other than specialized subcontractors if permitted in the bidding document), or any other firm(s) different from the Bidder.

c) As per para 1.10.1-4-b), 1.10.4-2-b) and 5.1.9-5, the condition of prior turnover and prior experience may be relaxed[72] for Startups (only to startups recognized by the Department of Industry & Internal Trade (DPIIT)) subject to meeting quality & technical specifications and making suitable provisions in the tender document (*Rule 173 (i) of GFR 2017*). Startups may be MSEs or otherwise. Such relaxation can be provided in the case of procurement of works as well. It is further clarified that such relaxation is not optional but has to be ensured, except in case of procurement of items related to public safety, health, critical security operations and equipment, etc) where adequate justification exists for the Procuring Entity not to relax such criteria.

d) The Techno-commercial evaluation establishes whether a proposal passes the minimum qualifying mark (or technical score) provided for in the Tender Document. The Procuring Entity should be prepared to debrief bidders to explain the evaluation of their proposals.

e) For details of the qualification criteria please refer to the MTD for Non-consultancy Services.

3. **Evaluation of Conformity to Performance Standards and Quality Assurance:** The Procuring Entity shall examine the Performance Standards and Quality Assurance; Methods Statement, Work Plan, and Inputs Deployment Plans (Manpower, Machinery and Materials) to ensure conformity to performance standards and quality assurance.

4. **Evaluation of Conformity to Commercial and Other Clauses:** Bidder must comply with all the Commercial and other clauses of the Tender Document. The Procuring Entity shall also evaluate the commercial conditions quoted by Bidder to confirm that all terms and conditions stipulated in the Tender Document have been accepted without substantive omissions/ reservations/ exception/ deviation by the Bidder. Deviations from or objections or reservations to critical provisions identified in the Tender Documents will be deemed to be a material deviation. If critical provisions are not explicitly stated in the Tender document, then these shall be taken to be Governing laws and Jurisdiction, Contractor's Obligations and Restrictions of its Rights, Performance Bond/ Security, Force Majeure, Taxes & Duties, and Code of Integrity). Only minor deviations may be accepted/allowed, provided these do not constitute substantive deviations as per para 7.3.1-4-f) above.

5. **Technical Evaluation Report and Declaration of Results:**

a) In a single envelope/cover tender, TC proceeds to evaluate the price aspects without a reference to CA at this stage. However, in case of a two envelop tender, the TC prepares a technical evaluation report of the "quality" of the proposals recording the scores given to each criterion and sub-criterion, as well as explain the decisions and take the competent authority's (CA) approval. For each proposal, the report also should substantiate the results of the evaluation and indicate technical weaknesses or deviations from the terms set out in the Tender Documents and comment on their

[72] OM No.F.20/2/2014-PPD (Pt.) dated 20.09.2016.

acceptability. This committee shall record in detail the reasons for acceptance or rejection of the bids analysed and evaluated by it. The CA may ask the TC to explain the report but should not request that scores be changed. It should review the TC's evaluation of each proposal (on technical, contractual, and other aspects). The CA should decide how any acceptable deviation in each proposal should be handled during contract formulation, in case that proposal is ranked first. The technical evaluation report is a confidential document, and its contents shall not be disclosed. All records relating to the evaluation, such as individual mark sheets, shall be retained until completion of the project and its audit. A sample format for preparation of technical evaluation report and financial evaluation report including award recommendation to the competent authority is given at Annexure 6.

b) **Declaration of Results:** 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). In the case of two-packet or two-stage tendering, Bid securities of unsuccessful bidders during the first stage, i.e., technical evaluation, etc., should be returned within 30 days of declaration of result of the first stage, i.e., technical evaluation etc, in terms of Para 6.1.1. The date/ time and place (or on the portal in case of e-procurement) are announced for the opening of Financial Bids in the presence of technically suitable bidders who are willing to attend the bid opening. Such a date should be two to five (5) days after the announcement.

7.4. Financial Evaluation

7.4.1. General Norms for Ranking of Financial Bids

1. The financial proposals shall be opened publicly (as per para 5.3 mutatis mutandis) witnessed by representatives of the technically qualified service providers who choose to do so. In off-line tenders, the Evaluation Committee demonstrably verifies that the financial proposals have remained sealed and then opens them.
2. For a time-based contract, any arithmetical errors shall be corrected, and prices shall be adjusted if they fail to reflect all inputs that are included in the respective technical proposals. For a lump-sum contract, the bidder is deemed to have included all prices in its/his financial proposal so neither arithmetical correction nor any other price adjustment shall be made.
3. For the purpose of evaluation, the total cost shall include all taxes and duties for which the Procuring Entity makes payments to the service provider and other reimbursable expenses, such as travel, translation, report printing, or secretarial expenses as indicated in the Tender document.
4. Unless otherwise stipulated, the comparison of the responsive Bids shall be on price criteria (except in case of QCBS selection – para 7.4.4 below) i.e., total outgo from the Procuring Entity's pocket, to be paid to the contractor or any third party, including all elements of costs as per the terms of the proposed contract, including any service charges, insurance, cost of incidental Works/ Goods, taxes, duties, levies etc. Financial Bids of all Techno-commercially suitable bids are evaluated and ranked to determine the lowest priced bidder.
5. Unless otherwise stipulated, if the Schedule of Requirements contains more than one schedule, the financial ranking of bids shall be done based on all schedules put together.

The bid for a schedule shall not be considered if the complete requirements prescribed in that schedule are not included in the bid;

6. If any bidder offers conditional discounts/ rebates in his bid or suo-motu discounts and rebates after the Bid Opening (techno-commercial or financial), such rebates/ discounts shall not be considered for ranking the offer. But if such a bidder does become L-1 without discounts/ rebates, such discounts/ rebates shall be availed and incorporated in the contracts;
7. Unless announced beforehand, the quoted price shall not be loaded based on deviations in the commercial conditions. If it is so declared, such loading of a financial bid shall be done as per the relevant provisions;
8. As per policies of the Government, from time to time, the Procuring Entity reserves its option to give purchase preferences to eligible categories of Bidders as indicated in the Tender Document.
9. Financial evaluation of Bids shall include and consider the following taxes/ duties, as per para 6.2:
   a) in the case of Services performed in India or incidental goods of foreign origin already located in India, GST & other similar duties, which shall be contractually payable, on the Services and incidental Goods, if a contract is awarded on the bidder;
   b) The offers shall be evaluated based on the GST rate quoted by each bidder, and the same shall be used for determining the inter-se ranking. The Procuring Entity shall not be responsible for any misclassification of HSN Number or incorrect GST rate if quoted by the bidder. Any increase in GST rate due to misclassification of HSN number shall have to be absorbed by the service provider; and
   c) If GST is quoted extra, but with the provision that it shall be charged as applicable at the time of delivery, the offer shall be evaluated for comparison purposes by loading the maximum existing rate of GST for the product/ HSN code.
10. **Price Variation:** If the bids have been invited on a variable price basis, they will be evaluated, compared, and ranked based on the position prevailing on the bid submission deadline and not based on any future date. If a Bidder submits a firm price quotation against the requirement of a variable price quotation, that bid shall be prima facie acceptable and considered further, taking the price variation asked for by the Bidder as nil.
11. **Ambiguous Financial bid:** If the financial bid is ambiguous and leads to two equally valid total price amounts, it shall be rejected as nonresponsive.
12. **Instances of Multiple L1s**: Rarely, there may be a tie at the lowest bid (L-l) position between two or more start-up/ non-start-up bidders. However, the method of selection of successful contractor in case of multiple L1 should be decided prior to issue of tender. It must be first determined whether it is a case of Cartel formation or anti-competitive practices, as per para 7.4.9 below, and if so, it shall be dealt with accordingly. If this is not a case of cartel formation, the following sequence of preference shall be adopted while considering the award of the contract:
   a) For Tender issued through NIC Portal/ manual basis:
      i) In case one of the L1 bidders is MSE owned by SC/ST or a Women Entrepreneur, then an order shall be placed on such bidder.
      ii) If one of the L1 bidders is MSE, then an order shall be placed on such bidders.

iii) Otherwise, the order shall be placed on the L1 bidder having a higher turnover in the previous financial year. In case there is a tie at the lowest bid (L-1) position between only startup bidders and none of them has past turnover, the order will be placed on the startup that was registered earlier with the Department of Industrial Promotion and Policy.

b) For Tenders having multiple L1s, issued through the GeM Portal: The tie-breaker methodology available on the GeM portal is to be followed.

7.4.2. Least Cost Selection (LCS)

Under the LCS procedures, the financial proposals will be ranked in terms of their total evaluated cost. The least cost proposal will be ranked as L-1 and the next higher and so on will be ranked as L-2, L-3 etc. The least cost proposal (L-1) will be considered for award of contract. The TC will put up a report on financial evaluation of the technically qualified service providers to the competent finance authority along with the recommendation that the least cost proposal (L-1) can be approved/ invited for negotiation and for final award of contract.

7.4.3. Single Source Selection (SSS)

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

7.4.4. QCBS Selection

1. Please refer to para 4.3.2 for the conditions permitted, for the use of QCBS selection in procurement of NC Services. That para also details competent authority and grounds for declaring a procurement as Quality Oriented Procurement (QOP), for use of QCBS method. That para also covers the role of STC (or Technical Committee in case of NC Services) for fixing parameters of the QCBS selection.
2. **Evaluation of QCBS Bids:** For evaluation, a suitable committee shall be constituted. However, members of the STC shall not be involved.
   a) **Joint Ventures:** Joint Ventures may be avoided in general in Non-consultancy services and particularly in QCBS system in NC Services. (Please refer to para 4.3.2 above)
   b) Since MII order is applicable 'where the bid is evaluated on price alone' – MII purchase preference would not be applicable where evaluation is based inter-alia on non-price criteria, e.g., QCBS or FBS in Services and Works.
   c) **Weightages:** As mentioned in para 4.3.2, the proposed weightages for quality and cost shall be specified in the Tender. Under QCBS selection, the technical proposals will be allotted weightage of not more than 30% (Thirty per cent) while the financial proposals will be allotted weightages of 70% (Seventy per cent) or more as declared in the Tender.
   d) **Qualifying Benchmark:** As mentioned in para 4.3.2, in QCBS selection, minimum qualifying marks (normally 70-80 (seventy – eighty) out of maximum 100 (hundred) marks) as qualifying benchmark for quality of the technical proposal shall be prescribed and indicated in the Tender Document along with a scheme for allotting marks for various technical criteria/ attributes. Bids scoring less than the minimum threshold shall not be considered for further evaluation. Since the weightage of the cost element adopted in NC services is as high as 70 (seventy) percent, financial considerations would dominate the selection, though to a lower extent as compared to LCS (Least Cost Selection – L1 basis). In such cases, it is essential to ensure that the minimum

qualifying marks in the evaluation is set sufficiently high, to weed out low quality bids with low prices.

e) **Evaluation of Quality Score:** Proposal with the highest technical marks (as allotted by the evaluation committee) shall be given a score of 100 (Hundred) and other proposals be given technical score that are proportional to their marks w.r.t. the highest technical marks.

f) **Evaluation of Financial Score:** Similarly, proposal with the lowest evaluated cost may be given a financial score of 100 (Hundred) and other proposals given financial scores that are inversely proportional to their prices w.r.t. the lowest offer.

g) **Weighted QCBS Score:** The total score, both technical and financial, shall be obtained by weighing the quality and cost scores and adding them up. On the basis of the combined weighted score for quality and cost, the service providers shall be ranked in terms of the total score obtained. The proposal obtaining the highest total combined score in evaluation of quality and cost will be ranked as H-1 followed by the proposals securing lesser marks as H-2, H-3 etc. The proposal securing the highest combined marks and ranked H-1 shall be recommended for award of contract. In the event two or more bids have the same score in final ranking, the bid with higher technical score will be H-1

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

$$B = \frac{Clow}{C} X \ + \ \frac{T}{Thigh}(1 - X)$$

where

C = Evaluated Bid Price

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

T = the total Technical Score awarded to the Bid

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

X = weightage for the Price as specified in the Tender Document

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

j) **Example:** Following example illustrates the evaluation of QCBS:

   i) In a particular case of selection of service provider, it was decided to have minimum qualifying marks for technical qualifications as 75 (Seventy-five) and the weightage of the technical bids and financial bids was kept as 30: 70 (Thirty : Seventy). In response to the Tender Document, three proposals, A, B & C were received. The technical evaluation committee awarded the following marks as under:

A: 75 Marks

B: 80 Marks

C: 90 Marks

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

A: 75/90 = 83 points

B: 80/90 = 89 points

C: 90/90 = 100 points

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

A: Rs.100.

B: Rs.104.

C: Rs.106.

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

A: 100/100 = 100 points

B: 100/104 = 96 points

C: 100/106 = 94 points

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

Proposal A: 83x0.30 + 100x0.70 = 95 points.

Proposal B: 89x0.30 + 96x0.70 = 94 points

Proposal C: 100x0.30 + 94x0.70 = 96 points.

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

Proposal A: 95 points: H-2

Proposal B: 94 points: H-3

Proposal C: 96 points: H-1

vii) Proposal C at the evaluated cost of Rs.106 (Rupees One hundred and six) was, therefore, declared as winner and recommended for approval, to the competent authority.

7.4.5. Global Tender Enquiry (GTE, International Competitive Bidding)

If stipulated in the TIS/ AITB that this is a Global Tender Enquiry (International Competitive Bidding), the following additional aspects of the evaluation of the financial offer shall also apply:

1. **Currency of Bid:** In GTE (Global Tender Enquiry), foreign bidders have the flexibility to quote prices and receive payments in either Indian Rupees or freely convertible currencies

such as US Dollars, Euros, Pound Sterling, Yen, other relevant currencies[73], or a combination thereof. However, prices for incidental goods/works (including Agency Commission) performed or sourced in India must be quoted and paid for in Indian Rupees. Indian bidders are required to quote in INR only. All offers are to be converted to Indian Rupees based on the "Bill currency selling" exchange rate on the bid submission deadline, quoted by a source as specified (if not specified, authorised exchange bankers approved by RBI) in the tender document.

2. **Evaluation of Offers**: Import of Goods or services or both attract integrated tax (IGST). The IGST rate and GST cess shall be applicable on the 'Customs Assessable Value' plus the 'Basic Customs duty applicable thereon.' The offers would be compared based on the principle of the total outgo from the Procuring Entity's pockets, including all applicable taxes and duties (Customs duty, IGST, and GST Cess).
3. **Agency Commission to the service provider:** Provisions contained in para 4.3.1-9 of the Manual for Procurement of Goods, 2024 maybe followed.

7.4.6. Evaluation of Concurrent Application: MSE and Make in India Policies

The concurrent application of the two procurement orders i.e., MSE Procurement Order of 2012 and PPP-MII Order may create confusion to the procuring entities on how to evaluate the bidders falling within the purview of both policies. To bring predictability both to the procuring entities as well as bidders, guidelines were issued by DoE[74]. These guidelines are explained in Annexure 21, along with examples in the annex thereto.

7.4.7. Reasonableness of Overall Bid Price Received

1. In every recommendation of the TC for an award of contract, it must be declared that the overall bid price recommended is reasonable. If the overall Bid price received is considered abnormally low, action may be taken as per para 7.4.8
2. If the successful bid as per evaluation criteria, is considered to be unreasonably high, then price justification may be called from the bidder. If the price justification is not acceptable, then either negotiations as per para 7.4.10 or reissue of tender for the identical or similar Services as per para 7.4.11 may be considered. In case cartel is suspected action as per para 7.4.9 may be taken.
3. In large value tenders, blind reliance on the cost estimate is not recommended for assessing reasonableness. More than one method of estimation of cost may be used to triangulate a reasonable price.

7.4.8. Consideration of Abnormally Low Bids

1. An Abnormally Low Bid (ALB) is one in which the Bid price, in combination with other elements of the Bid, appears so low that it raises material concerns as to the capability of the Bidder to perform the contract at the offered price. Procuring Entity may in such cases seek written clarifications from the Bidder, including detailed price analyses of its Bid price in relation to scope, schedule, allocation of risks and responsibilities, and any other

[73] The Central Board of Indirect Taxes and Customs in India (CBIC) issues Exchange Rate Notification under Customs Act, 1962, which lists currencies and exchange rates for imported goods in Schedule I – which may indicate relevant currencies for indicate. The current notification is Exchange Rate Notification No. 30/2024 - Customs (N.T.).

[74] Notified vide OM No.F.1/4/2021-PPD issued by Department of Expenditure dated 18.05.2023.

requirements of the bid 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, and evaluate the next higher bidder (and so on), at his/ their own quoted rate (and not by counteroffering rate of ALB), for award of contract. 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. Due care should be taken while formulating the specifications at the time of preparation of tender document to have a safeguard against the submission of abnormally low bid from the bidder.

2. In the case of predatory pricing as well, procuring entities may refer to the above consideration of Abnormally Low Bids to assist themselves in finalization of tenders[75].
3. No provisions should be kept in the Tender Documents regarding the Additional Security Deposit/ Bank Guarantee (BG) in case of Abnormally Low Bids. Wherever, there are compelling circumstances to ask for Additional Security Deposit/ Bank Guarantee (BG) in case of ALBs, the same should be taken only with the approval of the next higher authority competent to finalise the particular tender, or the Secretary of the Ministry/ Department, whichever is lower[76].

7.4.9. Cartel Formation/ Bid Rigging

1. The Competition Act defines bid rigging as agreements that have the effect of eliminating or reducing competition or adversely affecting or manipulating the process of bidding. There are various forms of bid rigging - Collusive bidding (dividing the market, setting prices, or limiting production – involves misrepresentation of independent bids); Bid Rotation/ suppression; Complementary Bidding; etc. (For details of legal aspects please refer to 'Appendix– 2: Legal Aspects of Public Procurement' of the Manual for Procurement of Goods, 2024)
2. Cartels implement this anti-competitive bid-rigging. Sometimes, a cartel of bidders quotes equal/ marginally different rates (pool rates) against a tender, whereas possibly:
   a) Rates quoted (and breakup thereof) are equal, despite their manufacturing/ logistics costs being different due to their scale of production/ location.
   b) The rate manages to be L1.
   c) In a variation, the rates may not be exactly equal but may be close enough to make the Cartel members L1, L2, L3, etc.
   d) Respective quoted quantities by these bidders are much less than the tendered quantity, leaving no option but to distribute quantities among these bids.
   e) Their bids have other uncanny similarities, i.e., the same layout or typographical errors. Bids from the same IP address raise suspicion, but by itself may not be a strong indicator of a cartel. In such cases, other factors mentioned in this para should be assessed to judge cartelisation.
3. If this rate is unreasonably high, this may be an attempt to force acceptance of higher rates by undermining the negotiating power of the buyer as per rules. Even when rates are reasonable, this may be an attempt to force the Procuring Entity to distribute quantities as decided by the bidders among them, even in tenders where splitting of quantities is not envisaged.

[75] In reference to OM No.F.12/17/2019-PPD issued by Department of Expenditure dated 06.02.2020

[76] Notified vide OM No. F.9/4/2020-PPD issued by Department of Expenditure dated 12.11.2020.

4. Cartels, by their very nature are secretive and thus it may not be possible to find the direct concrete evidence of their presence. The orders of the Competition Commission of India (CCI) clearly mention reliance on circumstantial evidence, both economic and conduct-based, to conclude the existence of a cartel agreement.
5. Such cartel formation/ pool rates abuse the transparency of Public Procurement and are a violation of the code of Integrity for Public Procurement. Such and similar tactics by bidders to avoid/ control true competition in a tender leading to an "Appreciable Adverse Effect on Competition" (AAEC) is an offence under the Competition Act, 2002.
6. Such abnormal practices need to be severely discouraged with strong measures. To discourage such practices, Procuring Entity may include in all tender documents a Cartel Formation/ Pool Rates clause, stating inter-alia that, Procuring Entity reserves its rights to take following actions, without assigning any reasons thereof, in case a Cartel/ Anti-competitive practice is suspected in a tender:
   a) Specify in Tender Document that are prone to such practices, that bidders must bid for at least a quantity that is more than a minimum specified percentage (say 25%) of the tendered quantity, otherwise their offer shall be rejected.
   b) Warn that Procurement Entity may take any/ all punitive actions available under the Code of Integrity for Public Procurement against such bidders, including removal from the list/ panel of registered sources or debarment, besides reporting the transgression to Competition Commission, and concerned trade associations like FICCI, ASSOCHAM, NSIC for suitable punitive action.
   c) Please note the following in para 7.4.10-2 below:

      In no case, including where cartel 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.
   d) Procuring Entity may decide the tender as per one or more of following provisions:
      i) Reject all bids from the suspected cartel formation and decide the tender accordingly.
      ii) place order on any one or more firms (from among the cartel) for any quantity with exclusion of the rest, with or without negotiation or counteroffering.

      Note: The selection of firms for this may be based on a transparent logistics parameter i.e., quicker delivery, nearer location of source, relatively better past performance, etc.
      iii) Whenever tender is floated for purchase exclusively from pre-qualified/ approved sources, and cartel formation is suspected among such sources, Procuring Entity may place orders on sources outside the pre-qualified/ approved sources for any quantity.
      iv) Wherever a specified ratio for splitting of quantities among 2/ 3 sources is stipulated in the tender document, and cartel formation is suspected among lower 2/3 bidders, place order on any number of firms beyond such ratios or decide tender as per sub para-i) or ii) above.
7. Certain Procurement decisions facilitate Cartel formation. Need Assessment and Procurement Planning is the main stage where this menace can be addressed effectively. Please refer to para 2.4.1-7.

7.4.10. Negotiations for Reduction of Prices (Rule 173 (xiv) of GFR 2017)

1. Negotiation with bidders after bid opening must be severely discouraged. However, in exceptional circumstances where price negotiation (including in post Reverse Auction tenders) is necessary due to some unavoidable circumstances, it 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.
2. In no case, including where cartel 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.
3. The circumstances where price negotiations may not be considered except under following exceptional circumstances:
   a) Where, L1 price is not considered to be reasonable, and
   b) the procurement is done on nomination basis or
   c) Procurement is from single or limited sources; or
   d) Where there is suspicion of cartel formation which should be recorded, following provisions of para 7.4.9 above.
4. 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 immediate requirements. The balance bulk requirement should, however, be procured through a re-tender, following the normal tender process.
5. 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, ordering negotiations, or calling for a re-tender and a definite timeframe should be indicated.
6. 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, 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. Similarly dynamic bids in Reverse Auction process as per para 4.6.2 and matching of L1 price as per para 7.4.6 above are not to be considered as negotiations.
7. After the CA has decided to call a specific bidder for negotiation, the following procedure should be adopted:
   a) It must be understood that, if the period of validity of the original offer expires before the close of negotiations, the original offer will not be available for acceptance. The period of validity of the original offer must, therefore, be extended, wherever necessary, before negotiations;
   b) The bidder to be called in for negotiations should be addressed as per the format of letter laid down in Annexure 14, so that the rates originally quoted by him shall remain open for acceptance in the event of failure of the contemplated negotiation;
   c) A negotiations meeting should be started only after obtaining a signed declaration from the negotiating service provider as per Annexure 14; and

d) Revised bids should be obtained in writing from the selected bidders at the end of the negotiations in the format of letter laid down in Annexure 15. The revised bids so obtained should be read out to the bidders 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 considered. In case a bidder does not submit the revised bid, its original bid shall be considered.

7.4.11. Cancellation of Procurement Process/ Rejection of All Bids/Re-tender (Rule 173 (xix) of GFR 2017)

1. The Procuring Entity has the right to cancel the process of procurement or reject all bids at any time before intimating acceptance of successful bid under circumstances mentioned below. However, such rejections should be well considered and normally be in cases where all the bids are either substantially in deviation to the Services and Activities Schedule or considered unreasonably high in cost and, if in the latter case, the lowest qualified bidder during negotiations fails to reduce the costs to a reasonable level. If it is decided to re- invite the bids, the Services and Activities Schedule should be critically reviewed/modified so as to address the reasons of not receiving any acceptable bid in the earlier Invitation for bids. The Procuring Entity may cancel the process of procurement or rejecting all bids under circumstances mentioned below:
   a) If the quantity and quality of requirements have changed substantially or there is an un-rectifiable infirmity in the tender 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 based on the number of Bidders. (Please refer to para 7.2.7 above also regarding receipt of a single offer).
   e) the Bids'/Proposals' prices are substantially higher than the updated cost estimate or available budget;
   f) If the bidder, whose bid has been found to be the lowest evaluated bid (L1) or Highest scorer (H-1) 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 (Para 7.5.3) or otherwise withdraws from the procurement process (para 7.2.6), the Procuring Entity shall deal the case as per para 7.2.6-3).[77].
2. 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. It may be noted that once a Tender is retendered, the bids in the old tender cannot be revived and reconsidered, as per the Indian Contract Act, even if prices received in the new tender turn out to be higher.
3. Approval for re-tendering should be accorded by the CA based on the reasons/proper justification in writing. The decision of the procuring entity to cancel the procurement shall

[77] Notified vide OM No. F.1/1/2021-PPD issued by Department of Expenditure dated 21.04.2022.

be immediately communicated to all bidders that participated in the procurement process and bids if not opened would not be opened and in case of manual tenders be returned unopened. Bid securities, if any, should also be returned without delay.

4. Before retendering, the procuring entity should first 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 tendering, and so on, were fulfilled. If not, a fresh enquiry should be issued only after rectifying the deficiencies.

7.5. Award of Contract

7.5.1. LoA to Successful Bidder

1. Before a final award is announced, the technical and financial credentials of the selected bidders/ service provider should be crosschecked to the extent feasible. The Procuring Entity may, at its discretion, ask Bidder to submit for verification the originals of all such documents whose scanned copies were submitted online. If so decided, the photocopies of such self-certified documents shall be verified and signed by the competent officer and kept in the records as part of the contract agreement. If the Bidder fails to provide such originals or in case of substantive discrepancies in such documents, it shall be construed as a violation of the Code of Integrity. Such bid shall be liable to be rejected as nonresponsive in addition to other punitive actions in the Tender Document. The evaluation of Bids shall proceed with the subsequent ranked offers.
2. Prior to the expiry of the period of bid validity, the successful bidder will be notified (briefly indicating therein relevant details such as quantity, description of the services ordered, prices, and so on) in writing by a registered letter or any other acknowledgeable and foolproof method that his bid has been accepted. Legal communication of acceptance of the offer is considered complete as soon as it is submitted to postal authorities (please refer to para 2.9-1) of ‘Appendix– 2: Legal Aspects of Public Procurement’ of the Manual for Procurement of Goods, 2024). A template for the Letter of Acceptance (or Notice of Award, or Acceptance of Tender) is given in Annexure 16. In the same communication, the successful bidder is to be instructed to furnish the required performance security within a specified period (generally 14 (fourteen) to 28 (twenty-eight), depending on the amount). Letter of Award - LoA shall state the sum (hereinafter and in the contract called the "Contract Price") that the Procuring Entity shall pay the contractor in consideration of the supply of the Services. The Letter of Award (LoA) shall constitute the legal formation of the contract if it is not conditional on submission of Performance Security (as in tenders below Rs 50 Lakhs). In case Performance Security is stipulated it would amount to a contract only after the furnishing of performance security as per the provisions of the para 7.5.3 below. The Procuring Entity, at its discretion, may directly issue the contract subject only to the furnishing of performance security, skipping the issue of LoA.
3. The value of Contract should include Taxes/ duties/ levies, if any.
4. In respect of contracts for purchases valued Rupees Five (5) lakhs and above, where tender documents include the GCC, SCC and schedule of requirements, the letter of acceptance will result in a binding contract. All delivery liabilities would be counted from the date of LoA.

5. It shall be mandatory for the successful bidder to get registered on GeM and obtain a unique GeM Seller ID. before the placement of LoA or the contract. This ID shall be incorporated in the contract.

7.5.2. Publication of Award of Contract and Return of EMD of Unsuccessful Bidders (Rule 173 (xviii) of GFR 2017)

1. **Mandatory Publication of Award of Contract:** The details of award of contract and name of the successful bidder should be mentioned mandatorily on the CPPP/ GeM (as relevant) and in the notice board/bulletin/website of the concerned Ministry or Department/e-Procurement Portal.
2. **Exceptions to Publishing of Award of Contract:** In case publication of such information is sensitive from commercial or security aspects, dispensation may be sought from publishing of such results by obtaining sanction from the Secretary of the Department with the concurrence of associated Finance. Open, transparent declaration, of price, sources, and delivery schedule of Central Public Sector Enterprises (CPSEs) service provider s as per extant instructions adversely impacts ability of CPSEs to compete in highly competitive market. CPSEs are denied a level playing field. At the time of tender formulation, commercial organisations like CPSEs will disclose whether the subject of procurement is for commercial re-sale. Contract Award details of such cases may be shared on electronic Procurement Portals such as GeM, Central Public Procurement Portal (CPPP) etc. after six (06) months of finalization of procurement. Such a system shall protect financial data of the CPSEs for a reasonable time while also complying with requirement of transparency.
3. **Bid Securities:** 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 in terms of para 6.1.1 above. The successful service provider's bid security shall be adjusted against the SD or returned as per the terms of the tender documents.

7.5.3. Performance Security

The service provider receiving the LoA is required to furnish the required performance security, if it is part of tender conditions, in the prescribed form within period prescribed in the tender document (generally 14 (fourteen) to 28 (twenty-eight), depending on the amount), as per para 6.1.2 above. In case performance security is not submitted within the stipulated time, procuring entity may pursue the contractor upto a reasonable grace period further for submission. In case the firm fails to submit the requisite Performance Security even thereafter or fails to sign the contact it may be treated as withdrawal of offer by L1 bidder, and the tender may be reinvited (refer para 7.2.6-3), besides taking necessary punitive actions including forfeiture of EMD against such bidders.

7.5.4. Acknowledgement of Contract by Successful Bidder and Execution

1. After the successful bidder is notified that his bid has been accepted, he will be sent an agreement in duplicate for signature and return, incorporating all agreements between the parties.
2. The service provider should acknowledge and unconditionally accept, sign, date and return the agreement within 14 (fourteen) days from the date of issue of the contract in case of OTE and 28 (twenty-eight) days in case of GTE. Such acknowledgements may not be required in low value contracts, below Rupees Five (5) Lakh or when the bidders offer has been accepted in entirety, without any modifications. While acknowledging the

contract, the service provider may raise issues and/or ask for modifications against some entries in the contract; such aspects shall be immediately be investigated for necessary action and, thereafter, the service provider's unconditional acceptance of the contract obtained. If both parties (Procuring Entity and the service provider) simultaneously sign the contract across the table, further acknowledgement from the service provider is not required. It should also be made known to the successful bidder 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 (as per para 7.2.6-3). Procuring Entity may also consider getting the contract digitally signed.

3. 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" in case of Ministry/ Department 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 (Annexure 1). In case of CPSE and other organisations the contract shall be signed for and on behalf of the head of the organisation. No contract should be entered into by any authority which has not been empowered to do so.

7.5.5. Framing of Contract

The following general principles should be observed while entering into contracts:

1. Any agreement shall be issued strictly as per approved TC recommendations, be vetted by the Associated/ integrated Finance, and approved by CA. The terms of contract must be precise, definite and without any ambiguities. The terms should not involve an uncertain or indefinite liability, except in the case of a cost-plus contract or where there is PVC in the contract. In other words, no contract involving an uncertain or indefinite liability, or any condition of an unusual character should be entered into without the previous consent of the Associated/ integrated Finance.
2. In the Non-consultancy Services contract, the accepted Services and Activities Schedule and methodology etc are laid down in form of 'Description of Service'. Therefore, before the contract is finally awarded, discussions may be necessary with the selected bidder to freeze these aspects, especially when, it is discouraged during evaluation of technical proposals to seek clarifications on these matters. However, such technical discussions do not amount to negotiations in the sense, the word is used in Procurement of Goods and Works. These discussions should not have financial ramifications and are not an essential part of the selection process. In many cases, however, it is felt necessary to ensure meeting of minds with the selected bidder the Services and Activities Schedule, methodology, staffing, Procuring Entity's inputs, and special conditions of the contract. These discussions shall not substantially alter (or dilute) the original Services and Activities Schedule or terms of the offer, lest the quality of the final product, its cost, and the initial evaluation be vitiated. The final Services and Activities Schedule and the agreed methodology shall be incorporated in "Description of Services," which shall form part of the contract.
3. 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 Non-consultancy Services, above a threshold value, requiring the contractor to, without charge, replace, repair, or rectify defective goods/ works/services;
c) Payment of all applicable taxes by the contractor or service provider; and
d) for an unconditional power of revocation or cancellation by the Procuring Entity at any time on the expiry of six months' notice to that effect, when a contract is likely to endure for a period of more than two years, it should, wherever feasible, include a provision.

4. Standard forms of contracts should be invariably adopted, except in following cases:
   a) Authorities competent to make purchases may, at their discretion, make purchases of value up to Rupees Two and half (2.5) lakh by issuing purchase orders containing basic terms and conditions;
   b) With respect to contracts for purchases valued from Rupees One Lakh to upto Rupees Ten lakhs, where tender documents include the GCC, SCC, and schedule of requirements, the letter of acceptance will result in a binding contract, *provided no performance security is called for or due to be submitted*. All delivery liabilities would be counted from the date of LoA. (Rule 225 iv) b) GFR 2017).
   c) 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
   d) Copies of all contracts and agreements for purchases of the value of Rs. 50 (Rupees Fifty) lakh and above, and of all rates and running contracts entered into by civil Departments of the Government should be sent to the Accountant General.
   e) Copies of the LOA/Purchase Order should also be sent to the Jurisdictional Assessing Officer for GST, mentioned in the bidder's bid.

7.5.6. Audit Trails - Procurement Records

1. The procuring entity must 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.
2. However, many organisations now process procurements on their own eProcurement Portals. In such cases, taking printouts and making a physical file just for records may be counter-productive, provided the portals have provisions for audit trails. The documents and records to be maintained electronically or physically will include the following:
   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 tendering;
   d) Documents relating to pre-qualification and registration of bidders, if applicable;
   e) Particulars of issue, receipt, opening of the bids and the participating bidders at each stage;
   f) Requests for clarifications and any reply thereof including the clarifications given during pre-bid conferences;
   g) Bids evaluated, and documents relating to their evaluation; and

h) Contracts and Contract Amendments
i) Complaint handling, correspondences with clients, service providers, banks.

3. In organisations where physical files are still maintained, the Procurement file should start with the Indent and related documents. All subsequent documents relating to procurement planning; Copy of Tender Document and documents relating to its and formulation, publishing and issue/ uploading; Bid Opening; Bids received; Correspondence and documents (including Technical Evaluation and TC report) relating to pre-qualification, evaluation, Award of Contract; and finally, the Contract copy, should be kept on the file. In case of bulky Bids received, all bids received may be kept in a separate volume, with a copy of accepted bids later being put on the main volume. To maintain integrity of the records relating to Procurement, these files should be kept secure and for contract management a new volume of file may be opened to obviate frequent exposure of sensitive procurement file. In contract management volume, copies of successful bid, Tender Committee Report, Contract may also be kept for ready reference, besides correspondence and documents relating to Contract Management and its closure.

7.6. Evaluation of Bids and Award of Contract – Risks and Mitigation

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

Risks	Mitigation
	proposed key experts, the proposal should be termed as non-responsive and rejected at the technical evaluation stage.
4. **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 (COI).	TC should give an undertaking at the appropriate time (as per para 7.2.4-3) that none of the members has any COI with the companies/agencies participating in the tender process. Any member having an COI with 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.
5. **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.
6. **Unwarranted retendering:** Rejecting all bids and calling for retendering on the pretext of prices being high, change of specifications, budget not being available, and so on.	Please refer to para 7.4.11 regarding safeguards against this. In case a procurement is rebid more than once, approval of one level above the CA may be taken. Please also see the complaint mechanism.
7. **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 tender documents beforehand.
8. **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

Risks	Mitigation
	be held with L-1. In case of L-1 backing out, there should be re-tendering.
9. **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 tender 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.
10. **Anti-competitive practices:** Bidders, which would otherwise be expected to compete, secretly conspire to frustrate the buyer's attempts to get VfM in a tender process. Anti-competitive conspiracies can take many forms. Sometimes the officers involved in procurement may be part of such collusion. a) **Bid coordination:** The bidders collude to the quote same or similar rates that are much higher than the reasonable price to force the buyer to settle the procurement at exorbitant prices. b) **Cover bidding:** Cover bidding is designed to give the appearance of genuine competition by way of supporting bids for the leading bid-rigger. c) **Bid suppression:** Bid suppression means that a company does not submit a bid for final consideration in support of the leading bid-rigger. d) **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. e) **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 8: Special Types of Non-Consultancy Procurements

8.1. Expression of Interest (EoI) for Shortlisting of Service Providers

8.1.1. Expression of Interest (EOI) Process

1. Unlike Procurement of Consultancy Services, procurement of Non-consultancy services is done by a simpler process akin to those of procurement of Goods and Works. *(Rule 206 of GFR 2017)*. It is normally done in Single Stage Two-envelope Tendering containing Technical and Financial bids. In highly technical and complex services, where quality is important (say in studies like seismic surveys, airborne data acquisition etc), there is a danger of low-quality bids getting selected for award of contract by quoting unsustainably low price. In such situations, to ensure that competition is not vitiated by low-quality bids, competition may be restricted only among equally qualified bidders. Therefore, instead of publicly inviting all interested bidders to present their bids; the EOI shortlisting process (similar to procurement of consultancy services) involves obtaining limited number of proposals from a pre-qualified firms that, in the Procuring Entity's view of experience, are capable and can be trusted to deliver the required services at the desired level of quality.
2. These considerations can be best addressed through competition exclusively between qualified shortlisted firms or individuals in which selection is based on the quality of the proposal and, where appropriate, on the cost of services to be provided. Such procurement needs to be done in a two-phase process. In the first phase of procurement (the EOI stage), the qualified firms are shortlisted transparently. In the second phase bids (Technical and Financial) are solicited from such shortlisted bidders to select the winning bidder. Care should be taken to avoid formation of unreasonable qualification criteria prior to shortlisting of bidders that may lead to restricted participation.
3. (Rule 183 (ii) of GFR 2017) For procurement above Rs 50 (Rupees Fifty) Lakhs shortlisting is done in an openly advertised competitive shortlisting process called Expression of Interest (EoI), giving equal opportunity to all interested bidders to be considered for shortlisting. Under EoI the "Request for Expression of Interest" (REoI) is advertised on Central Public Procurement Portal (CPPP) and on Government E-Market (GeM). An organisation having its own website should also publish all its advertised tender enquiries on the website. The advertisements for invitation of tenders should give the complete web address from where the bidding documents can be downloaded. A complete Services and Activities Schedule should be ready before requesting EoI. Attention of known reputed Service Providers may also be separately drawn wherever possible. The advertisement must include, among other things, the last date of submission of EoI, how to get/ download copy of the EoI document including Services and Activities Schedule, contact information of the Procuring Entity with the name of contact person, and so on. In case it is felt that likely Service Provider may not be available in India, the EoI process may be done on Global Tender Enquiry (GTE) process, by sending REoI notice to foreign embassies in India and Indian embassies in relevant countries. Please see restriction on floating GTE for tenders below Rs. 200 Crore, in the Manual of Procurement of Goods, second Edition. 2024.

4. Adequate time should be allowed for getting responses from interested bidders. The Procuring Entity shall make available copies of the EoI document to the interested bidders on its website/ eProcurement portal (GeM/ CPPP).
5. **Important Conditions of EoI:** Similar to Model Tender Document for Procurement of Consultancy Services, eligibility and qualification criteria for shortlisting should be specified in the EOI document.
6. **(Rule 201 (i) of GFR 2017)** In procurements of Non-consultancy services below Rs 50 (Rupees Fifty) Lakhs, shortlisting is done without a formal published Expression of Interest (EoI), akin to a Limited Tender Enquiry (LTE) process. To start with, the preparation of a long list of potential service providers may be done on the basis of formal or informal enquiries from other Ministries or Departments or Organisations involved in similar activities, Chambers of Commerce & Industry, Association of non-consultancy firms etc. The Procuring Entity should scrutinise the preliminary long list of likely contractors as identified above and shortlist the prima facie eligible and capable contractors from the long list. The number of service providers in this moderated long-list should not be less than three. In case sufficient service providers cannot be located, then the responses may be called from lesser number of bidders, but not less than three in any case, after taking CA's approval. If the complexity of the project so justifies, a formal EoI may be advertised as in sub-para 3) above, even for procurements below Rs 50 (Rupees Fifty) Lakhs, with the approval of CA.
7. **Empanelment of Service Providers**: To smoothen this shortlisting for NC services below Rs 50 (Rupees Fifty) Lakhs, Procuring entities who do frequent procurement of Non-consultancy services, may consider preparation of a panel of qualified Service Providers, after evaluation of their credentials, on the lines of registration of vendors in procurement of goods. 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[78].
8. The EoI document shall contain following sections:
   a) Letter of Invitation: It shall include a copy of the advertisement whereby service providers are invited to submit their EoI.
   b) Instructions to the Bidders: It may include instructions regarding nature of job; submission requirement; requirement of bid processing fees; if any; last date of submission; place of submission; and any related instruction;
   c) Description of Services - Brief Purpose and Scope of Work: This may include brief purpose/objective statement; Service Outcomes Statement; broad scope of work including Time-frames; inputs to be provided by the Procuring Entity; and expected deliverables of the assignment. This may also include the place of execution of the assignment. The request for EoI shall not include the Services and Activities Schedule.
   d) Qualification/ Shortlisting Criteria: This may clearly lay down the qualification/ shortlisting criteria which shall be applied by the Procuring Entity for short listing the service providers. The REoI should ask for sufficient information so that the Procuring Entity may evaluate the service providers' capabilities and eligibility to undertake the

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

assignment. Information should include: (a) core business and years in business; (b) qualifications in the field of the assignment; (c) technical and managerial organisation of the firm; and (d) general qualifications and number of key staff. In addition, the service providers should indicate information relating to their eligibility and any conflict of interest that they know may impact objective performance and impartial advice for their services. Service Providers should not be asked about their approach to the services or to submit any curricula vitae of key personnel, because these documents will be dealt with in the Tender stage. No legal documents such as certificates of incorporation of the firm, powers of attorney, financial statements, or translations of standard brochures should be requested. Given the often-large number of submissions, the advertisement should stress the importance of brevity of the information to be sent.

e) A sample format for seeking an EoI is given at *MTD for Procurement of Consultancy Services.*

8.1.2. Short List of Service Providers

1. The Procuring Entity shall evaluate the service providers for shortlisting, inter-alia, based on their past experience of handling similar types of projects, strength of their manpower and financial strength of the firm. For example, it is important to find out if the firm: (i) is a small specialised firm or a large firm with access to a pool of expertise; (ii) has been in business for an extended period and has a track record in the field of assignment and in the region; and (iii) has appropriate certification in in-house quality control (firm adheres to the requirement of International Organization for Standardization - ISO) as relevant to the task and has an ethics code in place.
2. It is important for the Procuring Entity to hire service providers by writing a clear Description of Service (objectives and Scope) and shortlisting criteria.
3. Finally, if the same firm is considered for concurrent service packages, the Procuring Entity shall assess the firm's overall capacity to perform multiple contracts before including it in more than one short list. However, this needs to be pre-declared in the EoI documents.
4. The Procuring Entity may assign scores to the response of each service provider based on weightages assigned to each of the criteria in the EoI. Each criterion may be sub-divided into sub-criteria, if called for. Normally, the weightages shown in Table 1 may be used for such an evaluation (this is just an indicative criterion to assist the evaluators. The criteria and their weightage may be changed as per the need of Procuring Entity).

Table 2. Qualification criteria and their weightages

Sl. No.	**Criteria**	**Weightage**	
	Sub-criteria	**Criteria Total**	**Sub-criteria**
1	Past experience of the service provider (track record)	60%	

	• Number of years' relevant experience
	• Past experience of services of similar nature
	• Past experience in carrying out
	  • Services in the related sector
	  • Services carried out in the region
			20%
			50%
			
			20%
			10%

2	General profile of qualification, experience, and number of key staff (not individual CVs)	25%	

Sl. No.	Criteria	Weightage	
	Sub-criteria	**Criteria Total**	**Sub-criteria**
	• Qualifications • Relevant experience		30% 70%
3	Overall financial strength of the service provider in terms of turnover, profitability, and cash flow (liquid assets) situation	15%	
	Turnover figure for Last three Years.		50%
	Net Profit Figure for Last three years		50%
	Totals	100%	

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

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

6. However, this exercise of scoring is not merely for disqualification of firms below a threshold, but to establish the relative strengths and weaknesses of the applicants, in order to arrive at a robust short list of qualified service providers who have the required experience and qualifications to deliver the required services at the desired level of quality.
7. The short lists shall normally comprise at least three firms (*Rule 184 of GFR 2017*) but not more than eight (to avoid inordinate delays in evaluation of subsequent Tender). Subsequent Tender documents would be issued only to the shortlisted service providers.
8. The evaluation committee may submit its EoI Evaluation report to CA for approval. Tender Committee format at Annexure 6 can be mutatis-mutandis used for this purpose.

8.2. Single Source Selection (SSS)

1. Selection of service providers through direct negotiations does not provide the benefits of competition in regard to quality and cost, lacks transparency in selection, and could encourage unacceptable practices. The reasons for SSS and selection of a particular service provider must be recorded and approved by the CA as per the delegation of powers laid down at in DPFR/SoPP, prior to single tendering. Powers of procurement of SSS must be severely restricted. Therefore, single-source selection shall be used only in exceptional circumstance, where it is inescapable over competitive selections as discussed in sub-paras below.
2. When in a Project, continuity for downstream work is essential, the initial Tender document shall outline this prospect, and, if practical, the factors used for the selection of the service provider should take the likelihood of continuation into account. Continuity in the technical approach, experience acquired, and continued professional liability of the same service provider may make continuation with the initial service provider (subject to satisfactory

performance in the initial assignment) preferable to a new competition. For such downstream assignments, the Procuring Entity shall ask the initially selected service provider to prepare technical and financial proposals on the basis of Services and Activities Schedule for subsequent services, which shall then be negotiated.

3. If the initial assignment was not awarded on a competitive basis or if the downstream assignment is substantially larger in value, a competitive process shall normally be followed in which the service provider carrying out the initial work is not excluded from consideration if it expresses interest.
4. For selecting a service provider under this method, the Procuring Entity should prepare a full justification and take the approval of the competent authority as per the Annexure 2: Schedule of Procurement Powers (SoPP).
5. While selecting the service provider under this method, the Procuring Entity shall ensure that the service provider has the requisite qualification and experience to undertake the assignment. Normally the Procuring Entity shall adopt the same short-listing criteria as applied to similar assignments while evaluating the EoI.
6. Its CFA's (Competent Financial Authority) responsibility to ensure that a statement of all selections by nominations, every month are to be reported to Secretary/ Head of Ministry/ Department.

8.3. Selection of Individual service providers

1. Individual service providers are normally employed on assignments for which
   a) Teams of personnel is not required;
   b) No additional outside professional support is required, and
   c) The experience and qualifications of the individual is the paramount requirement.
2. The procedures for selecting individual service providers are similar to, but much simpler than, those for selecting service provider agency. Process of selection of Individual service providers entails:
   a) Preparing a Non-consultancy services package including the Services and Activities Schedule, time frame, number of person-months, budget, eligibility and qualification criteria and getting it approved by the CA;
   b) **Advertising:** Advertisement in such case should be given on Central Public Procurement Portal (CPPP) at www.eprocure.gov.in and on Government e-Marketplace (GeM). An organisation having its own website should also publish all its advertised tender enquiries on the website. The advertisements for invitation of tenders should give the complete web address from where the bidding documents can be downloaded.
   c) **Method of Selection:** They shall be selected through comparison of qualifications of at least three candidates among those who have expressed interest in the assignment or have been approached directly by the Procuring Entity. Capability is judged on the basis of professional background, experience, and, as appropriate, knowledge of the local conditions, such as local language, culture, administrative system, and government organisation. Selection will be carried out by the TC which will award marks for educational/ professional qualifications and experience and select the most suitable candidate for the assignment. The TC may also interview candidates and award marks for their performance in the interview and recommend the remuneration to be paid.

d) **Direct Negotiation:** Individual service providers may be selected on a direct negotiation basis with due justification in exceptional cases such as: (a) tasks that are a continuation of previous work that the service provider has carried out and for which the service provider was selected competitively; (b) emergency situations resulting from natural disasters; and (c) when the individual is the only service provider qualified for the assignment. Individual service providers may be (among others) independent service providers; service providers recruited from firms; or service providers recruited from academic, government, or international agencies.

e) **Staff or Associates of service provider Firms**: If the candidate is permanent staff or associates of a firm the conflict-of-interest provisions described in these guidelines shall apply to the parent firm.

8.4. Selection of Specialized Agencies/ Institutions

1. From time to time, Ministries/ Departments may need to recruit a specialized agency or institution to undertake a specific Non-Consultancy Service, for which it is particularly well suited. Such agencies may be Government/ Semi-Government Agencies, Universities or Professional Institutions.
2. In some cases, the agency or institution has access to special expertise or special backup and support facilities that make it worthwhile considering recruitment on an SSS basis. In such cases, there must be full justification that the use of SSS is in the best interests of Procuring Entity.
3. In cases, of Government and semi-Government Agency, SSS would be an appropriate method of recruitment.
4. Individual service providers recruited from agencies and institutions may be selected in the same way as any other individual service providers.

8.5. Selection of Non-governmental Organizations (NGO)

1. Non-governmental organizations (NGOs, not-for-profit organisations) may be hired for NC Services, if they express interest and/ or if the Procuring Entity finds their qualifications satisfactory. Assignments which emphasize experience in and bonding with grassroot historically disadvantaged communities, e.g., experience in community participation and in-depth local knowledge are typically attributed to NGOs and short lists may comprise NGOs entirely. In this case, the evaluation criteria of proposals should reflect the NGO-unique qualifications, such as the following:
   a) History of work with grassroots communities and evidence of satisfactory performance;
   b) Familiarity with participatory development approaches and low-cost technologies;
   c) Experienced staff conversant with the cultural and socioeconomic dimensions of beneficiaries;
   d) Committed leadership and adequate management;
   e) Capacity to co-opt beneficiary participation.
2. Procuring Entities may select NGOs using SSS, provided the approvals and procedures laid down for the same are followed. For example, SSS may be adopted to hire a local NGO for a very small assignment in a remote area where only one NGO is available, and competition is impractical.

8.6. Procurement Agents

1. **Consultancy or Non-consultancy**:
   a) Hiring of Procurement agents (PAs) can either be done as a Consultancy Service or Non-consultancy service, depending on the objectives and scope of assignment.
   b) **Consultants:** If the role of Procurement Agents primarily involves intellectual analysis, strategic planning, spend analysis, cost control, and advisory functions, it would be appropriate to hire them as Consultancy Services i.e. when they are asked to design/ implement new system or improve value for money or develop strategic procurement or carry out market building/ sourcing etc, where quality weightage of more than 30% is called for.
   c) **Non-consultancy**: On the other hand, if their responsibilities are only outsourcing of routine procedures without intellectual decision making, classifying them as outsourcing of Non-Consultancy Services would be suitable, i.e. when they only operate the existing procedures and crucial decisions are made by the client himself, where quality weightage can be 30% or less. In such a case please also refer to para 4.6.4 above.
2. **Specific Items:** Procurement Agents as outsourcing of Non-consultancy services, may be hired by the Procuring Entity to handle the procurement of specific items and generally working from their own offices, they are paid a percentage (either fixed or inversely proportional) of the value of the procurements handled or a combination of a percentage and a fixed fee. In such cases, they may be selected under QCBS.
3. **Outsourcing of Procurement Function**: When PAs provide support for whole project in a specific unit of Procuring Entity, they are usually paid based on the staff-months of effort provided, and they shall be selected following the appropriate procedures using QCBS and time-based contracts.

8.7. Inspection Agents

1. Hiring of Inspection agents (IAs) to inspect and certify goods before shipment or on arrival in the Procuring Entity country, is generally a Non-consultancy service, where their responsibilities are only operational/ procedural, standardized goods/ commodities, without intellectual decision making, i.e. when they only inspect within the established protocols, repetitive work without intellectual inputs where quality weightage can be 30% or less.
2. Inspection agents may be selected using QCBS. Payment is usually based on a percentage of the value of goods inspected and certified.

8.8. Housekeeping Services:

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

8.9. Manpower Outsourcing Services[79]

1. Hiring of manpower through contracts should be avoided to ensure no future legal problems as these employees may demand regularization afterwards. Even, if employed, there should be no direct correspondence with such people. Even I-cards should be issued indicating the person to be representative of the contractor (name of the contractor to be mentioned).
2. Least Cost System (LCS) should be considered for procurement of Manpower Outsourcing Service, wherever appropriate, especially in high value cases.
3. In the procurement of Manpower Outsourcing Service, the minimum service charges (minimum floor price, inclusive of transaction charges) may be fixed as 3.85% (inclusive of GST). The procuring entities can also fix the service charge above 3.85% with proper justification on file, wherever required. However, such charges should not exceed 7% (inclusive of GST) in any case[80].
4. There is no bar on award of tenders to lowest bidder, if he has quoted service charges more than the minimum prescribed service charges[81] in the tender document (i.e. 3.85% to 7%)
5. This stipulation of Minimum floor price is applicable only if standalone Manpower is procured (not for Manpower plus Materials contracts) that too on the basis of service charges.

8.10. Private Security Manpower Services

1. Security services offer protection for life and property against theft, pilferage, fire etc., safety to manpower, guiding visitors to the premises, regulating entry of unwanted visitors, salesmen and maintenance of visitors register. This is one of the most frequently outsourced Non-Consultancy services. The Private Security Agencies (Regulation) Act, 2005 (PSARA) regulates the functioning of private security agencies in India. A PSARA license and labour licence are required for any person or entity that wants to operate a private security agency in India. The state government (in which the agency will be operating) issues these licenses.
2. Due to Operational and administrative reasons, around 60,000 skilled Armed Forces Personnel (skilled to undertake security guards related duties) are retired (Ex Servicemen - ESM) every year to maintain a youthful profile of the Armed Forces. Security Agencies (with ESM Officer as proprietor and other ESM as Security Supervisors/ Guards) are empanelled for “Provision of Security Services” by (Directorate General Resettlement – DGR, Department of Ex Servicemen Welfare – DESMW) to facilitates resettlement of ESM. These agencies have to employ ESMs as security guards/ supervisors in at least 90% of the deployed workforce. DGR monitors these agencies through reports/ returns.
3. The ‘Empanelment Certificate’ by DGR is issued (only to eligible ESMs having labour licence and PSARA certification in the relevant State) for a duration of five years (05) or up to the date when ESM Proprietor turns Sixty (60) years whichever is earlier.

[79] DoE, MoF’s OM NO.F.6/1/2023-PPD Dt 06/01/2023

[80] DoE OM No. 6/1/2023-PPD dated 06.01.2023

[81] DoE OM No. 6/1/2023-PPD dated 17.01.2024

4. DGR empanelled agencies/companies are only eligible through DGR sponsorship. DGR empanelled agencies / companies are not eligible for participating in the Tender Enquiry directly i.e. without DGR sponsorship. DGR Sponsored security agencies do not need to fulfil minimum experience, minimum turnover qualifications.
5. Security Manpower Service for CPSEs is governed by orders from Ministry of Defence[82] and Department of Public Enterprise[83] (DPE). As per these instructions, CPSEs must avail Security Services only from DGR empanelled Ex-Servicemen (ESM) Security Service Providers.
6. Since these services are available on GeM, procurement of these services through "Security Manpower Service"[84] (under the Manpower Resource Outsourcing Service) functionality on GeM portal becomes mandatory. On this functionality, procuring Entity can upload their requirements in the web-based format. DGR issues a sponsorship letter to at least three ESM Service Agencies based their criteria to participate in such requirements on GeM.
7. Selection of a Service provider is based on the service charges quoted over the minimum wages. In no case service charges may be negotiated by CPSEs below the rate prescribed by DGR in its guidelines for empanelment of ESM Security Service Agencies from time to time (which is upto 10% at present). In the eventuality of all the DGR sponsored Agencies quoting the same rates, the Procuring Entity shall award the contract to the senior-most sponsored Agency. The order of seniority of sponsored agencies / private limited companies / corporation has been indicated in the sponsorship letter".
8. Rest of details in uploading requirements and finalising the contract are available on the GeM portal.

8.11. Vehicle Hiring for Office Use

1. **Mode of Procurement and Type of Contract**: One of the most common outsourcings is hiring of staff cars for use of the executives. The procurement of vehicles for office use on a monthly basis shall be carried out as a Rate Contract through an Open Tender Enquiry (OTE). This type of contract allows the procuring entity to hire vehicles at predetermined rates for a specified period, ensuring flexibility and cost-effectiveness.
2. **Contract Period**: The contract will initially be valid for one year, with the possibility of extension up to two times, contingent on performance and mutual agreement. Include provisions for early termination, due to unsatisfactory performance.
3. **Price Variation Clause (PVC):** To account for fluctuations in operational costs, such as fuel prices and wages, the contract will include a Price Variation Clause (PVC) based on acceptable indices. This ensures fair compensation for the service provider and continuity of service in case of significant changes.
4. **Bid Design**: Appropriate eligibility, qualification, and selection criteria will be defined. Requirements for vehicle quality, technical specifications, and driver standards will also be specified. Different car specifications may be outlined for varying purposes. A Service

[82] Ministry of Defence OM No.28(3)/2012-D(Res-1) dated 09.07.2012 and No. 28(75)/2020-D(Res-1) dated 13 May 2021.

[83] Department of Public Enterprise OM No.DPE-GM-12/0001/2016-GM-FTS-5410 dated 13.09.2018 and No. DPE-GM-12/0001/2016-GM-FTS-5410 dated 14.02.2019.

[84] https://mkp.gem.gov.in/services#!/browse/services_home_manp_se16760331/open

Level Agreement (SLA) will be included to define expectations and standards – which may cover – Uptime requirements; Monitoring and reporting, complaint response, resolution and escalation; penalties for non-compliance and KPIs.

5. **Basis of Payment**: Payment for hired vehicles will be based on daily rates, which include specified working hours per day (e.g., 10 hours) and a set distance (e.g., 100 kilometres per day), within an overall monthly limit of 3,000 kilometres. Rates for additional overtime hours or kilometres will also be specified. Additional charges, such as night service fees for specified hours (e.g., 11 PM to 6 AM), may also be included. Basic monthly charges, overtime/ night charges will be paid monthly, while payments for extra kilometres will be processed on a quarterly basis. Any net extra Kms (after adjusting any shortfall Kms) would be paid off at the end of quarter and any net shortfall in Kms, if any, during the quarter shall be carried forward to the next quarter.

8.12. Procurement of IT Hardware as a Service (HaaS)

8.12.1. Procurement of Integrated IT Project

Procurement of IT project (refer para 1.4-3-b)), involve considerable intellectual inputs, hence these should be handled as procurement of Consultancy Services. Such procurements are done using QCBS selection method with 80%:20% weightages for Quality: Price.

8.12.2. Hardware as a Service (HaaS)

When procuring IT Hardware as a Service (HaaS), the salient Non-consultancy service tender and evaluation conditions must be clearly defined to ensure compliance, competitiveness, and value for money. Given that HaaS involves the procurement of hardware on a subscription or lease basis, with service-level agreements (SLAs) and maintenance, the tender conditions must address both the hardware and the associated services. Suggested below are some generic conditions:

1. **Scope of Services**:
   a) Detailed Specifications: Clearly outline the specific IT hardware (e.g., desktops, laptops, servers, networking cabling/ equipment, UPS etc) required, along with their configurations and performance standards. Specify what software packages (including anti-virus and firewall software) would be included and that licence shall be kept valid during the contract period.
   b) Service Components: Define the service components such as installation, configuration, maintenance, repair/ replacement/ upgradation and dismantling/ removal at the end of contract period.
   c) Delivery and Deployment: Specify timelines for delivery, installation, and commissioning of hardware at specified locations.
   d) End-to-End Support: Include help desk, remote support, on-site support, and any additional managed services required as part of the contract.
   e) Training and Knowledge Transfer: Specify requirements for the service provider to train the procuring entity's staff on using the hardware, managing configurations, basic troubleshooting and accessing support services.
   f) Security and Compliance Requirements
   g) Data Protection: If any data is handled by the hardware or service provider, stringent data protection clauses must be included, ensuring compliance with relevant Indian regulations such as the Information Technology Act, 2000 and its associated rules.

h) Cybersecurity Standards: Specify the required cybersecurity measures and standards that the service provider must adhere to (e.g., ISO/IEC 27001 certification).
i) Audit Rights: Include clauses allowing the procuring authority to audit the service provider's performance, data security, and compliance with the contract at regular intervals.
j) Risk Management Plan: Require the bidder to submit a risk management plan to mitigate risks related to hardware failure, service disruptions, or cybersecurity threats.
k) Ownership Model: Clarify that the hardware is provided on a service model (HaaS), and the ownership and risks remain with the service provider throughout the contract period.
l) Service provider would keep the hardware insured at his cost.
m) Asset Tracking: Specify requirements for tracking and monitoring hardware assets, including provisions for upgrading hardware during the contract period.

2. **Contract Period**:
   a) Tenure: Specify the duration of the contract (e.g., 3 years, 5 years), indicating whether the contract is renewable and under what conditions. In case the Contract is decided on QCBS basis as per para 7.4.4, a longer contract period may be considered (say upto 10 years).
   b) Exit Clauses: Include provisions for early termination or contract extensions, based on performance.
3. **Service Level Agreement (SLA)**:
   a) Uptime Requirements: Define minimum uptime guarantees (e.g., 99.9% availability) and penalties for breaches.
   b) Response and Resolution Times: Set clear expectations for response times and resolution times for service requests and hardware issues (e.g., 4-hour response time for critical failures).
   c) Maintenance & Support: Include conditions for periodic preventive maintenance and replacement of faulty hardware at no additional cost.
   d) Monitoring and Reporting: Require regular performance reports from the service provider regarding hardware functionality, uptime, and SLA adherence.
   e) Penalties for Non-Compliance: Define penalties for failure to meet SLA requirements, delayed delivery, or non-compliance with other terms of the contract. Penalties could include financial deductions, contract termination, or blacklisting from future tenders.
4. **Payment Terms**:
   a) Subscription Model: Outline the payment model, typically on a monthly or quarterly subscription basis, with provisions for penalties in case of non-compliance with SLAs.
   b) Cost Inclusions: Define the total cost of the service, including hardware, software, service charges, taxes, transportation, and any other related costs.
   c) Milestone-based Payments: Payment may be linked to the achievement of predefined milestones such as delivery, installation, successful commissioning, periodic payment, dismantling/ removal at end of contract.
5. **Qualification and Evaluation Criteria**:
   a) Technical Qualification:
      i) Experience and Expertise: Bidders must have prior experience in providing IT Hardware as a Service (HaaS) to government departments or large enterprises. Minimum of 3 to 5 years' experience in managing similar contracts.

   ii) Certifications: Relevant certifications such as ISO 9001 (quality management) and ISO 20000 (IT service management) may be required to demonstrate adherence to quality and service standards.
   iii) OEM Authorization: If the bidder is not the Original Equipment Manufacturer (OEM), an authorization letter from the OEM must be submitted to ensure genuine hardware, warranty, and after-sales support.

b) Technical Evaluation Criteria:
   i) Compliance with Specifications: The bidder must meet all hardware configuration requirements, Service Level Agreements (SLAs), and support service expectations.
   ii) Scalability: The solution must be capable of accommodating future upgrades or expansions.
   iii) Vendor Performance: Past performance, compliance with SLAs, and customer satisfaction reports will be reviewed.
   iv) Demonstrations/PoC: Proof of Concept (PoC) or demonstrations may be required to assess functionality and performance of the proposed solution.

c) Financial Qualification and Evaluation: Financial Standing: The bidder must demonstrate strong financial health, with required turnover and profitability over the last 3 to 5 years, to ensure financial stability for the duration of the contract.

d) Financial Evaluation Criteria: The evaluation will focus on the Total Cost of Ownership (TCO) over the contract period, including hardware subscription fees, service charges, penalties, and other associated costs. The Least Cost Selection (L1) method can be employed, ensuring all technical qualifications are met first. Alternatively, a Quality and Cost-Based Selection (QCBS) method can be used, where technical parameters and financial bids are weighted (e.g., 30% technical and 70% financial) to select the best value proposal.

Chapter 9: Monitoring Non-consultancy Services Contract

9.1. Contract Management

9.1.1. The Purpose of Contract Management

1. The purpose of contract management is to ensure that the contract delivers the desired outcomes as per the terms and conditions of the contract. It also ensures that the payments made to the contractor match the performance. Implementation of the contract should be strictly monitored, and notices issued promptly whenever a breach of provisions occurs. Monitoring should ensure that contractor adhere to contract terms, performance expectations are achieved (such as timelines, quality of outcomes, discharge of Service Provider's contracted obligations, and so on) and any problems are identified and resolved in a timely manner. Without a sound monitoring process, there can be no assurance that "*we get what we pay and contract for and pay for only for what we get."*. Normally, the following issues are handled in management of Services Contracts:
   a) Contract Administration:
      i) Issuing the notice to proceed;
      ii) Meetings and Reviews
      iii) Amendments/ variations to the contract;
      iv) Obligations Control: Monitoring that key experts and contracted resources are actually employed.
      v) Safeguards for handing over Procuring Entity materials/ equipment to contractors;
      vi) Resolving problems faced by service providers;
      vii) Dispute resolution and arbitration;
      viii) Breach of contract, remedies, and termination of services prior to the end of the contract;
      ix) Contract closure upon completion;
   b) Scope Control and Quality Assurance:
      i) Deciding on possible modifications to scope of work and issuing contract variations;
      ii) Monitor that all services are delivered as per contract.
      iii) Quality assurance: Review quality of outcomes at inception phase, mid-term and final phase.
      iv) Service Level Agreement (SLA) monitoring.
   c) Time Control: Monitoring progress and delays in timelines/ milestones of assignment;
   d) Cost Control:
      i) Billing, payment and monitoring the expenditure vis-à-vis progress;
      ii) Release of final payment and guarantees (if any) and closing the contract;
   e) Post contract evaluation:
2. Due to lack of physically/ tangibly measurable outcomes in Services contracts, intense and continuous monitoring of the Contract by the Procuring Entity is essential for the success of the assignment. Suitable provision for this should be made in the contracts which should also take care of the need to terminate/ penalize the Service provider or to suspend payments till satisfactory progress has not been achieved. A Contract Monitoring Committee (CMC) shall be formed by the Procuring Entity to monitor the Contract. The

Procuring Entity should also designate a counterpart Project Manager with adequate technical qualification, managerial experience, and power and authority as the nodal person to interact with the service provider's team. A system of reporting may be developed so that a statement covering all ongoing Service contracts may be submitted within the Department in detail, so as to enable Management by Exception based on various Risk and Mitigation strategies pointed out at relevant process milestones in this manual. (Rule 195 of GFR 2017).

9.1.2. Contract Monitoring Committee – (CMC)

1. Rule 205 of GFR 2017 enjoins that the Ministry or Department be involved throughout the conduct of the contract and continuously monitor the performance of the contractor. The Procuring Entity shall constitute a CMC comprising at least three members at the appropriate level, including the user's representative, after the selection procedure is over for monitoring the progress of the contract. If considered appropriate, the Procuring Entity may select all or any of the members of TC as members of CMC. The Procuring Entity may also include individual experts from the government/private sector/ educational/research institute or individual service providers in the CMC. The cost of such members, if any, shall be borne by the Procuring Entity. The CMC shall be responsible for monitoring the progress of the assignment, to oversee that the assignment is carried out as per the contract, to assess the quality of the services, to accept/reject any part of assignment, to levy appropriate liquidated damages or penalty if the assignment is not carried out as per the contract and if the quality of services is found inferior and for any such deficiency related to the completion of the assignment.
2. For the assignments which are very complex and/or are of highly technical nature, the Procuring Entity may decide to appoint another qualified Consultant to assist the CMC in carrying out its functions.

9.2. Contract Administration

9.2.1. Issuing Notice to Proceed, Kick-off Meeting and Pre-requisites.

1. A notice to proceed is required to initiate Non-consultancy services. It is normally issued as soon as possible after the contract has been signed. After the issuance of the notice to proceed, the contract normally commences upon the arrival of the service provider team's members at the premises for the Procuring Entity, if so required under the description of services.
2. A kick-off meeting is held, where the parties discuss and make sure that they are on same page as far as the outcomes and the contract management issues are concerned. The Procuring Entity and the service provider agree on reporting and monitoring. Schedule of meetings and reviews are also laid down during this discussion.
3. Before issuing notice to proceed, the Procuring Entity and the service provider should check that all pre-requisites for the contract execution are in place:
   a) Supervising/monitoring arrangements (including CMC) are in place;
   b) Procuring Entity's counterpart staff (including counterpart project manager) are nominated and are available;
   c) Facilities to be provided by the Procuring Entity as per the contract are ready for use by the service provider;
   d) All parties involved in the assignment (users, security team and other relevant departments) are informed;

e) All key personnel needed at the beginning of the assignment are effectively engaged in the assignment as required by the Contract;
f) Guarantees and advance payments, if any, are implemented;
g) All authorisations (if needed) are provided.

9.2.2. Review of Inception Phase:

For more complex services, the work is divided into phases, of which one of the most critical is the inception phase. The inception phase covers the submission and review of the work plan with the Procuring Entity, and the initiation of the field work. The service provider shall submit to the Procuring Entity for approval a Program showing the general methods, arrangements, sequencing, and timing for all activities. The Services shall be carried out in accordance with the approved Program as updated. Resulting from the factual study of ground situation by the service providers, following issues will need resolution at end of the inception phase:

a) Overall, Scope of Work;
b) Work Plan and Staffing Schedule;
c) Specific Activity Schedule
d) Access to Professional and Logistic Support;
e) Working Arrangements and Liaison

9.2.3. Reporting and Monitoring of Progress

1. Monitoring of Contract should ensure that service provider s adhere to contract terms, performance standards are achieved (such as timely deliverables, service outputs/ outcomes, adherence to the proper procedure for submitting invoices, and so on), and any problems are identified and resolved in a timely manner. Without a sound monitoring process, there can be no assurance that the buyer has received what was contracted and is paying only for what is received. A sound system for monitoring the performance of the service provider s in a contract would also be useful in selecting a good service provider for future procurement of the same or similar materials. Implementation of the contract should be strictly monitored, and notices should be issued promptly whenever a breach of provisions occurs.

2. **Monitoring of progress:** The timing, nature, and number of reports that the service provider should provide are normally contained in the service contract. If the assignment is of a routine nature over a long period (for example, housekeeping services), then monthly, quarterly, and annual progress reports may be required. On the other hand, if the assignment is to implement a particular task, a more specific type of reporting may be required. Shortcomings in the quality of the work produced or deviations from the implementation schedule should be brought to the immediate attention of the CA, so that they can be addressed at the earliest opportunity.

3. **Costs of Delays in Contract Management Decisions**: Payments and decisions in contract management requested by the contractor s should be made within a reasonable time. An atmosphere of lackadaisical dilatory functioning in such matters is liable to lead to bidders quoting higher prices in future bids, besides delays in services and disputes in the contract.

4. **Monitoring Physical Outputs/ Outcomes:** Especially in Non-consultancy services, progress of physical outcomes/ outputs has also to be monitored. There should be a stipulation in the contract for large value contracts (magnitude to be specified), for the Service Provider to submit project specific monthly progress report of the contract 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:

a) Project information, giving the broad features of the contract.
b) Introduction, giving a brief scope of the work/ Services and Activities Schedule under the contract.
c) Progress of assignment through a bar chart for the next three quarters for as may be specified, showing the milestones, targeted tasks and up to date progress.
d) Progress chart of the various components of the assignment 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.
e) Plant and machinery statement, indicating those deployed, and their working status.
f) Man-power statement, indicating individually the names of all the key-staff. 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.
g) 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.
h) A statement showing the variations/ change requests 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, if any, the advances received and adjusted from the department, etc.
i) Progress photographs/ videography, in colour, of the various items/ components of the service outputs/ outcomes up to date, to indicate visually the actual progress of the contract. Use of Geotagging (adding geographical metadata - latitude and longitude coordinates) in photos, videos, reports, may help in monitoring physical progress on the ground. Such information would also be useful later during use of such facilities.
j) Quality assurance and quality control tests conducted during the month, with the results thereof.
k) Any hold-up shall be specified.
l) Dispute, if any, shall also be highlighted.

5. **Monitoring a Time-based Contract:** The performance of a time-based contract may depend on the progress in other contracts. In such situations, the mobilisation and demobilisation of resources/ key experts and time employed by them should be mobilised and monitored carefully. These situations could lead to claims and disputes.

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

9.2.4. Issuing Contract Amendments/ Variations

1. The formal method of making and documenting a change in the Non-consultancy services contract is through a contract variation. There are few Non-consultancy services contracts of any type that do not require a contract variation at one time or another. Contract variations are issued when there are agreed-upon changes in the scope of work, personnel inputs, costs, timing of the service delivery, or out-of-pocket expenditures. Normally, these relate to changes that have a cost implication, but when there is a significant change in the

timing of an activity or a particular output, these should also be recorded through a contract variation. No amendment to the contract should be made that can lead to a vitiation of the original tender decision or bestow an undue advantage on the contractor. Where it becomes necessary/ inescapable, any modification shall be carried out with the prior approval of the CA.

2. Variation of the contract can be done only with the consent of both parties, except for those changes for which right of Purchaser for suo-moto amendment (i.e. penalties etc.) is reserved in the Contract. Normally, the request for contract variation is prepared by the service provider and submitted to the Procuring Entity. However, these can also be initiated by the Procuring Entity, suo-moto. If the contractor does not raise objections within 14 days to any suo-moto modifications/ amendments made by the Procuring Entity, it shall be assumed that the contractor has consented to the amendment.

3. To take care of any change in the requirement during the contract period, there could be situations wherein variations in the scope of work becomes necessary. These situations should be dealt with objectivity and fairness and should not be considered to unduly push the vendor to undertake work or take risks which was not explicitly communicated in the tender document. At the same time the vendor should not consider this as an opportunity to unduly charge the Procuring Entity due to lack of available options. Generally, the value of the change request should not be more than plus/minus 15 (Fifteen) per cent. The Tender document should contain detailed mechanism through which such change requests would be carried out. The decisions of CMC (both technical as well as financial) should be considered as final. Wherever variation is done through such a committee, all the members should sign the minutes of the recommendations.

4. No amendment shall be binding on the Procuring Entity unless and until the same is written and signed/ authorised by a competent authority.

5. Any amendment to the contract may have, inter alia, financial/technical/legal implications. The indentor may be consulted regarding the technical implications. Associated/ integrated Finance's concurrence should be obtained before issuing any amendment that has financial implications/repercussions. Further, if considered necessary, legal opinion may also be sought.

9.2.5. Obligations Control:

1. **Unsatisfactory Performance by Personnel:** Poor performance may involve one or more particular staff from the service provider's team, or the whole team or non-participation by the main qualifying consortium/ JV member. Based on the provisions of the contract, the Procuring Entity will advise the service provider to take the necessary measures to address the situation. Poor performance should not be tolerated; therefore, the service provider should act quickly to comply with a reasonable request to improve the performance of the team or to replace any particular staff member who is not performing adequately. If the service provider fails to take adequate corrective actions, the Procuring Entity may take up the issue with the top management of the service provider and issue notice to rectify the situation and finally consider terminating the contract.
2. **Changes in Constitution/ Financial Stakes**: The Contractor must proactively keep the Procuring Entity informed of any changes in its constitution/ financial stakes/ responsibilities during the execution of the contract since that may vitiate the legal basis of the Contract. Where the contractor is a partnership firm, the following restrictions shall apply to changes in the constitution during the execution of the contract:

a) A new partner shall not be introduced in the firm except with the prior consent in writing of the Procuring Entity, which shall be granted only upon execution of a written undertaking by the new partner to perform the contract and accept all liabilities incurred by the firm under the contract before the date of such undertaking.
b) On the death or retirement of any partner of the contractor firm before the complete performance of the contract, the Procuring Entity may, at his option, terminate the contract for default as per the Contract and avail any or all remedies thereunder.
c) In case the contract not terminated as provided in Sub-para (b) above,
    i) the remaining partners should give a written undertaking to perform the contract and accept all liabilities (including those of the expired/ retired partner) incurred by the firm under the contract before the date of such an event.
    ii) notwithstanding the retirement of a partner from the firm, that partner shall continue to be liable under the contract for acts of the firm until a copy of the public notice given by him under Section 32 of the Partnership Act, has been sent by him to the Procuring Entity in writing or electronically.

3. **Obligation to Maintain Capability- Key Personnel, Critical Equipment:** The contract is awarded to the contractor based on specific "Capability- Key Personnel and critical Equipment". Such capability needs to be sustained during the contract period, for its smooth execution and performance. The Contractor is contractually bound to maintain such capability during the execution of the contract. Any change that would impact the performance and execution of the contract, should be proactively brought to the notice of the Procuring Entity within 7 days of it coming to the Contractor's knowledge. These changes include but are not restricted to change regarding any declarations in this regard made by it in its bid. Contractor should also indicate remedial measures he is taking in this regard, and how he proposes to ensure smooth execution of contract.
4. **Deployment of Resources and Penalty for Absence**:
    a) Service Provider must deploy the contracted resources, maintaining adequate records of attendance and audit trails.
    b) The service provider shall be liable for all kinds of dues payable in respect of all personnel provided under the contract and the Procuring Entity shall not be liable for any dues for availing the services of the personnel. The service provider should ensure that persons to be deployed are not alcoholic, drug addict and not indulge in any activity prejudicial to the interest of the Procuring Entity. The service provider shall ensure to get the Police verification for all the manpower deployed by them and the contractor should ensure that the manpower deputed should bear good moral character.
    c) **Penalty for absence:** In the case of absence (apart from allowed leaves) of a resource during project period, no payment will be made for the days a resource is absent (Daily wage will be calculated by dividing man month rate by number of working days in that month). In addition, a penalty (say 5% of the daily wage) per working day per resource will be levied on such absence. Fraction of a day in reckoning period in supplies shall be eliminated if it is less than half a day. Penalty would be deducted from the applicable payments.
5. **Obligations regarding Permits, Approvals and Licenses:** Contractor must obtain and keep current all permits, approvals and licences that are needed as per law for delivery of services.

6. **Avoiding Conflict of Interest:** Neither the contractor nor its Subcontractors nor the Personnel shall engage, either directly or indirectly, during the term of this Contract, any business or professional activities in India that would conflict with the activities assigned to them under this Contract and after the termination of this Contract, such other activities as may be stipulated in the contract.
7. **No Assignment/ Sub-contracting:** The contractor shall not, save with the previous consent in writing of the Procuring Entity, sublet, transfer, or assign the contract or any part thereof or interest therein or benefit or advantage thereof, in any manner whatsoever. He shall notify the Procuring Entity in writing, all sub-contracts awarded under the contract, if not already stipulated in the contract, in its original bid or later. Such notification shall not relieve the contractor from any of its liability, or obligation under the terms and conditions of the contract. Sub-contract shall be only for bought out items and incidental Works/ Services. Sub-contracts must comply with and should not circumvent Contractor's compliance with its obligations. If the Contractor sublets or assigns the contract or any part thereof without such permission, the Procuring Entity shall be entitled, and it shall be lawful on his part, to treat it as a breach of contract and avail any or all remedies thereunder.
8. **Indemnifying Procuring Entity regarding Intellectual Property (IPR):** All deliverables, outputs, plans, drawings, specifications, designs, reports, and other documents and software submitted by the contractor under this Contract shall become and remain the property of the Procuring Entity and subject to laws of copyright and must not be shared with third parties or reproduced, whether in whole or part, without the Procuring Entity's prior written consent. The contractor shall, not later than upon termination or expiration of this Contract, deliver all such documents and software to the Procuring Entity, together with a detailed inventory thereof. The contractor shall indemnify the Procuring Entity against any breach of third party's IPR. The Contractor (and its allied firms) shall maintain confidentiality and secrecy of Procuring Entity's information provided to it (or that it comes across during execution of Contract).
9. **Performance Security**:
    a) The Contractor must maintain the Performance Security of the required amount in specified format during the currency of the Contract. In the event of any amendment issued to the contract, the contractor shall furnish suitably amended value and validity of the Performance Security in terms of the amended contract within twenty-eight days of issue of the amendment.
    b) If the contractor during the currency of the Contract fails to maintain the requisite Performance Security, it shall be lawful for the Procuring Entity at its discretion at its discretion to either terminate the Contract for breach of contract and avail any or all contractual remedies, or without terminating the Contract, recover from the contractor the amount of such security deposit by deducting the amount from the pending bills of the contractor under the contract or any other contract with the Procuring Entity or the Government or any person contracting through the Procuring Organisation or otherwise.
    c) The Procuring Entity shall be entitled, and it shall be lawful on his part, to deduct from the performance securities or to forfeit the said security in whole or in part in the event of:
        i) any default, or failure or neglect on the part of the contractor in the fulfilment or performance in all respect of the contract under reference or any other contract with the Procuring Organisation or any part thereof;

ii) for any loss or damage recoverable from the contractor which the Procuring Entity may suffer or be put to for reasons of or due to above defaults/ failures/ neglect;

iii) and in either of the events aforesaid to call upon the contractor to maintain the said performance security at its original limit by making further deposits, provided further that the Procuring Entity shall be entitled, and it shall be lawful on his part, to recover any such claim from any sum then due or which at any time after that may become due to the contractor for similar reasons.

d) The performance security should be refunded to the contractor without interest, after he duly performs and completes the contract in all respects but not later than 60(sixty) days of completion of all such obligations including the warranty under the contract. No claim shall lie against the Procuring Entity regarding interest on cash deposits or Government Securities or depreciation thereof. Return of Bid/ Performance Securities should be monitored by the senior officers and delays should be avoided. If feasible, the details of these securities may be listed in the e-Procurement Portal/ website of the Procuring entity, to make the process transparent and visible.

10. **Obligations under the Labour Codes and Rules:** The Contractor is solely responsible for its obligation under Labour Codes and Rules relating to personnel deployed by it on-site or off-site for execution of the contract. However, the procuring entity should pro-actively monitor that such obligations are discharged by the contractor. Contractor shall be asked to submit relevant reports and returns.
11. **Obligations Relating to Occupational Safety, Health, Working Conditions, Social Security, and Industrial Relations Requirements**: Contractor is legally bound to comply with statutory requirements regarding accommodation, Creche, safety, Hygiene, Health and Medical facilities, Government Welfare Schemes, etc. He shall be asked to maintain adequate records in this regard. The Procuring Entity shall proactively monitor that such obligations are discharged.
12. **Obligations relating to Site, Environmental Laws, and Third Parties:** The Contractor has obligations regarding safety and security of the site used by him. He has to comply with laws relating to environment at the site. He also is liable for any injury/ damage to third party personnel and properties as a result of his activities at the site.
13. **Obligations to Maintain Insurances:** Contractor must maintain Insurance cover at his own cost against all such risks as mentioned in the contract. Procuring Entity has to ensure that these Insurance Cover are adequate and current during the contract execution.

9.2.6. Incentives for Excellence in Contract Execution

Procuring Entities are encouraged to explore strategies (such as offering bonuses, improved ratings, or recognition) that may incentivize contractors, service providers and consultants for early, timely, and quality completion of projects.

9.2.7. Safeguards for Handing over Procuring Entity Materials/Equipment to Contractors

For performance of certain contracts, Procuring Entity may have to loan stores, drawings, documents, equipment, and assets (such as accommodation, identity cards and gate passes, and so on) to the contractor. In certain situations, the contractor may also be supplied electricity, water, cranes, and weighing facilities on payment/hire basis. Whenever stores or prototypes or sub-assemblies are required to be issued to the firm/contractor for guidance in

fabrication, these should be issued against an appropriate bank guarantee. In addition to the bank guarantee, appropriate insurance may be asked for if it is considered necessary. For low value items of less than Rs. 1,00,000 (Rupees One Lakh), or for sending spares for repairs to the OEMs, this stipulation of the bank guarantee may be waived and, if feasible, an indemnity bond may be taken. The Contractor shall use such property for the execution of the contract and no other purpose whatsoever. These assets shall remain the property of the Procuring Entity, and the contractor shall take all reasonable care of all such assets. The contractor shall be responsible for all damage or loss from whatever cause caused while such assets are possessed or controlled by the contractor, staff, workers, or agents. As a measure of transparency, the possibility of provision of such resources by Procuring Entity should have been announced in the tender document or at least requested by the contractor in the tender and written in the contract. Before the final payment or release of PBG/SD, a certificate may be taken from the concerned Department that the contractor has returned all documents, drawings, protective gear, material, equipment, facilities, and assets loaned, including all ID cards and gate passes, and so on, in good condition. Further, it should be certified that payment from the contractor has been received for usage of electricity, water, crane, accommodation, weighing facility, and so on.

9.3. Controlling Scope of Supply and Performance Standards

9.3.1. Scope of Services

1. The Contractor must perform/ delivery Services of the description, scope/ quantum, performance standards and quality outlined in the contract during the contract Period specified therein. The Services shall conform to performance and quality standards as stipulated in the contract or as per the best standards in the market, where not so specified. The Services shall include all incidental works/ Goods, and such other work-elements not mentioned explicitly in this Contract, but that can be reasonably inferred from the Contract as being required for attaining Completion of the Services.
2. The contractor shall perform the Services and its obligations with all due diligence, efficiency, and economy, observing sound management practices, and employ appropriate advanced technology and safe methods as per the performance standards and quality control parameters stipulated in the contract. For matters where the contract does not specify any Standard, the Services delivered shall conform to National/ International Standards or generally accepted professional techniques and practices.

9.3.2. Performance Standards - Quality Control

1. The Procuring Entity shall monitor the quality of the Services and shall inspect the contractor’s performance according to the Contract. The Procuring Entity shall promptly notify the contractor of any identified defects, requesting the correction of the notified defect within a reasonable time.
2. If the contractor has not corrected notified defect within the time stipulated in the Procuring Entity’s notice, the Procuring Entity shall assess the cost of having the defect corrected. Without prejudice to any of its other remedies under this Contract or applicable law, procuring Entity shall be legally entitled to deduct such cost from the contract’s payments, together with the damages for the shortfall in performance as per clause below.
3. **Damages for Shortfall in Performance:** Procuring Entity’s shall, without prejudice to other rights and remedies under the contract, recover as damages for the shortfall in performance, but not as a penalty, 0.5% percent (or any other percentage prescribed) of

the delivered price (including elements of GST & freight) of the defective Services, without having to prove actual loss incurred.

9.3.3. Service Level Agreement (SLA)

1. A service level agreement (SLA) is an agreement designed to create a common understanding about services, priorities and responsibilities, improve communications, manage expectations, clarify responsibilities and build the foundation for a win-win relationship. It must be specified in the bidding Document and finalised before the Services are started. The objectives of SLA are:
   a) Identify and define the Procuring Entity's needs;
   b) Eliminate unrealistic expectations on either side;
   c) Provide a framework for understanding between the service provider and the Procuring Entity;
   d) Reduce areas of conflict and encourage dialog in the event of disputes
2. While drafting the SLAs, care should be taken that they are balanced to both the contracting parties and penalties are proposed on both the sides.
3. SLA has two sets of elements:
   a) **Service elements**
      i) the services to be provided (and perhaps certain services not to be provided, if Procuring Entity might erroneously assume the availability of such services);
      ii) conditions of service availability;
      iii) service standards, such as the timeframes within which services will be provided
      iv) the responsibilities of both parties
      v) escalation procedures in case of performance deficiencies
   b) **Management elements**
      i) how service effectiveness will be tracked
      ii) how information about service effectiveness will be reported and addressed
      iii) how service-related disagreements will be resolved
      iv) how the parties will review and revise the SLA- Conditions warranting change; Change frequency and Change procedures

9.4. Time Control

9.4.1. Contract Period and Options:

1. Unless otherwise stipulated in the contract, the contract Period for which the Service shall be provided shall be one year from the effective date of the contract, unless completed earlier or terminated as per the contract.
2. If stipulated in the contract, the Procuring Entity shall have the right to exercise the following options, by written notification to the contractor no later than thirty (30) days before Contract end:
   a) extend the contract Period only once (unless otherwise stipulated in the contract) by four months period (unless otherwise stipulated in the contract).
   b) increase the ordered quantum of Services upto the percentage specified therein (or 25% if not specified) at any time, till the completion date of the contract, by giving reasonable notice and providing a reasonable extension in delivery period for

increased quantum, even though the quantum ordered initially has been delivered in full before the completion Period.

9.4.2. Delays in Performance of Services:

1. Service Provider shall be required to adhere to the delivery schedule (including any incidental Work/ Goods) specified in the Contract (or as extended) and, if there is a delay in performance of services, it amounts to breach of contract, since 'Time is the Essence of the Contract'. The service provider should notify the Procuring Entity and explain the causes of such delays. Non-consultancy services may be delayed for a variety of reasons, including sometimes delays in discharge of its obligations by the Procuring Entities.
2. **Delays Attributable to the Service Provider**: In case of delays in performance of services (including delay in rectification of a defective service within the time specified in the Procuring Entity's notice) attributable to the Service Provider, the Procuring Entity may without prejudice to his other rights:
   a) recover from the contractor liquidated damages as per para 9.4.6 below, or
   b) treat the delay as a breach of contract as per para 9.8.1 below and avail all the remedies therein, although it is in purchaser's interest to resort to this provision only as a last resort, in case of inordinate delays.
3. **Delay in Performance for which Service Provider is not Responsible**:
   a) In cases where there is a delay for which the Service Provider is not responsible, the delivery period needs to be re-fixed without imposing any penalty (i.e. without LD and without a denial clause). If corrective action requires extra work and the delay cannot be attributed to the service provider, the extra work should be reimbursed in accordance with the contract. Normally, in the following circumstances, the Service Provider may not be considered to be responsible for the delay:
      i) Cases where the Service Provider is dependent on the approval/ decision of the Procuring Entity, and the delay occurs in such approval/ decision, though requested by the Service Provider in time;
      ii) Where extension in the delivery period is granted on account of some omission on the part of the purchaser, which affects the due performance of the contract by the Service Provider,
      iii) Cases where the service delivery has been affected by Force Majeure or statutory change or specific executive instructions issued by Govt.
   b) There may be delays for which both buyer and contractor may be responsible to a different extent. In such cases, the levy of LD and Denial clause may be decided on merits.
4. **Inordinate Delays:** Inexcusable delays of more than one-fourth (25%) of the total completion period shall be treated as inordinate delays. Such inordinate delays may be treated as breach of contract and shall be noted as deficient performance and be held against the contractor in future tenders. A show-cause notice shall be issued to the contractor before declaring it a deficient performance. In case Procuring Entity decides to allow performance of contract, after inordinate delays, maximum limit on LD shall be 10% (instead of 5%) of the total contract value, as per para 9.4.7-1 and 9.4.9 below.

9.4.3. Extension or Refixation of Delivery

1. If at any time during the currency of the contract, the service provider encounters conditions hindering timely delivery of services, he shall promptly inform the concerned

officer in writing. He should mention its likely duration and make a request for extension of the schedule accordingly. On receiving the contractor's communication, the procuring entity shall examine whether the delay is attributable to the contractor or not (Please refer to para 9.4.2 above).

2. **Refixation of Delivery:** In case the delay is not attributable to the service provider (or in case of Force Majeure) the proposal (refer to Annexure 17) and, on approval from the CA, may agree to re-fix delivery period (i.e. a fresh delivery period, treated like original delivery period), which is arrived at by recasting the original contractual delivery period after taking care of the lost period for which the service provider was not responsible, without LD and without the denial clause (as defined in Para 9.4.5 below), for completion of the contractor's contractual obligations.
3. **Extension of Delivery:** In case the delay is attributable (fully or partly) to the service provider the proposal (refer to Annexure 17) and, on approval from the CA, may agree to extend the delivery schedule, with LD and with the denial clause (as defined in Para 9.4.5, 9.4.6 and 9.4.7 below), for completion of the contractor's contractual obligations, provided:
   a) That a higher rate in the original tender was not accepted against other lower quotations in consideration of the earlier delivery; and
   b) That there is no falling trend in prices for this item as evidenced from the fact that, in the intervening period, neither orders have been placed at rates lower than this contract, nor any tender been opened where such rates have been received even though the tender is not yet decided. In cases of certain raw material supplies, where prices are linked to the PVC, extension may be granted even in case of a falling trend in price indices, since the purchaser's interests are protected by the price variation mechanism. However, in such cases it should be ensured that extensions are done with the denial clause.
4. **Extension/ Refixation of time after its expiry:** The power to extend the time for performance under Section 63 of the Indian Contract Act is not inherently limited to extensions granted before the original deadline. It can be exercised even after the stipulated time has passed, provided there is consent from both parties. The contract does not automatically terminate upon the expiry of the initial delivery date, if there is a shared intention to continue the contractual relationship and fulfil the obligations, albeit under a revised timeline. Therefore, such extension/ refixation of time can be done, even after expiry of original period, provided consent of the contractor is obtained. However, it is prudent to formalize the extension before the original delivery period expires, to avoid any arguments about the contract's validity or of extension of time after the initial deadline.
5. **Extension/ Refixation** of the delivery date amounts to amendment of the contract. Such an extension/ refixation can be only done with the consent of both parties (that is, the procuring entity and service provider). No extension/ refixation of the delivery date is to be granted suo motu unless the contractor specifically asks for it. However, in a few cases, it may be necessary to grant an extension/ refixation of the delivery period suo motu in the interest of the administration. In such cases, it is legally necessary to obtain clear acceptance of the extension/ refixation letter from the contractor.
6. No correspondence should be entered into with the contractor after expiry of the contract delivery period or towards the end of it, which has the legal effect of condoning the delay/ breach of contract. When it is necessary to obtain certain information regarding past services, it should be made clear that calling for such information is not intended to keep the contract alive and that it does not waive the breach and that it is without prejudice to

the rights and remedies available to the purchaser under the terms of the contract. The last line of such a communication should therefore be: “This letter is issued without any prejudice to Procuring Entity’s rights and remedies under the terms and conditions of the subject contract and without any commitment or obligation.” A format for such correspondence is given in Annexure 19.

7. When it is decided to extend the delivery period subject to recovery of LD for delay in services, contractors must be given a warning to this effect in writing at the time of granting extensions. It is not correct to grant extensions without any mention of the LD if it is proposed to recover such charges eventually. It is also not correct to grant an extension of the delivery period by merely stating that the extension is granted “without prejudice to the rights of the purchaser under the terms and conditions of the contract” as this would mean that all the options given in the conditions of the contract would be available to the purchaser on expiry of the extended delivery period and would not amount to exercise of the option to recover LD. To take care of complex legalities brought out above, extension of the delivery period when granted should only be done in writing in the laid down format given in Annexure 18.
8. Organisations may put in place a graded authority structure whereby extension of time for completion of contract, beyond a specified threshold value of contract, may be granted by the next higher authority.

9.4.4. Performance Notice

A situation may arise where the services has not been completed within the stipulated period due to negligence/ fault of the service provider; however, the contractor has not made any request for extension of the delivery period, but the contracted services are still required by the purchaser and the purchaser does not want to cancel the contract at that stage. In such a case, a performance notice (also known as notice-cum-extension letter) may be issued to the contractor by suitably extending the delivery date and by imposing LD with denial clauses, and so on, along identical lines as in para 9.4.3 above. The contractor’s acceptance of the performance notice and further action thereof should also be processed in the same manner as mentioned above. The text of the performance notice will be on similar lines to the Annexure 19.

9.4.5. Denial Clause

If delay in services is attributable to the contractor, the procuring entity should protect itself against extra expenditure during the extended period by stipulating a denial clause (over and above levy of LD) in the letter informing the contractor of extension of the delivery period. In the denial clause (applicable for delays attributable to contractor), any increase in statutory duties and/ or upward rise in prices due to the PVC clause and/ or any adverse fluctuation in foreign exchange are to be borne by the contractor during the extended delivery period, while the purchaser reserves his right to get any benefit of a downward revisions in statutory duties, PVC, and foreign exchange rate. Thus, in cases of delays attributable to contractor, PVC, other variations and foreign exchange clauses operate only during the original delivery period of the services. The format of the denial clause is available in Annexure 18.

9.4.6. Liquidated Damages (LD)

Compensation of loss on account of late delivery (actually incurred as well as notional) where loss is pre-estimated and mutually agreed to is termed as Liquidated Damages (LD). Law allows recovery of pre-estimated loss provided such a term is included in the contract and there is no need to establish actual loss due to late services. However, it would strengthen

Procuring Entity's rights, if it is established and kept on record, that inconvenience and loss has been caused due to the delay in services, though the loss cannot be exactly quantified, and hence liquidated damages are applicable as a genuine pre-estimate of the loss.

9.4.7. Quantum of LD

1. While granting extension of the delivery period for delays attributable entirely to the contractor , where the delivery of services or any activity thereof is accepted after expiry of the original delivery period, the Procuring Entity may recover from the contractor, as liquidated damages for each week of delay or part thereof until actual delivery or performance, but not as a penalty, a sum equivalent to the 0.5% (half per cent, or any other percentage if prescribed) of the value of delayed portion (that includes variations, taxes and duties) of the Services, subject to a maximum of 5% (Five per cent) of the total contract value. Besides liquidated damages during such a delay, the denial clause shall also apply. The Procuring Entity may deduct liquidated damages from payments due to the contractor. Payment of liquidated damages shall not affect the contractor's liabilities. For purpose of GST, LD should be shown as deduction on the invoice value by the contractor.
2. In contracts governed by any type of variation (PVC, ERV or statutory variations), LDs (if a percentage of the price) will be applicable on the price as varied by the operation of the PVC.
3. In case of delays for which both procuring entity and contractor may be responsible to a different extent, procuring entity with the approval of CA and concurrence of finance decide a lower quantum of LD, and consider waiver of denial clause on the merit of the case.
4. LDs accrue only in case of delayed services. Where or as far as no services have been delivered under a contract, upon cancellation, recovery of only the loss occasioned by breach of contract can be made, notwithstanding the fact that prior to the cancellation one or more extensions of the delivery period with reservation of the right to LD are granted.

9.4.8. Waiver of LD

1. There should normally be no system of waiver of LDs for delayed services and it may strictly be an exception rather than a rule. For an extension of the delivery date with waiver of LD, approval of the CA with consultation of associated Finance may be taken and justifications recorded.
2. Government establishments/ Departments, as distinct from PSUs, which execute contract should not be dealt with as ordinary contractors and not generally be penalised for late delivery and claims for loss on risk-purchase should not be enforced against them. Serious cases of defaults should, however, be brought to the notice of the Head of Department or the Government Department concerned.
3. As mentioned in para 9.5.3-3-e) below, for purpose of GST, liquidated damages should be shown as deductions on the invoice value by the contractor.

9.4.9. Limit on total Damages.

Deductions on account of damages for delays and performance, put together shall be subject to a maximum of 5% (Five per cent, or any other percentage if prescribed) of the entire value of Contract of Services. In case of inordinate delays, this upper limit shall be 10% (Ten per cent) of the contract value. (Refer para 9.4.2-4.)

9.4.10. Force Majeure

1. A Force Majeure (FM) means extraordinary events or circumstance beyond human control such as an event described as an act of God (like a natural calamity) or events such as a war, strike, riots, crimes (but not including negligence or wrong-doing, predictable/ seasonal rain and any other events specifically excluded in the clause). An FM clause in the contract frees both parties from contractual liability or obligation when prevented by such events from fulfilling their obligations under the contract. An FM clause does not excuse a party's non-performance entirely, but only suspends it for the duration of the FM. The firm has to give notice of FM as soon as it occurs, and it cannot be claimed ex-post facto. There may be a FM situation affecting the purchase organisation only. In such a situation, the purchase organisation is to communicate with the contractor along similar lines as above for further necessary action. If the performance in whole or in part or any obligation under this contract is prevented or delayed by any reason of FM for a period exceeding 90 (ninety) days, either party may at its option terminate the contract without any financial repercussion on either side.
2. Notwithstanding the punitive provisions contained in the contract for delay or breach of contract, the contractor would not be liable for imposition of any such sanction so long as the delay and/ or failure of the contractor in fulfilling its obligations under the contract is the result of an event covered in the FM clause.

9.5. Cost Control: Billing and Payments

9.5.1. Payment to Service Providers

1. **Periodic Payments**:
   a) Payment is made to the contractor based on a schedule agreed on in contract, often based on certain milestones or outputs.
   b) Release of payment and settlement of the final bill should be processed through the Associated/ integrated Finance as per the terms and conditions of the contract;
   c) No payments to contractors by way of compensation or otherwise outside the strict terms of the contract or more than the contract rates should be allowed;
   d) All correspondence with the contractor will be handled by procuring entity.
2. **Invoices:**
   a) The contractor submits an invoice to the Procuring Entity detailing the expenditures for personnel and out-of-pocket items.
   b) The documents, which are needed from the contractor for release of payment, are to be clearly specified in the contract. The paying authority is also to verify the documents received from the contractor with corresponding stipulations made in the contract before releasing the payment. The invoice submitted by the contractor shall be verified and signed by the contract manager and pay order form or any other relevant forms shall be prepared by the procuring entity and signed by an officer authorised to sign pay-orders.
   c) Before the payment is made, the invoice should be cross-checked with the actual receipt of services to ensure that the payment matches the actual performance;
   d) In normal practice, if any item needs further scrutiny before the Procuring Entity can approve payment, payment of undisputed items/ services should be made. But payment of any disputed items/ services will be withheld until the circumstances are clarified.

e) While claiming the payment, the contractor must also certify on the bill that the payment being claimed is strictly in terms of the contract and all the obligations on his part for claiming this payment have been fulfilled as required under the contract. There should also be a suitable provision for verification of the authenticity of the person signing the invoice, and so on, to claim the payment.

3. **Deductions of Taxes**: Deduction of applicable taxes at source from payments to service provider shall be done as per the existing law in force during the currency of the contract. As soon as possible, but not later than the date of submission of tax returns, the procuring entity must provide the statutory certificates for the taxes deducted from the contractor so that he can claim set-offs and refunds from the concerned authorities. Detailed payment advice showing the calculations and reasons for the amounts disallowed and taxes deducted must be issued to the contractor along with payment.

4. **Timely Payment:**
   a) In a services contract, delivery of services is the essence of the contract for the purchaser. Similarly, receiving timely payment for the services is the essence of the contract for the service provider. A healthy buyer-contractor relationship is based on the twin foundation of timely and quality service, on the one hand, and prompt and full payment to the contractor, on the other. It should be ensured that all payments due to the firm, including release of the performance security, are made on a priority basis without avoidable delay as per the tender/ contract conditions. Any foreseeable payment delays should be communicated to the contractors in advance. Payments and decisions in contract management requested by the contractors should be made within a reasonable time. An atmosphere of lackadaisical dilatory functioning in such matters is liable to lead to bidders quoting higher prices in future bids, besides delays in services and disputes in the contract.
   b) Additionally, procuring entities are encouraged to ensure final bill payments are processed within three months of project completion. For contracts with payments exceeding Rs.100 crore annually, it is recommended to implement an online system to track bill submissions and payments, providing contractors with transparency and timely updates[85].

5. **Delay in payment to the contractors:**
   a) Public authorities may put in place a provision for payment of interest in case of delayed payment of bills by more than 30 working days after submission of bill by the contractor. Where interest is to be paid, the rate of interest should be the rate of interest of General Provident Fund. In case of unwarranted discretionary delays in payments, as prescribed above, responsibility shall be fixed on the concerned officers. There should be a system to monitor delays in payments and to identify such unwarranted delays including an online system for monitoring of the bills submitted by contractors. Such system shall have the facility for contractors to track the status of their bills. It shall be mandatory for all contractors' bills to be entered into the system with date of submission and date of payment. [86]
   b) As far as MSE contractors are concerned, MSME Act 2006 has provisions (refer to para 1.10.1-4-b) for details) for timely payments within 45 days and a levy of penal

[85] DoE's OM NO.F.1/1/2021-PPD dtd 29.10.2021

[86] DoE's OM NO.F.1/1/2021-PPD dtd 29.10.2021

interest for delayed payment and arbitration/ conciliation for related complaints by Micro and Small Enterprises Facilitation Councils.

6. **Handling Securities:** Proper procedures for safe custody, monitoring and return of bank guarantees and other instruments may be followed. Chapter 6 has more details in this regard. Before making a final payment or before releasing the performance bank guarantee, a 'No Claim Certificate' (Annexure 20) may be insisted upon from the contractor to prevent future claims. Whenever a bank guarantee is released following due procedure and safeguards, acknowledgement thereof should also be taken from the contractor.
7. **Advance Payment, as per Contract**: The terms and conditions of such payments are set out in the contract wherein the amount of advance payment is specified, as are the timing of the payment and the amount of advance payment security to be provided by the Service Provider. The advance payment is set off by the Procuring Entity in equal instalments against monthly billing statements until it has been fully set off. Once an advance has been provided, requests for any additional advance are not considered until the service provider liquidates the previous advance. The advance payment security is then released. In some contracts there may be provision for mobilization fee to be paid. (Please refer to para 6.4)
8. **Electronic Bill (e-Bill) processing system** was announced in Union Budget 2022-23, as part of 'Ease of Doing Business and Digital India eco-system' to bring broader transparency and expedite the process of payments. It will enhance transparency, efficiency, and faceless-paperless payment system. Contractors shall submit their bills electronically through the e-Bill portal, wherever such facilities are available. Concerned authorities verify these bills for discrepancies, authenticity, and adherence to rules. Once verified, the bills shall be approved for payment. The approved bills are integrated with the electronic payment systems. Funds are allocated from the relevant budget heads. The system generates payment orders. The e-Bill system allows real-time on-line tracking of bill processing by Contractors.

9.5.2. Price Variations

1. In case the contract provides for a Price Variation Clause (PVC) or variation on any other account, the price shall be subject to adjustment on a quarterly basis, as per such clauses, only during the original Delivery Period. With the payment of such variations, no additional individual claim shall be admissible on account of fluctuations in market rates, increases in taxes/ any other levies/ tolls, etc.
2. Please refer to para 6.5-2 for provisions of PVC (formula, base date, delivery date, time lag for both base/ delivery dates, lower and upper cap on PVC, applicability of PVC during after original delivery period);
3. Calculations for all variations should be based on the basic price without taxes and duties. Therefore, contracts involving customs duty, foreign exchange fluctuations, GST, 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 considered in the calculation of the price of the imported item. Taxes/ duties chargeable and payable ad-valorem shall be charged at the nett price after variations.
4. In contracts governed by any type of variation (PVC or statutory variations), LDs (if a percentage of the price) will be applicable on the price as varied by the operation of the PVC. For purpose of GST, LD should be shown as deduction on the invoice value by the contractor.

5. If the Contract provides for some inputs to be provided by the Procuring Entity free or at a fixed rate, or advance or stage payments have been already made, the value of such inputs and advance/ stage payments shall be excluded from the value of the Services delivered in the relevant quarter for payment/ recovery of price variation.
6. If there is a downward price trend, the Contractor may tend to hide this fact. Therefore, while claiming payments where such variations are applicable, the contractor must submit its calculations for each invoice, even if the payment on account of these variations is zero. Price reductions due to such variations must be passed on to the Procuring Entity. Care should be exercised to finalise the price before final payment is made and after obtaining data and documents in support of claims for escalation, if any. Where the contractors submit no such claims, 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 because of a decrease in price variation indices in the price variation formula. In the event of any decrease of such indices that come to light later regarding the payment claimed by us, we shall promptly notify the purchaser, and we undertake to refund and agree to the purchaser deducting from our future payment due any excess payment made to us in this regard."
7. Notwithstanding the above formalities, it should be appreciated that it is in the interest of the purchaser to be vigilant about downward variation, and it is, therefore, the basic responsibility of the purchase officers to make sure that the benefits of downward variation, wherever it occurs, are fully availed of.

9.5.3. Payment of Taxes and Duties

1. The contractor shall be entirely responsible for all taxes, duties, fees, levies etc., incurred until delivery of the Services to the Procuring Entity.
2. If applicable under relevant tax laws and rules, the Procuring Entity shall deduct required taxes on account of GST Reverse Charge Mechanism; Tax Deducted at Source (TDS), and Tax Collected at Source (TCS) relating to Income Tax, labour cess, royalty etc from all payments due to the Contractor and deposit these to respective authorities as per the existing law in force during the currency of the contract. In the case of foreign bidders, Corporate tax shall be deducted at source from each invoice as per instructions/ orders of the Government of India, Indian Income Tax Authority.
3. **Goods and services Tax:** GST shall be paid as per the rate at which it is liable to be assessed or has been assessed, provided the transaction of the sale is legally liable to such taxes and is payable as per the terms of the contract subject to the following conditions:
   a) The payment of GST and GST Cess to the contractor shall be made only on the latter submitting a GST compliant Bill/ invoice indicating the appropriate HSN code and applicable GST rate thereon duly supported with documentary evidence as per the provision of relevant GST Act and the Rules made there under. The delivery shall be shown being made in the name, location/ state, and GSTIN of the consignee only; the location of the procurement office of the procuring entity has no bearing on the invoicing.

b) The Procuring Entity shall not pay a higher GST rate if leviable due to any misclassification of the HSN number or incorrect GST rate quoted mistakenly by the Contractor. Wherever the contractor invoices the Services at GST rate or HSN number, which is different from that incorporated in the contract, payment shall be made as per GST rate, which is lower of the GST rates incorporated in the contract or billed. However, the Procuring Entity shall not be responsible for the contractor's tax payment or duty under a misapprehension of the law. The Contractor shall be required to adjust his basic price to the extent required by a higher tax rate billed as per invoice to match the all-inclusive price mentioned in the contract.

c) In case of undue profiteering by the contractor relating to GST tax, the Procuring Entity shall treat it as a violation of the Code of Integrity in the contract and avail any or all punitive actions thereunder, in addition to recovery and action by the GST authorities under the Act.

d) The contractor should issue Receipt vouchers immediately on receipt of all types of payments along with tax invoices after adjusting advance payments, if any, as per Contractual terms and GST Provisions.

e) Liquidated damages (refer to para 9.4.7 above for its quantum) or any other reduction (Price Variation or Exchange Rate variation, etc.) should be shown as deductions on the invoice and GST shall be applicable only on the net balance payment due. Similarly, any increase due to any variation should be shown as added to the invoice value. The Contractor shall be required to adjust his basic price to the extent required to adjust the applicable GST rate within the nett balance invoice value.

f) While claiming reimbursement of duties, taxes etc. (like GST) from the Procuring Entity, as and if permitted under the contract, the contractor shall also certify that in case it gets any refund out of such taxes and duties from the concerned authorities later, it (the contractor) shall refund to the Procuring Entity, the Procuring Entity’s share out of such refund received by the contractor. The Contractor shall also refund the appropriate amount to the Procuring Entity immediately on receiving the same from the concerned authorities.

g) All necessary adjustment vouchers such as Credit Notes/ Debit Notes for any short/ excess services delivered or revision in prices or any other reason under the contract shall be submitted to the Procuring Entity in compliance with GST provisions.

4. **For Procuring Entities eligible for availing Input Tax Credit**:

a) Contractors shall provide necessary documents/ compliances / invoices for enabling Procuring Entity (for commercially run entities) to avail of Input tax credit benefits under GST legislation.

b) The successful bidders should upload the details of the invoices raised on Procuring Entity on the GST Network within the prescribed time limits and undertake to adhere to all other compliances under the GST regulations/ legislations.

c) In case any credit, refund or other benefit is denied or delayed to the Procuring Entity due to any non-compliance of GST legislation by the bidder, such as failure to upload the details of the supply on the GST portal, failure to pay GST to the Government or due to non-furnishing or furnishing of incorrect or incomplete documents/ information by the bidder, the bidder would reimburse the loss to the Procuring Entity or it shall recover may recover the same, but not limited to, the tax loss, interest and penalty.

5. **Statutory Variation Clause:** Unless otherwise stated in the contract, statutory increase in applicable GST rate only during the original delivery period (or refixed delivery period –

para 9.4.3-2 above) shall be to Procuring Entity's account. Any increase in the rates of GST beyond the original completion date during the extended delivery period (for delays attributable to the service provider) shall be borne by the contractor, however the benefit of any reduction in GST rate must be passed on to the Procuring Entity during the original and extended delivery period. GST rate amendments shall be considered for quoted HSN code only, against documentary evidence, provided such an increase of GST rates after the last date of bid submission. The Procuring Entity is not liable for any claim from the contractor on account of fresh imposition and/ or increase (including statutory increase) of GST, customs duty, or other duties on raw materials and/ or components used for the purposes of delivery of the contracted Services taking place during the pendency of the contract unless such liability is expressly agreed to in terms of the contract.

9.6. Concluding the Assignment and Post Contract review

1. The contract is normally considered closed on the day after the completion date listed in the contract. Any expenditure incurred after the completion date are unlikely to be paid. It is, therefore, important, under all types of assignments, for the service provider to request an extension of the completion date if it appears that additional items will need to be billed after the completion date. The service provider should submit the final claim promptly after completing the assignment. The standard service provider contract states that the claim must be submitted within 60 (sixty) days of completion.
2. 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 20.
3. The contract shall stand closed upon
   a) successful performance of all obligations by both parties, including completion of warrantee obligations and final payment.
   b) termination and settlements after that, if any.
4. At least in large contracts (above Rs. 50 (Rupees Fifty) lakhs), 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:
5. **Materials Reconciliation:** The stores and/ or the indentor should confirm that all services agreed to in the contract have been fully and satisfactorily delivered by the service provider. Where the contract involved the supply of materials, tools, parts, or consumables by the service provider or issued to them by the Procuring Entity, a complete reconciliation shall be undertaken to ensure that all tools, assemblies, consumables, or other items provided to the service provider have been properly accounted for; wastage, surplus, scrap, or off-cuts have been returned or disposed of in accordance with the contract provisions.
6. **Reconciliation with the User Department:** Besides material reconciliation, the user Department should certify in writing that the following activities (wherever applicable) have been completed by the contractor, to the Department's satisfaction, as per the contract:
   a) Delivery of services in compliance with the defined performance standards and service levels;

b) Completion of support services during the warranty period, which ended on _____;
c) Training of operators/maintenance staff;
d) Vacation and restoration of site for use by the department;
e) Return of all ID cards, gate passes, documents, drawings, protective gear, material, equipment, facilities, and assets loaned to contractor; and
f) Fulfilment of obligations under the Annual Maintenance Contract (if part of the contract), which ended on _____.

7. **Payment Reconciliation:** The indenting/ materials management Departments may reconcile payments made to the contractor to ensure that there is no liability outstanding against the contractor on account of:
   a) Liquidated Damages (LD);
   b) Price reduction enforced on account of shortfall in performance of service quality/ material/ equipment;
   c) Variations/ deviations from the scope of the contract;
   d) Overpayments/ duplicate payments, if any;
   e) Services availed from Procuring Entity and vacation thereof such as accommodation, electricity, water, security, transport, cranes, and other machinery, and so on,
   f) Demurrage, insurance premiums or claims, customs duties, and so on;
   g) Material reconciliation;
   h) Price and exchange rate variations;
   i) Statutory duties paid on behalf of the contractor by Procuring Entity; and
   j) Inspection charges or loss of material in testing.
8. 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.
9. On completion of all activities against a contract, the purchase file should be preserved for a period of five years in the record room and then destroyed after expiry of the applicable mandatory retention period with the approval of the CA. However, Procuring Entity, at its discretion, may retain important records for future reference.

9.7. Disputes and Conflicts

9.7.1. Disputes

1. Normally, there should not be any scope for dispute between the purchaser and contractor after entering a mutually agreed valid contract. However, due to various unforeseen reasons, problems may arise during the progress of the contract leading to a disagreement between the purchaser and contractor. Therefore, the conditions governing the contract should contain suitable provisions for settlement of such disputes or differences binding on both parties.
2. In its directives[87] regarding contractual disputes, Department of Expenditure, Ministry of Finance has stressed that:

> *“Government departments/ entities/ agencies should avoid and/ or amicably settle as many disputes as possible using mechanisms available in the contract. Decisions should be taken in a pragmatic manner in overall long-*

[87] OM issued by PPD, DoE, MoF: No. F. 11212024-PPD dtd 03.06.2024

term public interest, keeping legal and practical realities in view, without shirking or avoiding responsibility or denying genuine claims of the other party."

3. All disputes and differences between the parties, as to the construction or operation of the contract, or the respective rights and liabilities of the parties on any matter in question; dispute or difference or any other account whatsoever, but excluding the Excepted Matters (detailed below); arising out of or in connection with the contract, whether before or after the completion/ termination of the contract, that cannot be resolved amicably between the Procurement Officer and the contractor within thirty (30) days from aggrieved Party notifying the other Party of such matters, shall be hereinafter called the "Dispute".
4. The aggrieved party shall give a 'Notice of Dispute' indicating the Dispute and claims citing relevant contractual clause to the designated authority and requesting for invoking the following dispute resolution mechanisms. The Dispute shall be attempted to be resolved before any recourse to courts, through dispute resolution mechanisms detailed subsequently, in the sequence as mentioned below, and the next mechanism shall not be invoked unless the earlier mechanism has been invoked or has failed to resolve it within the deadline mentioned therein. While processing a case for dispute resolution/litigation/arbitration, the procuring entity is to take legal advice, at appropriate stages.
   a) Adjudication
   b) [88]Mediation
   c) Arbitration

9.7.2. Excepted Matters

Matters for which provision has been made in any clause of the contract shall be deemed as 'excepted matters' (matters not disputable/ arbitrable), and decisions of the Procuring Entity, thereon shall be final and binding on the contractor. The 'excepted matters' shall stand expressly excluded from the purview of the Dispute Resolution Mechanism, including Arbitration. However, where the Procuring Entity has raised the dispute, this sub-clause shall not apply. Unless otherwise stipulated in the contract, excepted matters shall include but not limited to:

1. any controversies or claims brought by a third party for bodily injury, death, property damage or any indirect or consequential loss arising out of or in any way related to the performance of this Contract ("Third Party Claim"), including, but not limited to, a Party's right to seek contribution or indemnity from the other Party in respect of a Third-Party Claim.
2. Issues related to the pre-award tender process or conditions.
3. Issues related to ambiguity in contract terms shall not be taken up after a contract has been signed. All such issues should be highlighted before the signing of the contract by the contractor.
4. Issues related to contractual action/ termination of contract etc., by the Procuring Entity on account of fraud, corruption, debarment of contractors, criminal or wilful negligence of the contractor etc.

[88] The conciliation part of the Arbitration and Conciliation Act, 1996 has been replaced by mediation by the recent Mediation Act, 2023.

5. Issues that are already under investigation by CBI, Vigilance, or any other investigating agency or government.
6. Provisions incorporated in the contract, which are beyond the purview of The Procurement Entity or are in pursuance of policies of Government, including but not limited to
   a) Provisions of restrictions regarding local content and Purchase Preference to Local suppliers in terms of Make in India policy of the Government.
   b) Provisions regarding restrictions on Entities from Countries having land-borders with India in terms of the Government's policies in this regard.
   c) Purchase preference policies regarding MSEs and Start-ups

9.7.3. Adjudication

1. After exhausting efforts to resolve the Dispute with the Purchasing Officer executing the contract on behalf of the Procuring Entity, the contractor shall give a 'Notice of Adjudication' specifying the matters which are in question or subject of the dispute or difference indicating the relevant contractual clause, as also the amount of claim item-wise to Head of Procurement or any other authority mentioned in the contract (hereinafter called the "Adjudicator") for invoking resolution of the dispute through Adjudication.
2. Where necessary, e.g. matters of high value, Procuring Entity may proceed with adjudication by a high-level committee as para 9.7.4-3-a) to e) below.
3. During his adjudication, the Adjudicator shall give the contractor an adequate opportunity to present his case. Within 60 days after receiving the representation, the Adjudicator shall make and notify decisions in writing on all matters referred to him. The parties shall not initiate, during the adjudication proceedings, any mediation, arbitral or judicial proceedings in respect of a dispute that is the subject matter of the adjudication proceedings.
4. If not satisfied by the decision in adjudication, or if the adjudicator fails to notify his decision within the abovementioned time-frame, the contractor may proceed to invoke the process of Mediation as follows.

9.7.4. Mediation

1. Any party may invoke Mediation by submitting "Notice of Mediation" to the Head of the Procuring Organisation. A neutral third party, known as the Mediator, facilitates the mediation process. If the other party is not agreeable to Mediation, the aggrieved party may invoke Arbitration.
2. **The Mediation Act:** The Mediation shall be conducted as per The Mediation Act 2023[89].
3. **Guidelines for Mediation:** Department of Expenditure, Ministry of Finance has issued guideline on Mediation[90]. Government departments/ entities/ agencies are encouraged to adopt mediation under the Mediation Act 2023 and/ or negotiate amicable settlements to resolve disputes. Where necessary, e.g. matters of high value, they may proceed in the manner discussed below:
   a) Government departments/ undertakings may, where they consider appropriate, e.g. in high-value matters, constitute a High-Level Committee (HLC) for dispute resolution, which may include the following (this composition is purely indicative and not prescriptive):

[89] The Act would be fully notified at a later date. Hence some of the provisions like registration of mediators, and MSPs/ MCI may get activated later.

[90] OM issued by PPD, DoE, MoF: No. F. 11212024-PPD dtd 03.06.2024

i) A retired judge.
ii) A retired high-ranking officer and/ or technical expert.

b) In cases where a HLC is constituted, the Government department entity/ agency may either
   i) negotiate directly with the other party and place a tentative proposed solution before the HLC or
   ii) conduct mediation through a mediator and then place the tentative mediated agreement before the HLC or
   iii) use the HLC itself as the mediator.
c) This will enable decisions taken for resolving disputes in appropriate matters to be scrutinized by a high-ranking body at arms-length from the regular decision-making structure, thereby promoting fair and sound decisions in the public interest, with probity.
d) There may be rare situations in long-duration works contracts where a renegotiation of the terms may best serve public interest due to unforeseen major events. In such circumstances, the terms of the tentative re-negotiated contract may be placed before a suitably constituted High-Level Committee before approval by the competent authority.
e) Approval of the appropriate authority will need to be obtained for the final accepted solution. Section 49 of the Mediation Act 2023 is also relevant in this regard.
f) Mediation agreements need not be routinely or automatically included in procurement contracts/ tenders. The absence of a mediation agreement in the contract does not preclude pre-litigation mediation. Such a clause may be incorporated where it is consciously decided to do so.
g) Disputes not covered in an arbitration clause and where the methods outlined above are unsuccessful should be adjudicated by the courts.
h) General or case-specific modification in the application of the above guidelines may be authorised by the Secretary concerned (or an officer not below the level of Joint Secretary to whom the authority is delegated by him) in respect of Government Ministries/ Departments, attached/ subordinate offices and autonomous bodies, or the Managing Director in respect of Central Public Sector Enterprises including Banks and Financial institutions etc.

4. **Appointment of Mediator(s)**:
   a) Mediators can be of any nationality and must be registered with the Mediation Council of India (MCI) or empanelled by a court-annexed mediation centre or empanelled by an Authority constituted under the Legal Services Authorities Act, 1987 or empanelled by a mediation service provider (MSP) recognised by MCI.
   b) Within 30 days of receipt of the “Notice of Mediation”, the Head of the Procuring Organisation shall propose names of three likely mediators from its panel, asking the other party to choose one as Mediator. The mutually accepted mediator shall then be appointed to conduct mediation.
   c) If parties do not agree on the mediator, they can approach a mediation service provider ("MSP", recognised by MCI), who shall appoint a mediator based on the suitability and preferences of the parties within 7 days.
   d) As brought out in Annex-2 of Annexure 12, in contracts having an Integrity Pact, Independent External Monitors (IEMs) can be appointed as mediators, as per the Standard Operating Procedure (SOP) issued by the Central Vigilance Commission (CVC).

e) After a mediator is appointed, they must disclose any conflict of interest. Either party can seek a replacement of the Mediator after such disclosure.

5. **Venue:** Mediation must be conducted within the territorial jurisdiction of the Court, which has jurisdiction to decide the dispute unless both parties agree to do it online or at any other place.
6. **The Process**:
   a) The Mediator independently and impartially encourages open communication and cooperation between disputing parties to reach an amicable settlement, but he does not have the authority to impose a settlement upon the parties to the dispute. The parties shall be informed expressly by the mediator that he only facilitates in arriving at a resolution of the dispute and that he shall not impose any settlement nor give any assurance that the mediation may result in a settlement.
   b) Unlike court proceedings, Mediation is informal and flexible and allows for creative problem-solving and exploration of various solutions. The Code of Civil Procedure or the Bhartiya Sakshya Adhiniyam (BS), 2023 shall not be binding on the mediator. The parties can determine the mediation's venue, manner, and language.
   c) **Confidentiality**: All the acknowledgements, opinions, suggestions, promises, proposals, apologies, and admissions made during the mediation; acceptance/ willingness to accept proposals in the mediation; documents prepared solely for the conduct of mediation are strictly confidential. These can neither be relied upon as evidence in any subsequent court proceedings nor be asked to be disclosed by any court/ tribunal. No audio or video recording of the mediation proceedings shall be made or maintained by the parties or the participants, including the mediator and mediation service provider, whether conducted in person or online, to ensure the confidentiality of the mediation proceedings.
   d) **Online Mediation**: The Act allows parties to opt for online/ virtual Mediation, which shall be deemed to occur within the jurisdiction of a competent court. The Act also requires online mediation communication mechanisms to ensure confidentiality.
   e) The mediator initially meets the parties separately and communicates the view of each party to the other to the extent agreed upon by them. He assists them in identifying issues, advancing better understanding, clarifying priorities, exploring areas of the parties' responsibility, identifying common interests, and encouraging compromise. He then meets them jointly to encourage a mutually acceptable resolution. At any stage of the mediation proceedings, at the parties' request, the mediator may suggest a dispute settlement in writing.
   f) **Termination of Mediation**: The process must be completed within 120 days, though parties can extend it by another 60 days through mutual consent. If Mediation is not completed within this timeline, the Mediator shall prepare a non-settlement report without disclosing the cause of non-settlement or any other matter or thing referring to their conduct during mediation for the parties or the Mediation Service Provider (MSP). Mediation shall also stand terminated on a declaration of the mediator, after consultation with the parties or otherwise, that further efforts at mediation are no longer justified or on communication by a party(ies) in writing, addressed to the mediator and the other parties that they wish to opt out of mediation. On termination of Mediation, if the dispute is still alive, the aggrieved party shall be free to invoke Arbitration.
   g) **Mediated Settlement Agreement (MSA)**: If the parties resolve the dispute and execute a mediated settlement agreement ("MSA"), then the Mediation is successful.

An MSA is a written agreement settling some or all disputes and may extend beyond the disputes referred to mediation. It must be valid under the Indian Contract Act, signed by both parties and duly authenticated by the Mediator for the parties or the MSP. The Act provides options for MSA registration. During the pendency of proceedings, parties can also execute other agreements, settling some of the subject-matter disputes.

h) **Challenge to MSA**: MSA can be challenged within 90 days on limited grounds of (a) fraud, (b) corruption, (c) impersonation, and (d) subject matter being unfit for Mediation.

i) **Execution of MSA**: If there is no challenge or a challenge is unsuccessful, the Act ensures that the MSA is binding and enforceable, akin to a judgment or decree. This means that if one party fails to comply with the MSA, the non-defaulting party has a right to enforce it through the Court.

j) **Costs**: The parties shall equally bear all costs of mediation, including the fees of the mediator and the charges of the mediation service provider.

k) **No claim of Interest during Mediation proceedings**: Parties shall not claim any interest on claims/counter-claims from the date of notice invoking Mediation till the execution of the settlement agreement if so arrived. If parties cannot resolve the dispute, either party shall claim no interest from the date of notice invoking Mediation until the date of Termination of Mediation Proceedings.

l) The parties shall not initiate, during the mediation proceedings, any arbitral or judicial proceedings in respect of a dispute that is the subject matter of the mediation proceedings.

9.7.5. Arbitration

1. **Arbitration Agreement:** If an amicable settlement is not forthcoming, provided an Arbitration clause agreement is included in the contract, recourse may be taken to the settlement of disputes through arbitration as per the Indian Arbitration and Conciliation Act, 1996 (Amended 2015[91] and 2021[92]). For this purpose, when the contract is with a domestic service provider, a standard arbitration clause (hereinafter called the 'Agreement') may be included in the Tender Document (Please refer to the Model Tender Document) indicating the arbitration procedure to be followed, based on which the Arbitration Act shall become applicable.
2. This Agreement shall continue to survive termination, completion, or closure of the Contract for 3 years after that. Unless otherwise stipulated in the Contract, the venue of arbitration should be the place from where the contract has been issued.
3. The Micro, Small and Medium Enterprises Development (MSMED) Act, 2006 provides parties to a dispute (where one of the parties is a Micro or Small Enterprise) to be referred to Micro and Small Enterprises Facilitation Council if the dispute is regarding any amount due under Section 17 of the MSMED Act, 2006. If a Micro or Small Enterprise, being a party to dispute, refers to the provisions in MSMED Act 2006, these provisions shall prevail over this Agreement.

[91] https://lawmin.gov.in/sites/default/files/ArbitrationandConciliation.pdf

[92] https://egazette.nic.in/WriteReadData/2021/225832.pdf

4. **Government Guidelines on Arbitration in Contracts**[93]: Department of Expenditure, Ministry of Finance has issued following guidelines for arbitration in contracts of domestic procurement by the Government and by its entities and agencies (including Central Public Sector Enterprises (CPSEs), Public Sector Banks (PSBs) etc. and Government companies):
   a) Arbitration as a method of dispute resolution should not be routinely or automatically included in procurement contracts/ tenders, especially in large contracts.
   b) As a norm, arbitration (if included in contracts) may be restricted to disputes with a value less than Rs. 10 crores. This figure is regarding the value of the dispute (inclusive of both claims and counterclaims) not the value of the contract, which may be much higher. It may be specifically mentioned in the bid conditions/ conditions of the contract that arbitration will not be a method of dispute resolution in all other cases.
   c) Inclusion of arbitration clauses covering disputes with a value exceeding the norm specified in sub-para (b) above should be based on careful application of mind and recording of reasons and with the approval of:
      i) Regarding Government Ministries/ Departments, attached/ subordinate offices and autonomous bodies, the Secretary concerned or an officer (not below the level of Joint Secretary) to whom authority is delegated by the Secretary.
      ii) Regarding CPSEs/ PSBs/ Financial institutions etc., the Managing Director.
   d) In matters where arbitration is to be resorted to, institutional arbitration may be given preference (where appropriate, after considering the reasonableness of the cost of arbitration relative to the value involved).
   e) General or case-specific modification in the application of the above guidelines may be authorised by the Secretary concerned (or an officer not below the level of Joint Secretary to whom the authority is delegated by him) in respect of Government Ministries/ Departments, attached/ subordinate offices and autonomous bodies, or the Managing Director in respect of Central Public Sector Enterprises including Banks and Financial institutions etc.

9.7.6. Foreign Arbitration

1. The Arbitration and Conciliation Act 1996 has provisions for international commercial arbitration, which shall be applicable if one of the parties has its central management and control in any foreign country.
2. When the contract is with a foreign service provider, the service provider has the option to choose either the Indian Arbitration and Conciliation Act, 1996 or arbitration in accordance with the provisions of the United Nations Commission on International Trade Law (UNCITRAL) arbitration rules.
3. The arbitration clause with foreign firms should be in the form of self-contained agreements. This is true especially for large value contracts or those for costly plant and machinery. The venue of arbitration should be in accordance with UNCITRAL or arbitration rules of India, whereby it may be in India or in any neutral country.

9.7.7. Notice for Arbitration

1. 'The Appointing Authority,' to appoint the arbitrator shall be Head of the Procuring Organisation named in the contract and includes if there be no such authority, the officer

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who is for the time being discharging the functions of that authority, whether in addition to other functions or otherwise.

2. In the event of any dispute as per para 9.7.1 above, if the Adjudicator fails to decide within 60 days (as referred in para 9.7.3 above), or the mediation is terminated (as referred in sub-para 9.7.4 above) then, parties to the contract, after 60 days but within 120 days of 'Notice of Dispute" shall request the Appointing Authority through a "Notice for Arbitration" in writing requesting that the dispute or difference be referred to arbitration.
3. The "Notice for arbitration" shall specify the matters in question or subject of the dispute or difference indicating the relevant contractual clause, as well as the amount of claim item-wise.

9.7.8. Reference to Arbitration

After appointing Arbitrator(s), the Appointing Authority shall refer the dispute to them. Only such dispute or difference shall be referred to arbitration regarding which the demand has been made, together with counter-claims or set off. Other matters shall be beyond the jurisdiction of Arbitrator(s)

9.7.9. Appointment of Arbitrator

1. **Invalidation of Unilateral Appointment Clauses:** On November 8, 2024, the Supreme Court of India, in a landmark ruling, stemming from the case (2024 INSC 857) Central Organisation for Railway Electrification (CORE) v. ECL-SPIC-SMO-MCML, ruled that:
   a) arbitration clauses allowing a government department or PSU to unilaterally appoint a sole arbitrator or mandate that the private party select an arbitrator from a panel curated exclusively by the government department or PSU are invalid.
   b) PSUs or government departments cannot compel the private party to choose from their panel of arbitrators. The private party must have the autonomy to nominate its arbitrator independently, ensuring a balanced and fair process.
   c) a private party can waive objections to bias or ineligibility under Section 12(5) of the Act, but this waiver must be explicit, in writing, and made after the dispute arises—not at the contract formation stage. Pre-dispute waivers embedded in contracts are not valid.
2. Therefore, the appointing authority for arbitrators, may ask the contractor to recommend his nominee arbitrator either from names suggested from approved panel of the Procuring Organisation or from an approved panel of the Indian Council of Arbitration (ICA) within 30 days from the date of dispatch of the written and valid acceptance of the demand for arbitration by the appointing authority. Guidelines of ICA Rules for Domestic Commercial Arbitration are as under:-
   a) The contractor may access the ICA's panel of arbitration through the ICA's official webpage: https://icaindia.co.in/pdf/Engineers.pdf.
   b) A formal request for nomination shall be submitted to ICA, accompanied by:-
      i) A brief Statement of Claim outlining the nature and quantum of the disputes
      ii) A copy of the relevant contract and any supporting documents
      iii) A copy of the notice intimating the other party of the initiation of arbitration proceedings, with proof of delivery (if any).
   c) Ad-hoc appointment fees for the nomination and appointment of arbitrators shall be as per the ICA Rules for Domestic Commercial Arbitration and revised from time to time. The fee shall be submitted along with the request.

d) The nomination and appointment of arbitrators from the ICA panel shall be as per the ICA Rules for Domestic Commercial Arbitration and shall be amended from time to time.

3. **Qualification of Arbitrators:**
   a) In the case of retired officers of The Procuring organisation, he shall have retired in the rank of Senior administrative grade (or equivalent) and shall have retired at least 1 years prior and must not be over 70 years of age on the date of Notice for arbitration.
   b) In the case of serving officers, they shall not be below JA Grade level.
   c) In case of serving or retired officer, he should not have been:
      i) involved in current vigilance/ CBI cases or against whom disciplinary or prosecution proceedings are not in process.
      ii) imposed a major penalty or two or more minor penalties or undergone administrative action three times or more, or
      iii) imposed a minor Penalty and undergone two administrative actions due to vigilance/CBI action while in service.
   d) Independence and Impartiality:
      i) Retired or serving officers shall not have had an opportunity to deal with the matters to which the contract relates or who, in the course of his/ their duties as officers of the Procuring Organisation, expressed views on any or all the matters under dispute or differences. Arbitrator shall make a declaration in this regard as per Annexure 25. The proceedings of the Arbitral tribunal or the award made by such Tribunal shall, however, not be invalid merely because one or more arbitrators had in the course of his service, an opportunity to deal with the matters to which the contract relates or who in the course of his/ their duties expressed views on all or any of the matters under dispute.
      ii) Arbitrators (including from panel of ICA) shall be independent and impartial (section 12(1) of the Arbitration Act) and disclose in writing any circumstances (past or present relationships with parties or counsel) that may give rise to justifiable doubts about their independence or impartiality. Disclose any direct or indirect interest in the dispute's outcome.
   e) Disclosure by all arbitrators shall be in format of Annexure 25.
   f) An Arbitrator may be appointed notwithstanding the total no. of arbitration cases in which he has been appointed in the past.
   g) Not be other than the person appointed by The Appointing Authority and that if for any reason that is not possible, the matter shall not be referred to arbitration at all.
4. **Panel of Arbitrators**: The procuring Organisation may prepare, with the approval of the head of the procuring organisation, a panel of serving and retired officers who are willing and qualified (as per sub-para 3 above) to be empanelled as Arbitrators based on integrity, ethics, the experience of dealing in contracts/ tenders, temperament of taking fair decisions, feedback, general image, career profile etc. Such persons should have vigilance clearance and should not be working in the vigilance wing. The performance of empanelled arbitrators should be reviewed annually. The empanelment of a retired officer as arbitrator shall be limited to three procuring entities only, and at any given time, a maximum of two arbitration cases shall be assigned to any arbitrator in a Procuring entity.
5. **Replacement of Arbitrators:** If one or more of the arbitrators appointed as above refuses to act as arbitrator, withdraws from his office as arbitrator, or in the event of the arbitrator dying, neglecting/ unable or unwilling or refusing to act for any reason, or his award being

set aside by the court for any reason, or in the opinion of The Appointing Authority fails to act without undue delay, the Appointing Authority shall appoint new arbitrator/ arbitrators to act in his/ their place in the same manner in which the earlier arbitrator/ arbitrators had been appointed. Such a re-constituted Tribunal may, at its discretion, proceed with the reference from the stage at which it was left by the previous arbitrator (s).

6. **Appointment of Arbitrator**:
   a) Appointment of Arbitrator where the applicability of section 12 (5) of the Arbitration and Conciliation Act has been waived off:(refer para 1-c) above)
      i) In cases where the total value of all claims in question added together does not exceed ₹ 1,00,00,000/- (Rupees One Crore), the Arbitral Tribunal shall consist of a Sole Arbitrator who shall be a serving officer of the procuring organisation, not below Junior Administrative Grade, nominated by the Appointing Authority. The sole arbitrator shall be appointed within 60 days from the day when a written and valid demand for arbitration is received by the designated Appointing Authority.
      ii) In cases not covered by sub-para i) above, the Arbitral Tribunal shall consist of a panel of three serving officers not below Junior Administrative Grade or two serving officers not below Junior Administrative Grade and a retired officer (retired not below the rank of Senior Administrative Grade Officer), as the arbitrators. For this purpose, the Appointing Authority shall send a panel of at least four (4) names of Officers, which may also include the name(s) of retired Officer(s) empanelled to work as Arbitrator, to the Contractor within 60 days from the day when a written and valid demand for arbitration is received by the Appointing Authority. The contractor will be asked to suggest at least 2 names out of the panel for appointment as the Contractor's nominee within 30 days from the date of dispatch of the request to him. The Appointing Authority shall appoint at least one out of them as the Contractor's nominee and shall also simultaneously appoint the balance number of arbitrators either from the panel or from outside the panel, duly indicating the 'presiding arbitrator' from amongst the 3 arbitrators so appointed. The Appointing Authority shall complete this exercise of appointing the Arbitral Tribunal within 30 days from the receipt of the names of the Contractor's nominees. While nominating the arbitrators, it shall be necessary to ensure that one of them is from the Finance/ Accounts Department (officer of Selection Grade of the Finance/ Accounts Department shall be considered as of equal status to the officers in Senior Administrative Grade of other departments for appointment of an arbitrator).
      iii) The serving officer working in arbitral tribunal in the ongoing arbitration cases as per sub-para i) and ii) above can continue as arbitrator in the tribunal even after his retirement.
   b) Appointment of Arbitrator where the applicability of Section 12 (5) of the Arbitration and Conciliation Act has not been waived off:
      i) In cases where the total value of all claims in question added together does not exceed ₹ 50,00,000/- (Rupees Fifty Lakh), the Arbitral Tribunal shall consist of a sole arbitrator. For this purpose, the Appointing Authority will send a panel of at least four (4) names of retired Officer(s) (retired not below the rank of Senior Administrative Grade Officer) empanelled to work as Appointing Authority Arbitrator duly indicating their retirement dates to the Contractor within 60 days

from the day when a written and valid demand for arbitration is received by the Appointing Authority. The contractor will be asked to nominate to the Appointing Authority at least 2 names of arbitrators. These can be out of the panel suggested by the approving authority or from an approved panel of the Indian Council of Arbitration (ICA – refer sub-para 2 above) within 30 days from the date of dispatch of the request by the Appointing Authority. The Appointing Authority shall appoint at least one out of them as the arbitrator within 30 days from the receipt of the names of the Contractor's nominees.

ii) In cases where the total value of all claims in question added together exceeds ₹ 50,00,000/- (Rupees Fifty Lakh), the Arbitral Tribunal shall consist of a Panel of three (3) arbitrators. For this purpose, the Appointing Authority will send a panel of at least four (4) names of retired Officers (retired not below the rank of Senior Administrative Grade Officer) empanelled to work as Arbitrator duly indicating their retirement date to the Contractor within 60 days from the day when a written and valid demand for arbitration is received by the Appointing Authority. The contractor will be asked to nominate to the Appointing Authority at least 2 names of arbitrators. These can be out of the panel suggested by the approving authority or from an approved panel of the Indian Council of Arbitration (ICA – refer sub-para 2 above) within 30 days from the date of dispatch of the request by the Appointing Authority. The Appointing Authority shall appoint at least one out of them as the Contractor's nominee and shall also simultaneously appoint his nominee arbitrator either from the panel or from outside the panel. The Appointing Authority shall complete this exercise of appointing the Arbitral Tribunal within 30 days of the receipt of the names of the Contractor's nominees. Two selected arbitrators are free to select a presiding arbitrator (3rd arbitrator) within thirty (30) days from their appointment. The presiding arbitrator may be selected from an approved panel of the procuring organisation or from an approved panel of the Indian Council of Arbitration (as per mutual agreement), which will be approved by the appointing authority within 30 days of receipt of such name.

c) If the contractor does not suggest his nominees for the arbitral tribunal within the prescribed timeframe, or the two appointed arbitrators fail to nominate a presiding arbitrator, the Appointing Authority shall proceed with the appointment of the arbitral tribunal within 30 days of the expiry of such time provided to the contractor.

d) **Failure to Appoint Arbitrators**: If The Appointing Authority fails to appoint an arbitrator, or two appointed arbitrators fail to agree on the third arbitrator, within 60 (sixty) days, then subject to the survival of this Arbitration Agreement, in international commercial arbitration, the Supreme Court of India shall designate the arbitral institution for the appointment of arbitrators. In case of national arbitrations, the High Court shall designate arbitral institutions. The Arbitration Council of India must have graded these arbitration institutions. These arbitral institutions must complete the selection process within thirty days of accepting the request for the arbitrator's appointment.

9.7.10. The Arbitral Procedure

1. **Effective Date of Entering Reference:** The arbitral tribunal shall be deemed to have entered the reference on the date on which the arbitrator(s) have received notice of their appointment. All subsequent time limits shall be counted from such date.

2. **Seat and Venue of Arbitration:** The seat of arbitration shall be the place from which the Letter of Award or the contract is issued. The venue of arbitration shall be the same as the seat of arbitration. However, in terms of section 20 of The Arbitration Act, the arbitrator, at his discretion, may determine a venue other than the seat of the arbitration without in any way affecting the legal jurisdictional issues linked to the seat of the arbitration. The Arbitral Tribunal shall decide any matter related to Arbitration not covered under this Arbitration Agreement as per the provisions of The Arbitration Act.
3. If the Adjudication and/ or Mediation mechanisms had not been exhausted before such reference to Arbitration, the Arbitrator should ask the aggrieved party to approach designated authority for such mechanisms before the Arbitration proceedings are started.
4. The claimant shall submit to the Arbitrator(s) with copies to the respondent his claims stating the facts supporting the claims along with all the relevant documents and the relief or remedy sought against each claim within 30 days from the date of appointment of the Arbitral Tribunal unless it has granted an extension.
5. On receipt of such claims, the respondent shall submit its defence statement and counterclaim (s), if any, within 60 days of receipt of the copy of claims, unless the Arbitral Tribunal has granted an extension.
6. No new claim shall be added during proceedings by either party. However, a party may amend or supplement the original claim or defence thereof during arbitration proceedings subject to acceptance by the Tribunal having due regard to the delay in making it.
7. Statement of claims, counterclaims and defence shall be completed within six months from the effective reference date.
8. **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. The arbitrator (s) may impose an exemplary cost on the party seeking adjournment without sufficient cause.
9. **Award within 12 (twelve) months:** The arbitral tribunal is statutorily bound to deliver an award within 12 (twelve) months from the date when the arbitral tribunal enters reference. The award can be delayed by a maximum of six months only under exceptional circumstances where all parties consent to such extension of time. The court's approval shall be required for further extension if the award is not made out within such an extended period. During the period of an application for extension of time is awaiting before the court, the arbitrator's proceedings shall continue until the disposal of the application.
10. **Cost of Arbitration and Fees of the Arbitrators:** The concerned parties shall bear the cost of arbitration in terms of section 31 (A) of The Arbitration Act. The cost shall inter-alia include fees of the Arbitrator. Further, the fees payable to the Arbitrator shall be governed by instructions issued on the subject by the Procuring Entity and/ or the Government from time to time, in line with the Arbitration and Conciliation Act, irrespective of the fact whether the Arbitrator is appointed by the Procuring Entity or the Government under this clause or by any court of law unless directed explicitly by Hon'ble court otherwise on the matter. However, if any of the three arbitrators is selected from the Panel of Indian Council of Arbitration (ICA), the fee of the arbitrators shall be determined as per the rates fixed/revised by the Indian Council of Arbitration from time to time and the fee shall be borne equally by both the parties. A sole arbitrator shall be entitled to a 25% extra fee over such a prescribed fee. The arbitrator shall be entitled to a 50 percent extra fee if the award is made within 6 months in terms of provisions contained in section 29(A) (2) of The

Arbitration Act. Besides the above, Arbitrator shall also be entitled to this extra fee in cases where Fast Track Procedure in terms of section 29 (B) of The Arbitration Act is followed.

11. **Fast Track Procedure:** The parties to arbitration may choose to opt for a 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, and the arbitral tribunal shall be entitled to additional fees. The salient features of the fast-track arbitration are:
    a) The dispute is to be decided based on written pleadings only. Procuring Entities may encourage Fast Track Procedure based on written pleadings only.
    b) Arbitral Tribunal shall have the power to call for clarifications in addition to the written pleadings where it deems necessary.
    c) An oral hearing may be held only if all the parties request or the arbitral tribunal considers it necessary.
    d) The parties are free to decide the fees of the arbitrator(s) for fast-track procedure.
12. **Powers of Arbitral Tribunal to grant Interim Relief:** The parties to arbitration may approach the arbitral tribunal for seeking interim relief on the grounds available under section 9 of the act. The tribunal has the powers of a court while making interim awards in the proceedings before it.
13. **Confidentiality:** As provided in Section 42A of The Arbitration Act, all the details and particulars of the arbitration proceedings shall be kept confidential, except in certain situations like if the disclosure is necessary for the implementation or execution of the arbitral award.
14. **Obligation During Pendency of Arbitration:** Performance of the contract shall, unless otherwise directed by the Procuring Entity, continue during the arbitration proceedings, and no payment due or payable by the Procuring Entity shall be withheld on account of such proceedings, provided; however, it shall be open for Arbitral Tribunal to consider and decide whether or not the performance of the contract or payment therein should continue during arbitration proceedings.
15. **The Arbitral Award:** In the case of the Tribunal, comprising of three members, any ruling on award shall be made by a majority of members of the Tribunal. In the absence of such a majority, the views of the Presiding Arbitrator shall prevail. The arbitral award shall state item-wise the sum and reasons upon which it is based. The analysis and reasons shall be detailed enough so that the award can be inferred from it. It shall be further a term of this arbitration agreement that where the arbitral award is for the payment of money, no interest shall be payable on whole or any part of the money for any period till the date on which the award is made in terms of Section 31 (7) (a) of The Arbitration Act. The award of the arbitrator shall be final and binding on the parties to this contract. A party may apply for corrections of any computational errors, typographical or clerical errors, or any other error of similar nature occurring in the award or interpretation of a specific point of the award to the Tribunal within 60 days of receipt of the award. A party may apply to the Tribunal within 60 days of receiving the award to make an additional award as to claims presented in the arbitral proceedings but omitted from the arbitral award.

9.7.11. Challenging Arbitration/ Judicial Awards

1. In matters covered by arbitration/ court decisions[94], the guidance contained in 'General Instructions on Procurement and Project Management' dated 29.10.2021[95] should be kept in mind. In cases where there is a decision against the government/ public sector enterprise, the decision to challenge/ appeal should not be taken routinely, but only when the case genuinely merits going for challenge/ appeal and there are high chances of winning in the court/ higher court.
2. 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.
3. 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 after 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.)[96]
4. 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.
5. 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.

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[94]Notified vide OM No. F. 11/21/2024-PPD issued by Department of Expenditure dated 03.06.2024

[95]Notified vide OM No. F./1/9/2021-PPD issued by Department of Expenditure dated 29.10.2021.

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

6. 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.
7. The only circumstances in which such payment need not be made is where the contractor declines, or is unable, to provide the requisite bank guarantee and/or fails to open an escrow account as required. Persons responsible for not adhering to are liable to be held personally accountable for the additional interest arising, in the event of the final court order going against the procuring entity[97].

9.7.12. Mechanism for Resolution of Commercial Disputes between CPSEs and Government Agencies

1. **Introduction**: To streamline and ensure the effective resolution of commercial disputes between Central Public Sector Enterprises (CPSEs) and Government Departments/Organizations, the Government of India has established the Administrative Mechanism for Resolution of CPSEs Disputes (AMRCD). This mechanism, effective from May 22, 2018, supersedes the earlier Permanent Machinery of Arbitration (PMA), and applies to all commercial disputes concerning the interpretation and application of provisions in contracts between:
   a) CPSEs inter se, and
   b) CPSEs and Government Departments/Organizations, excluding disputes related to Railways, Income Tax, Customs, and Excise Departments.
2. **Structure of AMRCD**: The AMRCD operates on a two-tier structure:
   a) First Level (Tier 1): Disputes are initially referred to a Committee comprising the Secretaries of the respective Administrative Ministries/Departments involved and the Secretary of the Department of Legal Affairs. The Financial Advisors (FAs) of the concerned Ministries/Departments represent the issues before this Committee.
   b) Second Level (Tier 2): If the dispute remains unresolved at the first level, it is escalated to the Cabinet Secretary, whose decision is final and binding.
3. **Procedure**: The claiming party must approach the Financial Advisor of its Administrative Ministry/Department to initiate the dispute resolution process. Meetings are held to examine and resolve the dispute on its merits. The Committee is expected to finalize its decision within three months of receiving the dispute notice. An aggrieved party can appeal the first-level decision to the Cabinet Secretary within 15 days.
4. **Inclusion in Contracts**: All CPSEs must include a specific clause in relevant contracts to ensure that disputes are resolved through the AMRCD as stipulated in the DPE[98] O.M. Ongoing contracts should also be amended to incorporate this clause.

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

[98] No. 4(1)/2013-DPE(GM)/FTS-1835 dated May 22, 2018, with latest amendment issued by Department of Public Enterprises vide OM No. 05/0003/2019-FTS-10937 dated 14.12.2022.

9.8. Terminating Services Prior to End of Contract

9.8.1. Breach of Contract

1. In case the contractor undergoes insolvency or receivership; neglects or defaults or expresses inability or disinclination to honour his obligations relating to the performance of the contract or ethical standards or any other obligation that substantively affects the Procuring Entity's rights and benefits under the contract, it shall be treated as a breach of Contract. Such defaults could include inter-alia:
   a) **Default in Performance and Obligations**: if the contractor fails to deliver any or all the Services or fails to perform any other contractual obligations (including Code of Integrity or obligation to maintain production capability (equipment & manufacturing facilities) based on which contract was awarded) within the period stipulated in the contract or within any extension thereof granted by the Procuring Entity it shall be treated as a breach of Contract.
   b) **Insolvency**: If the contractor or any partner thereof, shall at any time, be adjudged insolvent or shall have a receiving order or order for the administration of his estate made against him or shall take any proceeding for composition under any Insolvency Act for the time being in force or make any conveyance or assignment of his effects or enter into any assignment or composition with his creditors or suspend payment or if the firm be dissolved under the Partnership Act, the Procuring Entity may consider it as a breach of Contract.
   c) **Liquidation:** if the contractor is a company being wound up voluntarily or by order of a Court or a Receiver, Liquidator or Manager on behalf of the Debenture-holders is appointed, or circumstances shall have arisen which entitle the Court or Debenture-holders to appoint a Receiver, Liquidator or Manager, the Procuring Entity *may consider* it as a breach of Contract.
2. As soon as a breach of contract is noticed, a show-cause 'Notice of Default' shall be issued to the contractor, giving two weeks' notice, reserving the right to invoke contractual remedies. After such a show-cause notice, all payments to the contractor would be temporarily withheld to safeguard needed recoveries that may become due on invoking contractual remedies. If there is an unsatisfactory resolution, remedial action may be taken immediately.

9.8.2. Termination of Contract

1. In some cases, termination is the optimal choice; in others, it is detrimental to the overall intent of the assignment. This implies a missed opportunity, and a waste of the funds already expended on the assignment. For these reasons, termination should be avoided if possible, even if this means a considerable re-staffing of the Service Provider's team.
2. Termination may be initiated by any party. Termination must be undertaken within the terms of the contract document. These provide for a notice period of 30 (thirty) days and payment by the Procuring Entity of any legitimate outstanding fees and costs to the service provider, and the payment of legitimate costs to wind-up the Non-consultancy service team (unless the termination was occasioned by the default of the service provider).
3. The CMC would indicate which of the final billings by the firm are eligible for payment and which are not. In case of dispute over what is or is not a legitimate expense, eligible for payment, the dispute mechanism described above is invoked and, if it is not possible to

resolve the matter amicably, the issue is submitted for arbitration. The contract will remain valid until the arbitration decision is made.

9.8.3. Termination of Contract for Default

1. In the event of unsatisfactory resolution of 'Notice of Default' within two weeks of its issue as per para above, the Procuring Entity, if so decided, shall by written 'Notice of Termination for Default' sent to the contractor, terminate the contract in whole or in part, without compensation to the contractor. Before cancelling the contract and taking further action, it may be desirable to obtain legal advice. Such termination shall not:
   a) prejudice or affect the rights and remedies, which have accrued and/ or shall accrue to the Procuring Entity after that.
   b) affect the performance of the contract to the extent not terminated, unless otherwise instructed by the Procuring Entity,
   c) extinguish warranty obligations of the contractor, for the services already supplied, if any.
2. If the contract is terminated in whole or in part, additionally, recourse may be taken to any one or more of the following actions:
   a) Temporarily withhold payments due to the contractor till recoveries due to invocation of other contractual remedies are complete.
   b) Call back any loaned property or advances of payment, if any, with the levy of interest rate (e.g., the interest rate of the General Provident Fund-GPF) prevailing on the date of release of advance payment, plus 2% to be compounded quarterly.
   c) Recover liquidated damages and invoke denial clause for delays.
   d) Prefer claims against insurances, if any.
   e) Encash and/ or Forfeit performance security or
   f) Invoke any other contractual securities, including Termination of Contract for Default
   g) Initiate proceedings in a court of law for the transgression of the law, tort, and loss, not addressable by the above means.

9.8.4. Determination of Contract for Default/ Convenience of Procuring Entity or for Frustration of Contract

1. After placement of the contract, there may be an unforeseen situation compelling Procuring Entity to terminate the contract, in whole or in part for its (the Procuring Entity's) convenience, by serving written 'Notice for Determination of Contract' on the contractor at any time during the currency of the contract. The notice shall indicate inter-alia, that the termination is for the convenience of the Procuring Entity or the frustration of the contract and also the extent to which the contractor's performance under the contract is terminated, and the date with effect from which such termination shall become effective.
2. Such termination shall not prejudice or affect the rights and remedies accrued and/ or shall accrue after that to the Parties.
3. Unless otherwise instructed by the Procuring Entity, the contractor shall continue to perform the contract to the extent not terminated.
4. All warranty obligations, if any, shall continue to survive despite the termination.
5. Determining the contract by Procuring Entity for its convenience is not its legal right – and the contractor must 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.

6. The Services and incidental Goods/ Works that are complete and ready in terms of the contract for delivery and performance within thirty days after the contractor's receipt of the notice of termination shall be accepted by the Procuring Entity as per the contract terms. For the remaining Services and incidental Goods/ Works, the Procuring Entity may decide:
   a) To get any portion of the balance completed and delivered at the contract terms, conditions, and prices; and/ or
   b) To cancel the remaining portion of the Services and incidental Goods/ Works and compensate the contractor by paying an agreed amount for the cost incurred by the contractor, if any, towards the remaining portion of the Services and incidental Goods/ Works.

9.8.5. Frustration of Contract

Upon a supervening cause occurring after the effective date of the contract, including a change in law, beyond the control of either party whether because of the Force Majeure clause or within the scope of section 56 of the Indian Contract Act, 1872, that makes it impossible to perform the contract within a reasonable timeframe, the affected party shall give a 'Notice of Frustration Event' to the other party giving justification. The parties shall use reasonable efforts to agree to amend the contract, as may be necessary to complete its performance. However, if the parties cannot reach a mutual agreement within 60 days of the initial notice, the Procuring Entity shall issue a 'Notice for Determining the contract' and terminate the contract as per para 9.8.4 above, due to its frustration, without repercussions on either side.

9.8.6. Limitation of Liabilities

Except in cases of criminal negligence or willful misconduct:

1. neither Party shall be liable to the other Party, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, which may be suffered by the other Party in connection with the Contract, provided that this exclusion shall not apply to any obligation of the Contractor to pay liquidated damages to the Employer and
2. the aggregate liability of the Contractor to the Procuring Entity, whether under the Contract, in tort or otherwise, shall not exceed the total Contract Price, provided that this limitation shall not apply to any obligation of the Contractor to indemnify the Employer with respect to patent infringement.
3. the aggregate liability of the Employer to the Contractor except for patent infringement, whether under the Contract, in tort or otherwise, at any point of time during the execution/performance of the Contract, shall not exceed the 'total Contract Price less payments already released to the Contractor'.

9.9. Monitoring of NC Services Contracts – Risks and Mitigation

Risks	Mitigation
1. *Substitution of key experts in implementation*: When the contract progresses, over a period of time, the request for substitution of key staff is	The Procuring Entity needs to deal with such requests strictly in terms of contract provisions which permit substitution of key experts in exceptional circumstances such as "death or medical incapacity". Substitution of a person

Risks	Mitigation
made by the firm citing reasons of non-availability, health, and so on.	"of equivalent or better qualification and experience" should receive utmost scrutiny and compliance, as diluting such a provision leads to loss of quality of work and a serious integrity issue. Such substitution should not give any undue financial benefit to the contractor.
2. *Cost overruns in time-based contracts:* Time and Cost over-run is a major risk in Time-based contracts, as the payment is based on time and delay may result in unanticipated benefit to the service provider and the assignment may get delayed.	This type of contract should include an upper limit of total payments to be made to the service providers for the assignment to safeguard against excessive prolonging of time and payments. After this limit is reached, or the period of completion is exceeded, CA should review justification for extension of the contract. One of the ways to prevent cost overruns in time-based contract is to require Procuring Entities acquire contract management capacity to manage service contracts before contract is signed. It is Procuring Entity's mandate to monitor service provider's contracts and also to request service providers to keep producing progress reports and highlighting the status of their contract as it reaches milestones such as 50% and 80% progress. Procuring Entity must carefully authorise mobilisation and demobilisation of key experts and examine the time sheets and other reimbursable expenditures.
3. Advance payments: This is an area of risk in public procurement with undue and unintended benefits to the contractor, which vitiates the original selection criteria.	Any mobilisation or other advance payments should be interest bearing and should be only for justifiable cases. Terms of such advances should be expressly stated in the NIT/tender documents. The advance payment may be released in not less than two stages depending upon the progress of the contract. Advance should be progressively adjusted against bills cleared for payment. Interest should be charged on delayed recoveries irrespective of the reason stated.
4. Contract changes and renegotiations: This is also a risk area, where the procuring entity may not get what it contracted and paid for or may pay for what it has not received. On the other hand, the contractor may not get timely or	Contract modifications and renegotiations should not substantially alter the nature of the contract. It should not vitiate the basis of the selection of the contractor. It should not give undue or unintended benefits to the contractor. However, for any changes caused by the procuring entity, the contractor should be

Risks	Mitigation
proper amendments due to changes asked by the procuring entities.	adequately and timely compensated within the contractual terms.
5. Supervising agencies/individuals are unduly influenced to alter the contents of their reports so changes in quality, performance, equipment, and characteristics go unnoticed.	A contract management manual or operating procedure should be prepared for large value contracts. There should be inbuilt systems of checks and balances. All large contracts should be formally reconciled for closure to ensure that the scope of the work is completed. This should include the dispute resolution forum for resolving disputes in a fixed timeframe with provision of escalation level. All payments/recoveries should also be reconciled. It should also be ensured that material/assets loaned to him including security passes are accounted for.
6. Contractor's claims are false or inaccurate and are protected by that in-charge of revising them.	
7. Payment to the contractor is delayed intentionally or otherwise.	
8. Contractor gets final payment, but contract closure has not been formally done. As a result, material/assets loaned to him are not accounted for.	
9. Every dispute lands up in arbitration or court cases since the procuring entity is reluctant to grant compensation for its own lapses to the contractor.	
10. Agents/ Sub-contractors and partners, chosen in a non-transparent way, are unaccountable or are used to channel bribes.	Normally Procuring Entity should deal with the contractor directly and not though agents. If foreign contractors in GTE contracts use agents, then the relationship between contractor and Agent should be as per the contract (and Integrity Pact Annexure 12, if applicable) in conformity with paras 3.3.3-2-b) and 3.9. Sub-contracting should be regulated as per the contract and paras 3.2.3-1, 5.2.2-3-c), and 9.2.5-7.

ANNEXURE

Annexure 1: Financial Powers to Sanction Expenditure for Purchases and Execution of Contracts

(Refer Para 1.5-1,4.4.1-2, 7.2.1-5,7.5.4-3)

1. DFPR, 2024, Rule 11, Sub-Rule (1): Subject to the provisions of DFPR 2024 and the provisions of the General Financial Rules, governing the procurement of goods and services, a Department of the Government of India shall have full powers to sanction expenditure for purchases and for execution of contracts.
   a) DFPR 2024, Annexure II (General Conditions for incurring expenditure), para 11: In order to derive the benefit of these delegations optimally, the Departments of the Government of India should not only make full use of the delegated powers but also further re-delegate powers to their subordinate organisations to match the latter's requirements. A complete review of such re-delegations may be undertaken at least once in three years.
2. Powers to sanction expenditure for purchases or execution of contracts to be exercised by Secretary of the Department, shall be as follows:

Sub-rule (2)	For open or limited tender contracts	Rs. 100 crores
Sub-rule (3)	For negotiated or single tender or proprietary contracts and agreements	Rs. 25 crores

3. **Sub-Rule (4)**: Contracts or purchases, the amount of which exceeds the value stated in sub-rules (2) and (3) above, in the categories stated, shall require the approval of the Minister in charge of the Department.
4. **Sub-Rule (5)**: Subject to the provisions of DFPR 2024, Secretaries of the Departments of Government of India may, by general or special order, confer powers not exceeding those vested in them as specified in Sub-rule (2) and (3) of Rule 11 ….. upon an Administrator or Head of the Department or any other authority subordinate to him in consultation with the Financial Advisor of the Department or Ministry.
   a) **Redelegation of Powers:** Rule 12, sub-rule (3): The Administrator or Head of the Department ……. by an order in writing, authorise a Gazetted Officer serving under him to exercise to such extent, as may be specified in that order, all or any of the powers conferred on such Administrator or Head of the Department …. The Administrator or Head of the Department shall, however, continue to be responsible for the correctness, regularity and propriety of the decisions taken by the Gazetted Officer so authorised.
   b) Charter for FA, 2023, Para 20: Under Rule 12 of the Delegation of Financial Powers Rules (DFPR), and orders of DoE, certain powers have been given to Departments and to Heads of Department to decide the financial limits up to which they wish to further delegate powers for incurring certain types of expenditure. Such cases of re-delegation of powers may be either with a requirement to consult with Financial Adviser in individual cases while exercising the re-delegated power or without a requirement to consult the Financial Adviser in individual cases while exercising the re-delegated power. All orders of re-delegation of powers require consultation of the Financial Adviser on both these points, viz. the extent of re-delegation and whether or not consultation of the Financial Adviser in individual cases will be required.
5. **Sub-Rule (6)**: Notwithstanding anything contained in sub-rules (1), (2), (3) and (4),in cases where powers to award contract or purchase or consultancy in a Project or Scheme has been considered and allowed by Public Investment Board (PIB) or Expenditure Finance

Committee (EFC) or Cabinet, as the case may be, such cases will be processed as per the financial limits laid down for sanction of such Schemes or Projects by that Authority.

Clarification w.r.t Rule 11 (6) It is clarified that where the award of contract, purchase or engagement of consultancy services forms part of a Project or Scheme, which has been appraised by the PIB or EFC, and approved by the Competent Financial Authority (including the Cabinet), and where financial limits for such powers have been specifically prescribed in such approval, the limits allowed by the Competent Financial Authority shall be followed.

6. **Explanation:** If a contract extends over a period of time, the total value over the entire period of currency shall be taken for the purpose of applying the limit.
7. **These rules shall not apply to**:
   a) the Ministry of Railways and authorities subordinate to that Ministry;
   b) the Ministry of Defence and authorities subordinate to that Ministry in relation to expenditure debitable to Defence Services Estimates.
   c) the Departments of Atomic Energy and Space;
   d) the Department of Telecommunications;
   e) the Government of India's representatives abroad whose powers shall be determined in accordance with the rules or orders issued separately in consultation with the Finance Ministry.

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

(Refer Para 1.5-1, 4.4-2, 7.2.1-5, 7.2.7-3, 8.2-4)

A suggested structure of SoPP [99] is given below. However individual threshold values (wherever not given in GFR/ DFPR) would depend on the respective circumstances of various Organisations.

	Threshold Value in Rupees (Lakh)				
Five columns for level of officers are just indicative, there would be more levels as per competent Financial Authorities (CFAs, including Minister or Board of Directors in CPSEs) in organisations.					
Competent Financial Authority > Level 1 is lowest and Level -n is highest	**Level -1**	**Level-2**	**Level 3**	**Level-4**	**Level-n**
Procurement Proposal initiation, approvals and Signing: Including formulation of Services and Activities Schedule and Cost Estimates					
In Principle Approval, initiation and approval of Procurement Proposals for Services					
Initiation, Approval of Services and Activities Schedules and Cost estimates for Services					
Final Administrative, Budgetary Approval for Starting Procurement					
Approval for Floating of Tenders of Various Types including					
Approval Selection of System of Selection of service providers – other than LCS – QCBS					
Approval for Selection by nomination of Services					
Preparation and Approval of Bidding Documents and floating of Tenders – EoI/ Tender for services					
Approval of Retendering of a discharged tender after second attempt					

[99] The procuring entities will indicate the stages and the value threshold above which consultations with/ concurrence/ vetting from IFD would be required

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

Competent Authority (CA) for Evaluation and Acceptance of Tenders					
Procurement without calling Quotation					
Procurement Through a Purchase Committee					
Direct Approval of Tenders Without Tender committee					
Tender Committee/ CEC Composition and CA for Acceptance – EoI/ RfP for Services. Slabs below are suggestive but would depend on the frequency of cases in various slabs of procurements in an organisation.					
Slab 1 (Rs 10 Lakh to 50 Lakh) – Level 2 officers' TC, Acceptance by Level 3 Officer					
Slab 2 (Rs 50 Lakh to 2 Crore) – Level 3Officers' TC acceptance by Level 4 Officer					
Slab 3 (Rs 2 Crore 25 Crore) – Level 4 officers' TC acceptance by Level 5 Officer					
Higher levels and other type of TC to suit local requirements, Acceptance at Sec level					
Approval of acceptance of Single Offer against GTE/ OTE/ LTE and acceptance of unsolicited Offers in LTE against urgency certificate by the indentor					
Formulation and Placement of Contracts					
Contracts after following Tendering Process					
Acceptance of Special Conditions with concurrence of Finance before Award of Contract as per recommendation of TC/ CA					
Acceptance of Advance Payments					
Other Variations demanded by Bidders in special circumstances.					
Post Contract Powers, including Bill Passing and Payments, Handing over assets/ equipments/ material/ utilities to Contractor; Extensions with or without LD, or approvals of Variations, Contract Closure, Terminations, Arbitrator appointment, Accepting and sanctioning Court and Arbitration award					
Waiver of Liquidated Damages					
Allowing release of Time-barred claims					

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

Annexure 3: Format of Procurement Proposal

Procurement Proposal (Concept Paper) for Procurement of Non-consultancy services

(Refer Para 2.2.1)

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

1. Purpose/ Objective Statement of Services

a) Description of service:

b) Background of the Organisation and the Project:

c) Purpose/ Objectives of the Assignment: (Highlight how the proposed procurement of services would fit in with short-term and strategic goals of Procuring Entity)

2. Service Outcome Statement - Outcomes expected from the Procurement of Services:

a) Broad List of Activities/ Steps involved in achieving objectives:

b) Expected Time-frame of assignment/ Duration of Engagement:

c) Rough estimate of cost of Procurement of services: (including related costs to be incurred by the organization)

3. Justification for the procurement of Services - Capabilities required for carrying out the assignments:

4. Rough assessment of available in-house capabilities as compared to required capabilities:

5. Precedence and similar assignments carried out earlier in our organisation/ similar organisations

6. The eligibility and pre-qualification criteria to be met by the service providers:

7. Justification: Based on assessment of required and in-house capabilities;

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

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

iii) Money, and
iv) Time/ Speed of execution.

8. In principle approval

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

Proposing Officer
Signatures/ Name/ Designation/ Department
Comments and Instructions:

Approving Officer
Signatures/ Name/ Designation/ Department

Annexure 4: Services and Activities Schedule for Non-consultancy Services

(Refer Para 2.3.1-3)

1. Title of the Services
2. **Background** of Procuring Organisation and Services and impact on Procuring Organisation's performance/ objectives;
3. Statement of Purpose and Service Outcomes
4. **Contract Period:** (Unless otherwise stipulated, the period for which Service shall be Contracted shall be one year from the date of Contract, with a provision for extension for four months (unless otherwise stipulated) after that.)
5. Description and Scope of Services
6. **Form of BOQ/ Contract** – (Time-based (input/ output admeasurement) or Indefinite delivery (input/ output admeasurement) or Lumpsum or Percentage-Based)
7. Itemized Services and Activities Schedule
   a) Tasks, Activities, dependencies, categorised into classes, location and features affecting prices.
   f) Frequency of Activities, Quantum, Length and Duration of Activities
   g) Performance standards for such activities
8. Labour/ Personnel Deployment Schedule:
   a) Type of Personnel, Number of each type, Place, Shifts, Frequency of deployment
   b) Project Managers, Supervisors, Their qualifications/ experience, numbers
   c) Leave reserve and reliving staff needed are not included in the numbers of personnel, these must be included in the rate of each personnel
9. **Material Schedule, if any**: Materials, Consumables, Tools of Trade, to be consumed/ deployed, tabulate, quantum, specifications, per unit of activity/ Manpower/ day/ location etc
10. **Essential Equipment Schedule**: Deployment of essential machinery (equipment, Trucks, Cranes, Washing Machines, vessels/ crafts, plant & machinery) – mention quantity/ activity, specifications, capacity, age. Possession/ access to such machinery may also be included in the qualification requirements.
11. Deliverables/ Outcomes and Timelines (frequency) thereof:
12. **Statutory and contractual obligations** to be complied with by the contractor: Various statutory provisions relating to labour, taxation, Workmen Safety, Child and Women Labour, Private Security Agencies, Environmental Protection, Mining, Forest clearance, Employment reservations and Procuring Entity's own regulation about safety, security, confidentiality etc. must be listed, so that price implications and compliance is taken care of by the bidder.
13. **Facilities and Utilities to be provided by the Procuring Entity** to service provider at Site: It should be mentioned, if any facility/ utility (Operation Manuals, Emergency Medical, Room, Furniture, Electricity connection, Water connection) etc would be made available to the successful bidder to carry out the service. In case it is proposed to charge the Electricity/ Water supplied to the service provider, the same may be mentioned, including the rate of charges. Specially mention facilities and utilities which will not be provided, or the facilities which would be provided on chargeable basis.

14. **Insurances**: Required to be taken by the contractor
15. Institutional and organisational arrangement
    a) Counterpart Project Manager and Team
    b) Chain of Command for reporting
    c) Procedure for review of the work of service provider after award of contract

Annexure 5: Bid Opening Attendance Sheet cum Report

(Refer Para 5.3-3- a and i))

(Name of Procuring Entity)

Bid Opening Attendance Sheet cum Report

Type of Opening	EoI/ Technical/ Financial	**No**		**Date and Time of Opening**	
Title of Tender					

Attendance Record						
Sr No	**Bidder's Name**	**Bidder's Address**	**Bidder's Authorisation and Date**	**Represented by**	**Contact No.**	**Signature of Representative**

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

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

Signature, Date and Time Name and Designation of Tender Opening Officer	Signature, 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, Date and Time Name and Designation of Procuring Entity Officer

Annexure 6: Tender Committee Minutes Format for Non-Consultancy Services

(For EoI/ Techno-Commercial/Financial Bids)
(Refer Para 7.2.8-1, 7.3.4-5-a), 8.1.2-8)

Organisation:_____

Minutes of Tender Committee Meeting
(EoI/ Techno-commercial/Financial Bids)

Stage of Evaluation: EoI/ Technical/ Financial

Section I: Top Sheet

File No:		Date:	
Procuring Entity/ Client		Method of Selection	LCS/ QCBS/ SSS
Type of Contract	Lump-sum/ Time Based/ Percentage/ Retainer cum Success Fee/ Indefinite Delivery		
Name of Assignment		Estimated Cost:-	
Tender Stage Published In		Date of Publication	
Bid Validity and Extensions taken		Bid Opening Date	

Past Precedents/ Procurements

Sr. No.	service provider	Order Reference & Date	Description of Service	Cost Details	Remarks

Members of the Tender Committee

Sr. No.	Name	Designation	Sr. No.	Name	Designation
1			2		
3			4		

Section II: Background of the Assignment

Include a brief description, context, scope, and objectives of the services. Mention technical and financial approvals; estimated cost; budgetary provisions; urgency of requirement; special technical requirements and other connected procurements which are part of same package/project.

Review special conditions, restriction if any, on participation of bidders; purchase preferences, requirements prescribed in bid documents (EMD, document submission, etc.)

Describe briefly the selection process that has been completed before this stage: mode of bidding; bidding document contents; bid publication; Pre-proposal Conferences, Amendment/ Clarifications sought and given, withdrawals of firms before proposal submissions, level of competition obtained; issues if any noticed during bid-opening (bids not opened due to lack/ unsatisfactory EMD, etc.), the establishment of the shortlist, EoI, and. Describe major events that may have affected the timing (delays, complaints from service providers, reference of Tender document (attach with the Evaluation Report or make

it available for review/approving authority), extension of proposal submission date, and so on).
Names/nationality of firms/associations (mark domestic firms and firms that had expressed interest) of Firms who participated and Shortlisted Bidders prior to this stage – EoI/ Technical Evaluation: i) Participated/ Expressed Interest: ii) Shortlisted in EoI/ Technical Evaluation prior to this
Section III: Preliminary Evaluation of Responsiveness
Review handling of any complaints received
Discuss preliminary evaluation for determining substantially responsive bids and for minor corrections and clarifications
Section IV: Evaluation of Responsive Bids: Technical Evaluation
i) Describe briefly the meetings and actions taken by the evaluation committee: formation of a technical evaluation team, outside assistance, evaluation guidelines, justification of sub-criteria and associated weightings as indicated in the Tender Document and compliance of evaluation with Tender Document. ii) Summary of Evaluation Criteria and Weights assigned iii) Grading and Rating Scheme in the Bid documents or decided before the Evaluation iv) Present results of the technical evaluation: scores and the award recommendation (based on Rating System agreed among evaluators prior to receipt of proposals). v) Highlight strengths and weaknesses of each proposal (most important part of the report). a) Strengths: Experience in very similar projects in the country; quality of the methodology, proving a clear understanding of the scope of the assignment; strengths of the local partner; and experience of proposed staff in similar assignments. b) Weaknesses: Of a particular component of the proposal; of a lack of experience in the country; of a low level of participation by the local partner; of a lack of practical experience (experience in studies rather than in implementation); of staff experience compared to the firm's experience; of a key staffer (e.g., the team leader); of a lack of responsiveness; and of disqualifications (conflict of interest). vi) Comment on individual evaluators' scores (discrepancies). Items requiring further negotiations. **Technical Evaluation Report should also contain** a) Technical Evaluation Summary (simplified in case of LCS or EoI, otherwise detailed, if so chosen in Tender Document) b) Evaluation of Service Provider's Experience (In case of Detailed Technical Evaluation specified) c) Evaluation of Methodology & Work Schedule (In case of Detailed Technical Evaluation specified) d) Evaluation of the Key Professionals (In case of Detailed Technical Evaluation specified)
Section V: Evaluation of Technically Successful Bids: Financial Evaluation
i) Start with review of techno-commercial evaluation and shortlisted Firms and approval and directions by CA ii) Describe briefly the meetings and actions taken by the evaluation committee: formation of a financial evaluation team, outside assistance, evaluation guidelines, justification of associated weightings as indicated in the Tender Document and compliance of evaluation with Tender Document. iii) Insert a summary table of evaluated financial scores/ combined weighted scores

iv) Deliberations should be in the sequence of financial/ combined scores etc. Indicate: any issues faced during the evaluation, such as difficulty in obtaining the exchange rates to convert the prices into the common currency used for evaluation purposes; adjustments made to the prices of the proposal(s) (mainly to ensure consistency with the technical proposal) and determination of the evaluated price (does not apply to Quality-based (Quality-based), Selection- based on Qualifications (Qualifications), and Single-source Selection (Single-Source));arithmetical correction in case of Time-based Contract, tax-related problems; award recommendation; and any other important information.

v) Attach Minutes of Public Opening of Financial Proposals

Section VI: Summary of Recommendations

Bid-wise recommendation should be recorded

In case of evaluation of financial bids,

1. Give a summary of recommended bids, award value, bid expiry date and special conditions, if any;
2. Also mention that the rates recommended are considered reasonable (and basis for such determination);
3. Total value of the recommendations for determining level of acceptance authority;
4. Mention that none of the TC members have any conflict of interest with the parties recommended for award;
5. 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 7: Certificate for Procurement of Non-consultancy services without Quotation

(Refer Para 4.4-3-e-i))

Ref No: _____

Place: _____ Date: _____

"I, _____, am personally satisfied that the Non-consultancy services executed as described below are of the requisite scope and performance standards and have been got executed from a reliable service provider at a reasonable price."

Description of Service:	
Justification:	
Place and Nodal Officer for availing the Services	
Contract Basis	Lump-Sum/ Unit (Item) Rate/ Time-based
Scope/ Quantum/ Performance Standards	
Rate:	
Taxes/Duties:	
Other Charges:	
Total Contract Price:	
service provider	M/S
Vide Bill No.:	
Cheque may be drawn in favour of	
Name of Procuring Officer:	
Designation:	
Signature:	

Annexure 8: Purchase Committee Certificate for Procurement of Non-consultancy services.

(Refer Para 4.4-3-e-ii))

Ref No: _____

Place: _____ Date: _____

Description of Service:	
Justification:	
Place and Nodal Officer for availing the Services	
Contract Basis	Lump-Sum/ Unit (Item) Rate/ Time-based
Scope/ Quantum/ Performance Standards	

Details of Prices Ascertained						
service provider	Rate:	Taxes/Duties:	Other Charges:	Total Unit Price:	Total Price:	Recommendations & Comments

Selected service provider	
Unit Rate, Taxes/ Duties/ Other Charges	
Total Unit Rate	
Total Value of Purchase	
Cheque may be drawn in favour of	

Signature:	Signature:	Signature:
Name 1:	Name 2:	Name 3:
Designation:	Designation:	Designation:

"Certified that we the undersigned, members of the purchase committee are jointly and individually satisfied that the above-described Services are executed at a reasonable price and are of the requisite scope and performance standards and have been got executed from a reliable service provider, and it is not debarred by Department of Expenditure or Ministry/Department concerned." The details of recommended purchase are:

Annexure 9: Limited Tender Form

(Refer Para 4.4-3-c-i))

Name of the Procuring Entity _____

<table>
<tr><td colspan="3">Firm’s Reference</td><td></td><td>Date</td><td></td></tr>
<tr><td colspan="3">Firm Registration No. (if any)</td><td></td><td>PAN (attach photocopy)</td><td></td></tr>
<tr><td>TIN/ GST#</td><td colspan="2"></td><td rowspan="4">LIMITED TENDER FORM</td><td colspan="2" rowspan="4">Address:</td></tr>
<tr><td>Phone</td><td colspan="2"></td></tr>
<tr><td>Fax</td><td colspan="2"></td></tr>
<tr><td>Email</td><td colspan="2"></td></tr>
<tr><td colspan="3" rowspan="3">M/s:</td><td>Enquiry No. and Date</td><td colspan="2"></td></tr>
<tr><td>Date of Tender Opening</td><td colspan="2"></td></tr>
<tr><td colspan="3">The tender would be opened at three pm on the date of tender opening above, at the address mentioned above.</td></tr>
<tr><td colspan="6">Please submit on or before 3:00 pm on the date of tender opening, your quotation for the following services, in accordance with the terms and conditions printed overleaf, in a sealed cover, marked on top with – Enquiry No; Date of Tender Opening.
Yours Sincerely
Procuring Officer</td></tr>
<tr><td colspan="6">Services and Activities Schedule: All Rates in Figures and in Words in Rupees</td></tr>
<tr><td>Sr No:</td><td>Description of Services/ Activities</td><td>Qty</td><td>Unit</td><td>Delivery Terms</td><td>Rate per Unit</td><td>Taxes & Duties</td><td>Total Rate per Unit</td><td>Total Value</td></tr>
<tr><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td></tr>
<tr><td colspan="6">Delivery Schedule:</td></tr>
<tr><td colspan="6">Enclosed Performance Standards /Special Conditions of Contract:</td></tr>
<tr><td colspan="6">I/ we engage to delivery of Service(s) to your office and comply the following:
1. Services and Activities schedule and Performance indicated.
2. Special conditions of Contract for this tender.
3. Terms and conditions printed overleaf.</td></tr>
</table>

4. General conditions of contract (signed at the time of vendor registration). 5. I/we confirm that set off for the GST, etc. Paid on the inputs have been taken into consideration in the above quoted price and further agree to pass on such additional duties as sets offs as may become available in future under GST, etc. 6. This offer is valid for 90 (ninety) days from the date of opening of the tender. 7. An undertaking that we have not been debarred by the Procuring Entity (Government/ Department/ CPSE) that has issued this Limited Tender Enquiry. An undertaking that we have not been debarred by Department of Expenditure (DoE), Ministry of Finance, Government of India. 8. That the rates quoted are not higher than the rates quoted for same item to any Government/Undertaking. 9. That the bid submitted by us is properly sealed and prepared so as to prevent any subsequent alteration and replacement.

Signature & Seal Place & Date:		Name of Authorised Signatory:	
Address:		Tel. No./ Fax. No./ Mobile No. Email Id:	

TERMS AND CONDITIONS OF LIMITED TENDER

1. The quotation must be in the form furnished by procuring entity and should be free from corrections/erasures. In case there is any unavoidable correction it should be properly attested. If not the quotation will not be considered. Quotation written in pencil will not be considered.
2. Quotation will be opened on due date at 3.00 pm at the indicated venue in presence of the bidders or their representatives who may wish to be present.
3. The Procuring Entity reserves the right to accept the offer by individual items and reject any or all tenders without assigning any reason thereof and does not bind itself to accept lowest quotations.
4. Participation in this tender is by invitation only and is limited to the selected procuring entity's registered service providers. Unsolicited offers are liable to be ignored. However, service providers who desire to participate in such tenders in future may bring it to the notice of procuring entity and apply for registration as per procedure. Note: to get registered as an approved service provider with the procuring entity, please download service provider approval form from _____ and submit.
5. Manufacturer's name and country of origin of services offered must be clearly specified. Please quote whether your organisation is large scale industry or small-scale industry. If you have NSIC/ MSE/ MSI Certificate, please attach it to the quotation. Mention your registration details. Purchase Preference and restriction policies of the Government of India shall be applicable in this Tender.
6. Complete details and performance standards if any must accompany the quotation. If you have got any counter offer as suitable to the Services required by us, the same may be shown separately.
7. All Services delivered are subject to inspection/ review and approval before acceptance.
8. The Procuring Entity reserves the right to modify the quantity specified in this enquiry.

9. The prices quoted should be firm till the services are completed. Please quote the rates in words and figures. Price quoted should be net and valid for a minimum period of three months from the date of opening of the quotation.
10. Payment of GST is primarily the responsibility of the service provider and will not be paid unless the percentage value is clearly mentioned in the quotations. If no indication regarding GST is recorded in the quotation, the GST will be considered as included.
11. Delivery period required for delivering the services should be invariably specified in the quotation.
12. In case your quotation is accepted, and order is placed on you, the services against the order should be completed within the period stipulated in the order. The Procuring Entity reserves the right to recover any loss sustained due to delayed delivery by way of penalty. Failure to perform Services within the stipulated period shall entitle Procuring Entity for the imposition of penalty without assigning any reasons @ 1/2% (half percent) of the total value of the services covered in order as penalty per day subject to a maximum of 5% (five percent) unless extension is obtained in writing from the office on valid ground before expiry of delivery period.
13. If the deliveries are not maintained and due to that account Procuring Entity is forced to obtain services at your risk and cost from elsewhere, the loss or damage that may be sustained there by will be recovered from the defaulting service provider.
14. Dispute clause: Any dispute relating to the enquiry shall be subject to the jurisdiction of the court at (indicate Place) only.
15. Our normal payment terms are 100% (hundred percent) within 30 (thirty) days on receipt and acceptance of services at our site.

Annexure 10: Example of Formula for Price Variation Clause

(Refer Para 6.5-2-d-x))

(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 contractor (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 delivery 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 months prior to the month in which base month falls and average of the month, two months prior to the month in which date of delivery 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:

1. There is a Time-lag period between the date of delivery/ base date respectively and the dates on which indices/ prices are to be considered as per above formula. This time lag can be a few months/ weeks prior to such base date/ date of delivery, depending on the frequency of publishing/ availability of indices/ prices and the supply chain process of manufacturing. This must be specified in the definitions of L_0/ L_1 and M_0/M_1 indices in the formula in the tender document as above.
2. Base date shall be assumed to be the bid submission deadline.
3. No price increase is allowed beyond original delivery period.

4. No price adjustment shall be payable on the portion of contract price paid to the contractor as an advance/ interim payment after the date of such payment.
5. No price adjustment shall be payable if this is less than or equal to 2% (two percent) of Po.
6. Total adjustment will be subject to maximum ceiling of ____% (to be specified in tender document), beyond which the price variation would be capped at this level. As soon as it comes to light that price variations are likely to go beyond this ceiling, and if the Contractor is not agreeable to the price variation being capped at that level, he may notify the Purchaser under 'Frustration of Contract' provisions in the Tender Document/ Clause, for termination of contract.
7. Payments for services would initially be made as per the base price mentioned in the contract. Price adjustment bill should be submitted only quarterly for the services delivered during the quarter.
8. 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.
9. Even if there is no price adjustment claim, contractor 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 because of decrease in price variation indices in the price variation formula. In the event of any decrease of such indices that come to light later regarding the payment claimed by us, we shall promptly notify this to the purchaser, and we undertake to refund and agree to the purchaser deducting any excess payment made to us in this regard, from our future payment due."*

Annexure 11: Model Clause/ Certificate to be inserted in tenders etc. w.r.t Order (Public Procurement No.4)

(Refer para 1.10.3-7)

(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. The conditions relating to specified ToT (as shown in italics) should be incorporated only in the tenders that attract the restrictions due to specified ToT.)

A. Model Clauses for Tenders (including tenders issued manually or any electronic portal, including GeM):

I. Any bidder from a country that 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. *Further, any bidder (including bidder from India) having specified Transfer of Technology (ToT) arrangement with an entity from* a *country which shares* a *land border with India, shall also require to be registered with the same 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 (or entity) 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.

Annexure 11: Model Clause/ Certificate to be inserted in tenders etc. w.r.t Order (Public Procurement No.4)

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.

VII. The registration shall be valid at the time of submission of bid and at the time of acceptance of bid.

VIII. If the bidder was validly registered at the time of acceptance/ placement of order, registration shall not be a relevant consideration during contract execution

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 fulfils 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 fulfils 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 additional certificate by Bidders in the cases of specified To T:

"I have read the clause regarding restrictions on procurement from a bidder having a Transfer of Technology (ToT) arrangement. I certify that this bidder does not have any To T arrangement requiring registration with the competent authority. "

OR

"I have read the clause regarding restrictions on procurement from a bidder having a Transfer of Technology (ToT) arrangement. I certify that this bidder has valid registration to participate in this procurement."

B. Model Certificate for GeM (to be taken by the GeM from the seller during registration on GeM. GeM should also obtain this certificate from all existing bidders as soon as possible):

"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 and does not have any specified Transfer of Technology (ToT) from such a country or if from such a country or if having specified ToT from such a country has been registered with the Competent Authority. I hereby certify that this vendor/ bidder fulfils 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 12: Integrity Pact Format

(Refer para 3.4-2, 9.9-10)

INTEGRITY PACT

Between

(the Procuring Organisation) hereinafter referred to as **"The Principal,"** and _____ hereinafter referred to as **"The Bidder/ Contractor."**

Preamble

The Principal intends to award contract/s for_____, under laid down organisational procedures, The Principal values full compliance with all relevant laws of the land, rules, regulations, economical use of resources, and fairness / transparency in its relations with its Bidder(s) and / or Contractor(s).

To achieve these goals, the Principal shall appoint Independent External Monitors (IEMs) who shall monitor the tender process and the execution of the contract for compliance with the abovementioned principles.

Section 1 – Commitments of the Principal:

1) The Principal commits itself to take all measures necessary to prevent corruption and to observe the following principles: -
   a. No employee of the Principal, personally or through family members, shall in connection with the tender for, or the execution of a contract, demand, take a promise for or accept, for self or third person, any material or immaterial benefit which the person is not legally entitled to.
   b. The Principal shall treat all Bidder(s) with equity and reason during the tender process. The Principal shall, in particular, before and during the tender process, provide to all Bidder(s) the same information and shall not provide to any Bidder(s) confidential / additional information through which the Bidder(s) could obtain an advantage in the tender process or the contract execution.
   c. The Principal shall exclude from the process all known persons having conflict of interest.
2) If the Principal obtains information on the conduct of any of its employees which is a criminal offence under the BNS/ PC Act, or if there be a substantive suspicion in this regard, the Principal shall inform the Chief Vigilance Officer and in addition shall initiate disciplinary proceedings.

Section 2 – Commitments of the Bidder(s)/ Contractor(s):

1) The Bidder(s)/ Contractor(s) commits themselves to take all measures necessary to prevent corruption. The Bidder(s)/ Contractor(s) commits themselves to observe the following principles during participation in the tender process and the contract execution.
   a. The Bidder(s)/ Contractor(s) shall not, directly or through any other person or firm, offer, promise, or give to any of the Principal's employees involved in the tender process or the execution of the contract or to any third person any material or other benefit which they are not legally entitled to, in order to obtain in exchange any advantage of any kind whatsoever during the tender process or the execution of the contract.
   b. The Bidder(s)/ Contractor(s) shall not enter with other Bidders into any undisclosed agreement or understanding, whether formal or informal, in violation of the Competition Act, 2002 (as amended from time to time). This applies in particular to

prices, specifications, certifications, subsidiary contracts, submission or non-submission of bids or any other actions to restrict competitiveness or to introduce cartelisation in the tender process.

c. The Bidder(s)/ Contractor(s) shall not commit any offence under the relevant BNS/ PC Act; further, the Bidder(s)/ Contractor(s) shall not use improperly, for purposes of competition or personal gain, or pass on to others, any information or document provided by the Principal as part of the business relationship, regarding plans, technical proposals, and business details, including information contained or transmitted electronically.
d. The Bidder(s)/Contractors(s) of foreign origin shall disclose the name and address of the Agents/ representatives in India, if any. Similarly, the Bidder(s)/Contractors(s) of Indian Nationality shall furnish the name and address of the foreign principals, if any. Further details, as mentioned in the "Guidelines on Indian Agents of Foreign Service Providers," shall be disclosed by the Bidder(s)/ Contractor(s). Further, as mentioned in the Guidelines, all the payments made to the Indian agent/representative must be in Indian Rupees only. Copy of the "Guidelines on Indian Agents of Foreign Service Providers" is placed on Annex hereto.
e. The Bidder(s)/ Contractor(s) shall, when presenting their bid, disclose any and all payments made, is committed to, or intends to make to agents, brokers, or any other intermediaries in connection with the award of the contract.
f. Bidder(s) /Contractor(s) who have signed the Integrity Pact shall not approach the Courts while representing the matter to IEMs and shall wait for their decision.

2) The Bidder(s)/ Contractor(s) shall not instigate third persons to commit offences outlined above or be an accessory to such offences.

Section 3 - Disqualification from the tender process and exclusion from future contracts;

If the Bidder(s)/Contractor(s), before award or during execution, has committed a transgression through a violation of Section 2, above or in any other form such as to put their reliability or credibility in question, the Principal is entitled to disqualify the Bidder(s)/Contractor(s) from the tender process or take action as per laid down procedure to debar the Bidder(s)/Contractor(s) from participating in the future procurement processes of the Government of India.

Section 4 – Compensation for Damages:

1) If the Principal has disqualified the Bidder(s) from the tender process before the award according to Section 3, the Principal is entitled to demand and recover the damages equivalent to Earnest Money Deposit/ Bid Security.
2) If the Principal has terminated the contract according to Section 3, or if the Principal is entitled to terminate the contract according to Section 3, the Principal shall be entitled to demand and recover from the Contractor liquidated damages of the Contract value or the amount equivalent to Performance Bank Guarantee.

Section 5 – Previous transgression:

1) The Bidder declares that no previous transgressions occurred in the last three years with any other Company in any country conforming to the anti-corruption approach or with any Public Sector Enterprise in India that could justify his exclusion from the tender process.
2) If the Bidder makes an incorrect statement on this subject, the Principal shall act like para 2) of Section 4 above.

Section 6 – Equal treatment of all Bidders / Contractors / Subcontractors:

In the case of Sub-contracting, the Principal Contractor shall take responsibility for adopting the Integrity Pact by the Sub-contractor.

a. The Principal shall enter into agreements with identical conditions as this one with all Bidders and Contractors.
b. The Principal shall disqualify from the tender process all bidders who do not sign this Pact or violate its provisions.

Section 7 – Criminal charges against violating Bidder(s) / Contractor(s) / Subcontractor(s):

If the Principal obtains knowledge of the conduct of a Bidder, Contractor, or Subcontractor, or of an employee or a representative or an allied firm of a Bidder, Contractor or Subcontractor which constitutes corruption, or if the Principal has substantive suspicion in this regard, the Principal shall inform the same to the Chief Vigilance Officer.

Section 8 – Independent External Monitor:

1) The Principal shall appoint competent and credible Independent External Monitor(s) for this Pact after approval by the Central Vigilance Commission. The task of the Monitor is to review, independently and objectively, whether and to what extent the parties comply with the obligations under this agreement.
2) The Monitor is not subject to instructions by the parties' representatives and performs their functions neutrally and independently. The Monitor would have access to all Contract documents whenever required. It shall be obligatory for them to treat the information and documents of the Bidders/Contractors as confidential. They report to the Management of the Principal.
3) The Bidder(s)/Contractor(s) accepts that the Monitor has the right to access without restriction, all Project documentation of the Principal, including that provided by the Contractor. Upon their request and demonstration of a valid interest, the Contractor shall also grant the Monitor unrestricted and unconditional access to their project documentation. The same applies to Sub-contractors.
4) The Monitor is under contractual obligation to treat the information and documents of the Bidder(s)/ Contractor(s)/ Sub-contractor(s) with confidentiality. The Monitor has also signed declarations on ‘Non-Disclosure of Confidential Information’ and ‘Absence of Conflict of Interest.’ In case of any conflict of interest arising later, the IEM shall inform the Management of the Principal and recuse themselves from that case.
5) The Principal shall provide the Monitor with sufficient information about all meetings among the parties related to the Project, provided such meetings could impact the contractual relations between the Principal and the Contractor. The parties offer the Monitor the option to participate in such meetings.
6) As soon as the Monitor notices, or believes to notice, a violation of this agreement, they shall inform the Management of the Principal and request the Management to discontinue or take corrective action or other relevant action. The Monitor can, in this regard, submit non-binding recommendations. Beyond this, the Monitor has no right to demand from the parties that they act in a specific manner, refrain from action, or tolerate action.
7) The Monitor shall submit a written report to the Management of the Principal, within 8 to 10 weeks from the date of reference or intimation to him by the Principal and, should the occasion arise, submit proposals for correcting problematic situations.
8) If the Monitor has reported to the Management of the Principal a substantiated suspicion of an offence under the relevant BNS/ PC Act, and the Management of the Principal has not, within the reasonable time, taken visible action to proceed against such offence or

reported it to the Chief Vigilance Officer, the Monitor may also transmit this information directly to the Central Vigilance Commissioner.

9) The word 'Monitor' would include both singular and plural.

Section 9 – Pact Duration:

This Pact begins when both parties have legally signed it. It expires for the Contractor 12 months after the last payment under the contract, and for all other Bidders, 6 months after the contract has been awarded. Any violation of the same would entail disqualifying the bidders and exclusion from future business dealings.

If any claim is made / lodged during this time, the same shall be binding and continue to be valid despite the lapse of this Pact as specified above, unless it is discharged / determined by the Management of the Principal.

Section 10 – Other provisions:

1) This agreement is subject to Indian Law. The place of performance and jurisdiction is the place from where the Tender/ Contract is issued.
2) Changes, supplements, and termination notices must be submitted in writing. Side agreements have not been made.
3) If the Contractor is a partnership or a consortium, this agreement must be signed by all partners or consortium members.
4) Should one or several provisions of this agreement turn out to be invalid, the remainder of this agreement remains valid. In this case, the parties shall strive to come to an agreement according to their original intentions.
5) Issues like Warranty / Guarantee, etc., shall be outside the purview of IEMs.
6) In the event of any contradiction between the Integrity Pact and its Annex, the Clause in the Integrity Pact shall prevail.

_____	_____
(For & On behalf of the Principal)	(For and on behalf of Bidder/ Contractor)
(Office Seal)	(Office Seal)
Place ---------- Date ----------	
Witness 1: _____	Witness 1: _____
(Name & Address	(Name & Address

Annex-1 to Annexure 12: Integrity Pact - Guidelines for Indian Agents of Foreign Service Providers

1.1 There shall be compulsory registration of agents for all Global Tender Enquiries (GTE) and Limited Tender Enquiries (LTE). An agent not registered with the Procuring Entity shall apply for registration with them.

1.2 Registered agents shall file an authenticated Photostat copy duly attested by a Notary Public/Original certificate of the Principal confirming the agency agreement and giving the status being enjoyed by the agent and the commission/remuneration/salary/ retainer ship being paid by the Principal to the agent before the placement of an order by the Procuring Entity.

1.3 Wherever the Indian representatives have communicated on behalf of their principals and the foreign parties, have stated that they are not paying any commission to the Indian agents, and the Indian representative is working based on salary or as a retainer, a written declaration to this effect should be submitted by the party (i.e., Principal) before finalising the Contract.

2.0 Disclosure of Particulars of Agents/ Representatives in India, if any.

2.1 Bidders of Foreign nationality shall furnish the following details in their offer:

2.1.1 The name and address of the agents/representatives in India, if any and the extent of authorisation and authority given to commit the Principals. If the agent/representative is a foreign Company, it shall be confirmed whether it is a real functioning Company, and details of the same shall be furnished.

2.1.2 The amount of commission/remuneration included in the quoted price(s) for such agents/representatives in India.

2.1.3 Confirmation of the Bidder that the commission/ remuneration, if any, payable to his agents/representatives in India, may be paid by the Procuring Entity in Indian Rupees only.

2.2 Bidders of Indian Nationality shall furnish the following details in their offers:

2.2.1 The name and address of the foreign principals indicating their nationality as well as their status, i.e., whether manufacturer or agents of manufacturer holding the Letter of Authority of the Principal specifically authorising the agent to make an offer in India in response to tender either directly or through the agents/representatives.

2.2.2 The amount of commission/remuneration included in the price (s) quoted by the Bidder for himself.

2.2.3 Confirmation of the foreign principals of the Bidder that the commission/remuneration, if any, reserved for the Bidder in the quoted price (s) may be paid by the Procuring Entity in India in equivalent Indian Rupees on satisfactory completion of the Project or supplies of Stores and Spares in case of operation items.

2.3 In either case, in the event of the contract materialising, the payment terms shall provide for payment of the commission /remuneration, if any, payable to the agents/representatives in India in Indian Rupees on expiry of 90 days after the discharge of the obligations under the contract.

2.4 Failure to furnish correct and detailed information as called for in paragraph - 2.0 above shall render the concerned bid liable to rejection or, in the event of a contract materialising, the same liable to termination by the Procuring Entity. Besides this, there would be a penalty of banning business dealings with the Procuring Entity or damage or payment of a named sum.

Annex-2 to Annexure 12: Integrity Pact – Appointment and Role of IEMs

(Refer para 3.4-3, 9.7.4-4-d))

1. Appointment of IEMs:

i). Integrity Pact would be implemented through a panel of Independent External Monitors (IEMs) nominated by CVC at an organisation's request from its list of empanelled IEMs. Three IEMs shall be appointed for Maharatna and Navratna PSUs, and two IEMs shall be nominated in all other organisations.

ii). The IEMs appointed should be eminent persons of high integrity and reputation. A periodical notice inviting applications from eligible persons shall be published on the CVC's website. After due scrutiny and verification of the applications and accompanying documents, as may be deemed appropriate, the name(s) would be included in the panel for nomination as IEM.

iii). The zone of consideration of eminent persons for empanelment as IEMs would consist of:

a) Officers who have held the post of Additional Secretary to Govt of India or were in the equivalent or higher pay scale at the time of retirement (whether serving with Govt of India or any State Govt.).

b) Persons who held the CMD post of Schedule 'A' Public Sector Enterprise and were equivalent to Additional Secretary to Govt of India at retirement.

c) Persons who have held the post of CMD/MD and CEO of Public Sector Banks, Insurance Companies, and other Financial Institutions at retirement.

d) Chief Executive Officer of an organisation (other than listed above and were equivalent or higher to Additional Secretary to Govt, of India, at the time of retirement).

e) Armed Forces Officers in the pay scale equivalent or higher to Additional Secretaries to Govt of India at retirement.

f) The age of IEM should not be more than 70 years at the time of appointment.

g) If a retired person has accepted a full-time assignment, post-retirement, either in the government sector, private sector, or elsewhere, he shall not be eligible to be on the panel of IEMs. All those empanelled persons who accept full-time assignments elsewhere would cease to remain on the panel from the date they have taken the assignment. In this regard, it would be incumbent upon the empanelled persons to immediately inform CVC about the acceptance of full-time assignment by them.

h) All IEMs should sign non-disclosure agreements with the organisation in which they are appointed.

i) A person acting as an IEM shall not be debarred from taking up other assignments, such as consultancy with other organisations or agencies, subject to his declaring that their additional assignment does not involve any conflict of interest and is not a full-time assignment. The IEMs must also sign a declaration of absence of conflict of interest with existing assignments. In case of any conflict of interest arising later from an entity wherein he is or has been a consultant, the IEM should inform the CEO and recuse themselves from that case.

j) A person may be appointed as an IEM in a maximum of three organisations at a time. An empanelled person cannot be appointed in one organisation for over three years.

2. Role of IEMs in Integrity Pact:

i). Bidders or their authorised representative may address to the IEMs all the representations/grievances/complaints related to any discrimination on account of lack of fair play in modes of procurement and tendering systems, tendering method, eligibility conditions, bid evaluation criteria, commercial terms & conditions, choice of technology/specifications etc.

ii). The entire panel of IEMs should examine the matter jointly, who would investigate the records, conduct an examination, and submit their joint recommendations to the Management of the Procuring Entity. If the entire panel is unavailable for unavoidable reasons, the available IEM(s) shall examine the complaints. Consent of the IEM(s), who may not be available, shall be taken on record. The IEMs would be provided access to all documents/records of the tender for which a complaint or issue is raised before them, as and when warranted.

iii). The role of IEM is advisory, and the advice of IEM is non-binding on the Organization; however, their advice would help properly implement the Integrity Pact.

iv). IEM should examine the process integrity; they are not expected to concern themselves with fixing the responsibility of officers. IEMs should not associate CVO and /or the officials of the vigilance wing during the examination of the complaints in any manner. A matter being examined by the IEMs can be separately investigated by the CVO if a complaint is received or directed to them by the CVC.

3. Systemic Improvements:

i). The Procurement wing of the organisation shall hold quarterly meetings with the IEMs. A summary of contracts awarded in the previous quarter, covered under the Integrity Pact, shall be shared with the IEMs during the quarterly meeting. Such a summary of contracts should include details like tender number, mode of tendering, the period allowed for publicity, number of bids received, number of bidders considered eligible, and name and address of the successful bidder.

ii). The above summary of contracts is to help the IEMs in analysing whether an appropriate mode of tendering is being adopted by the organisation, i.e., limited tender mode or nomination mode is not unduly used, the number of bidders is not too low, a large number of bidders are not excluded while judging the eligibility or during the technical bid evaluation stage, and whether particular firm or set of specific firms is repeatedly getting contracts etc. Based on their analysis, the IEMs can suggest to the management suitable systemic improvement(s) and measures to improve objectivity in decision-making, capacity building, etc.

iii). It would be desirable to have structured meetings of the IEMs with the Chief Executive of the Organization on a half-yearly basis to discuss and review the information on tenders awarded during the preceding six-month period. Additional such meetings, however, can be held as per requirement. All such meetings with the Procurement wing or with the organisation’s Chief Executive should be minuted.

4. Dispute Mediation:

In case of any dispute between the management and the contractor relating to those contracts where an Integrity Pact is applicable, in case both the parties are agreeable, they may try to settle the dispute through mediation before the panel of IEMs in a time-bound manner. If required, the organisations may adopt any mediation rules for this purpose. However, no more than five meetings shall be held for dispute resolution. Both parties shall equally share the fees/expenses on dispute resolution. If the

dispute remains unresolved even after mediation by the panel of IEMs, the organisation may take further action as per the terms & conditions of the contract.

5. Entitlements of IEMs:

i). IEMs shall be paid fees of ₹ 25,000/- per sitting subject to a maximum of ₹ 3,00,000/- in a calendar year for the sitting fees.

ii). The travel and stay arrangements for the IEMs for such meetings shall equal their entitlements at retirement. Booking travel tickets, as per the mode of travel indicated by the IEM in writing (including email), the organisation shall do local transport and stay. The organisation concerned shall provide a place for meetings and secretarial assistance to IEMs for rendering their job. No payment instead of secretarial aid shall be paid to the IEMs.

iii). As mentioned above, the travel/ stay arrangements and fees for meetings held by IEMs for mediation between the management and the contractor shall be the same but in addition to the fees for the regular meetings and would be over and above the ceiling of 3,00,000/- as per calendar year.

Annexure 13: FAQs in Respect of Public Procurement Policy for MSEs Order, 2012[100]

(Refer Para 1.10.1-7-d))

Q.No.1: What is the share of procurement from MSEs out of the total procurement made by Central Government Ministries/ Departments/ Public Sector Undertakings?

Ans. Under amended Public Procurement Policy for MSEs, Order 2012 a minimum 25 per cent share out of the total annual procurement by Central Government Ministries / Departments / Public Sector Undertakings are to be made from MSEs.

Q. No.2: Is there any reservation for MSEs owned by SC/ST/ Women entrepreneurs?

Ans. Yes, out of 25% target of annual procurement from MSEs (Not in the specific tender), a sub-target of 4% of annual procurement from MSEs is earmarked for procurement from MSEs owned by Scheduled Caste (SC) / Scheduled Tribe (ST) entrepreneurs and 3% of annual procurement from MSEs is earmarked for procurement from MSEs owned by women entrepreneur. However, in event of failure of such MSEs to participate in tender process or meet tender requirements and L1 price, 4% sub-target for procurement earmarked for MSEs owned by SC/ST entrepreneurs and 3% earmarked to women entrepreneur will also be met from other MSEs.

Q No.3: Who is eligible for availing the benefits under the Public Procurement Policy?

Ans. As mentioned in Section 7(4) of Ministry of MSME's Notification No. S.O2119(E) dated.

26th June 2020, an enterprise registered with any other organization under the Ministry of MSME shall register itself under Udyam Registration. With effect from 01.07.2020, MSEs registered under Udyam Registration are eligible to avail the benefits under the Policy. MSEs registered under Udyog Aadhaar Memorandum (UAM), validity of which is till 31.03.2022, are also eligible to avail the benefits under the Policy.

Q.No.4: What is the date of implementation of the policy?

Ans. The policy is applicable with effect from 1.4.2012 and became mandatory with effect from 1.4.2015 onwards.

Q.No.5: Is the Policy transparent, competitive, and cost effective?

Ans. The Policy rests upon core principles of competitiveness, adhering to sound procurement practices and execution of orders for supply of goods and services in accordance with a system which is fair, equitable, transparent, competitive, and cost effective.

Q.No.6: Is the policy implemented in parts or fully from its inception?

Ans. As per Gazette Notification (S.O. 5670(E) dated 8th November 2018, it is mandatory for all Central Government Ministries / Departments/ CPSEs to procure at least 25% of their annual procurement from MSEs including 4% from MSEs owned by SC/ST entrepreneur and 3% from MSEs owned by women entrepreneur.

Q.No.7: Is there any monitoring system for assessing the Government procurement from MSEs?

Ans. To monitor the progress of procurement by Central Government Ministries/ Departments and CPSEs from MSEs, Ministry of MSME has launched the MSME Sambandh Portal on 8th December 2017 for uploading procurement details by all CPSEs on a monthly and an annual basis which is regularly monitored by the Ministry.

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[100] https://www.dcmsme.gov.in/FAQs-PPP_25032022.pdf

Q.No.8: Is there a price matching facility for procurement from MSEs over large scale?

Ans. (i) Price quotation in tenders: In tender, participating Micro and Small Enterprises, quoting price within price band of L1+15 percent shall also be allowed to supply a portion of requirement by bringing down their price to L1 price in a situation where L1 price is from someone other than a Micro and Small Enterprise and such MSE shall be allowed to supply up to 25 per cent of total tender value.

(ii) In case of more than one such Micro and Small Enterprise, the supply shall be shared proportionately (to tendered quantity).

Q.No.9: What steps are to be taken by the Central Government Ministries/ Departments/ CPSEs to develop MSE Vendors to achieve their targets for MSEs procurement?

Ans. The Central Government Ministries/ Departments/ Public Sector Undertakings shall take necessary steps to develop appropriate vendors by organizing Vendor Development Programmes (VDPs) or Buyer-Seller Meets focused on developing MSEs for procurement through the GeM Portal. To develop vendors belonging to MSEs for Public Procurement Policy, the Ministry of MSME is regularly organizing State Level VDPs and National Level VDPs under the Procurement and Marketing Support Scheme.

Q.No.10: What steps are to be taken by the Central Government Ministries/ Departments/ CPSEs to develop vendors from MSEs owned by SC/ST/Women entrepreneurs?

Ans. For enhancing the participation of MSEs owned by SCs / STs/ Women in Government procurement, Central Government Ministries / Departments / CPSEs must take the following steps:

i. Special Vendor Development Programmes/ Buyer-Seller Meets would be conducted by Departments/ CPSEs for SC/STs and Women.

ii. Outreach programmes will be conducted by National Small Industries Corporation (NSIC) to cover more and more MSEs from SC/STs under its schemes of consortia formation; and iii. NSIC would open a special window for SCs/ STs under its Single Point Registration Scheme (SPRS). iv. A National SC/ST hub scheme was launched in October 2016, for providing handholding support to SC/ST entrepreneur which is being coordinated / implemented by the NSIC under this Ministry.

Q.No.11: What are the other benefits /facilities available to the MSEs under the policy?

Ans. To reduce transaction cost of doing business, MSEs will be facilitated by providing them tender sets free of cost, exempting MSEs from payment of earnest money deposit, adopting e-procurement to bring in transparency in tender process. However, exemption from paying of Performance Bank Guarantee is not covered under the policy. MSEs may also be given relaxation in prior turnover and prior experience criteria during the tender process.

Q.No.12: Is there any review mechanism for monitoring and reviewing of the policy?

Ans. A Review Committee has been constituted under the Chairmanship of Secretary, Ministry of MSME for monitoring and reviewing of Public Procurement Policy for MSEs. M/O MSME will review and/or modify the composition of the Committee as and when required. This Committee will, inter alia, review the list of 358 items reserved for exclusive purchase from MSEs on a continuous basis, consider requests from Central Government Departments, CPSEs for exemption from 25% target on a case-to-case basis and monitor achievements under the Policy.

Q. No.13: What is the grievance redressal mechanism in case of non-compliance of the Policy by any Government Department?

Ans. To redress the grievances of MSEs related to non-compliance of the Policy a Grievance Cell named “CHAMPION Portal” has been set up in the Ministry of MSME.

Q. No.14: Whether there is any kind of purchase that has been kept out of the purview of procurement under the Policy? If yes, how is the monitoring of the set goal done?

Ans. Given their unique nature, Defence armament imports will not be included in computing 25% goal for M/o Defence. In addition, Defence Equipments like weapon systems, missiles, etc. will remain out of purview of such policy of reservation. Monitoring of goals set under the policy will be done, in so far as they relate to the Defence sector, by Ministry of Defence itself in accordance with suitable procedures to be established by them.

Q.No.15: From where can the details of the Policy be obtained?

Ans. Policy details are available on the website of this office at www.dcmsme.gov.in.

Q.No.16: Is this policy mandatory under any Act?

Ans. Yes, the Policy is mandatory and notified under the MSMED Act, 2006.

Q.No.17: How many items are reserved for exclusive purchase from MSEs?

Ans. There are 358 items reserved for exclusive purchase from MSE Sector.

Q.No.18: Whether this policy is applicable for works/ trading activities also?

Ans. Policy is meant for procurement of only goods produced and services rendered by MSEs. However, traders/ distributors/ sole agent/ Works Contract are excluded from the purview of Public Procurement Policy for MSEs Order,2012.

Q.No.19: Whether the Policy is applicable for MSEs registered with NSIC?

Ans. The Policy is applicable for all MSEs registered under Udyam Registration and Udyog Aadhar Memorandum (valid till 31.03.2022).

Q.No.20: Whether the Policy provides benefits for exemption from Security Deposit/ Performance Bank Guarantee to MSEs?

Ans. No, there is no exemption on Security Deposit/ Performance Bank Guarantee under the Policy.

Q.No.21: Can MSEs quoting a price within the band L1+15% be given complete supply to tender in case tender item cannot be split /divided?

Ans. In case of tender item cannot be split or divided, etc. the MSE quoting a price within the band L1+15% may be awarded for full/ complete supply of total tendered value to MSE, considering the spirit of the Policy for enhancing Govt. Procurement from MSEs.

Q.No.22: Which are the MSEs owned by SC/ST enterprises?

Ans. The definition of MSEs owned by SC/ ST is as given under:

(a) In case of proprietary MSE, proprietor(s) shall be SC /ST.

(b) In case of partnership MSE, the SC / ST partners shall be holding at least 51% shares in the unit.

(c) In case of Private Limited Companies, at least 51% share shall be held by SC/ST promoters.

Q.No.23: Can the Central Government Ministries/ Departments/ CPSEs who have a meagre value of total procurement be exempted from the Policy?

Ans. The Policy is applicable to all the Central Government Ministries / Departments / CPSEs, irrespective of the volume and nature of procurement.

Q.No.24: Does the Policy have a provision for exemption from 25% procurement target?

Ans. The Review Committee may consider any request of Ministries / Departments / CPSEs for exemption from the present 25% procurement targets on a case-to-case basis.

Q.No.25: Does laminated paper Gr. I, II and III fall under the paper conversion product (Sl.No.202) and is a reserved item for exclusive procurement from MSEs?

Ans. As per Policy Circular No. 21(6)/2016-MA dt. 26th May 2016, it is clarified that only paper bags, envelopes, ice-cream cups, paper cups and saucers and paper plates are covered under the head "Paper Conversion products" at SI. No. 202 of the list of reserved items under the Public Procurement Policy for MSEs Order-2012.Accordingly, the description of SI. No. 202 as indicated in the English version of the Reserved List will be applicable.

Q.No.26: Are MSEs having Udyam Registration Certificate eligible for availing benefits under the PP Policy?

Ans. Yes, Udyog Aadhar has been replaced with Udyam Registration Certificate w.e.f. 01.07.2020. Udyam Registered MSEs can avail the benefits under the Public Procurement Policy. The UAM will also remain valid till 31.03.2022.

Q.No.27: Does the Ministry give any certificate for MSEs having Udyam Registration?

Ans. The Erstwhile Udyog Aadhaar Memorandum (UAM valid till 31.03.2022) has been replaced by Udyam Registration Certificate (w.e.f. 01.07.2020). As part of ease of doing business, Udyam Registration Certificate (URC) has been introduced through a dedicated portal on self-certification basis. An acknowledgement of URC is generated online instantly which is accepted by all Central Government Ministries / Departments / CPSEs and State Govts.

Q.No.28: Is the Public Procurement Policy applicable to State Governments/ State Departments/ State PSUs?

Ans. The Public Procurement Policy for MSEs Order, 2012 is applicable to Central Government Ministries/ Departments and CPSEs. This Policy is not applicable to State Government Ministries/ Departments/ PSUs.

Q.No.29: Are the benefits of Public Procurement Policy applicable to MSEs who are not registered for the tendered items?

Ans. The benefits of PPP should be given to all eligible MSEs irrespective of relevance of product Category and as per Sl. No. 3 of FAQ.

Q.No.30: Can the relaxation of norms for start-ups and MSEs in Public Procurement Policy in prior experience and prior turnover criteria be given to all MSEs?

Ans. It is clarified that all Central Government Ministries/ Departments/ Central Public Sector Undertakings may relax conditions of prior turnover and prior experience with respect to Micro and Small Enterprises in all public procurement, subject to meeting of quality and technical specifications (In exercise of Para 16 of Public Procurement Policy for Micro and Small Enterprises, Order 2012).

However, there may be circumstances (like procurement of items related to public safety, health, critical security operations and equipment, etc.) where procuring entity may prefer the vendor to have prior experience rather than giving orders to new entities (O.M.No.F.20/2/2014PPD(Pt.) dated 20.09.2016 issued by DoE).

Q.No.31: Has the Ministry clarified the sub target of procurement from SC/STs/Women entrepreneurs under amended Public Procurement Policy for MSEs, Order 2012?

Ans. It is clarified that sub-targets of 4% (within 25% of annual procurement target) and 3% (within 25% of annual procurement target) have been earmarked for procurement from MSEs

owned by SC&ST and Women entrepreneurs, respectively under the amended Public Procurement Policy for MSEs Order, 2012.

Q.No.32: Are Works Contracts a part of Services? What is the difference between Works and Services?

Ans. Works Contracts are not covered under the purview of Public Procurement Policy for MSEs. The definition is available in GFR Rules 130, 143, 177 & 197.

Q.No.33: Is there any provision to take action against the defaulting MSEs under the Policy?

Ans. There is no such provision under the Policy. The procuring entity may take appropriate action as per terms and conditions (T&C) of the tender documents and/or as per GFR Rules.

Q.No.34: Are financial institutions/ autonomous bodies included in the PP Policy?

Ans. The Policy is applicable for all Central Government Ministries/ Departments and CPSEs.

Q.No.35: Can the Ministry take action against the procuring agency for Delay in return of the Security Deposit of the MSEs?

Ans. There is no such provision under the Policy. The matter can be referred to the department concerned for taking appropriate action in the interest of the MSE complainant.

Q.No.36: Is it mandatory for MSEs to disclose their status as SC/ST/Women in Udyam Registration Certificate (URC)?

Ans. Yes, it is mandatory to disclose the status as SC/ST/Women for in Udyam Registration.

Q.No.37: Have the State Governments been asked to frame a Public Procurement Policy for MSEs?

Ans. Yes, all the State Governments have been requested to frame the Public Procurement Policy on similar lines.

Q.No.38: Have all the CPSEs been uploading their monthly and annual procurement details, on MSME SAMBANDH Portal?

Ans. Most of the CPSEs are uploading their procurement details on the portal.

Q.No.39: Is there any provision to take action against the procuring agency for noncompliance of PPP-MSE under the Policy?

Ans. No, there is no such provision in the Policy.

Q.No.40: What is the objective of the Policy?

Ans. The objective of the Policy is to promote Micro and Small Enterprises (MSEs) by improving their market access and competitiveness through: - Increased participation in Government purchase.

- Encouraging relationship (including product development) between MSEs and Public Sector Undertaking (PSUs).
- Increased share of supplies of MSEs to Central Government Ministries/ Departments and CPSEs.
- Increased share of supplies of MSEs to Central Government Ministries/ Departments and CPSEs.

Q.No.41: What are the items or goods which can be procured from MSEs to achieve the target of 25% from MSEs?

Ans. To achieve the target Government / CPSEs they can procure.

i. The items from the list of 358 items reserved for procurement from MSEs.
ii. Items which are being manufactured by MSEs, besides reserved items.

Q.No.42: How is the status of Enterprises as MSEs be verified?

Ans. The status of enterprises as MSEs can be verified through their Udyam Registration Certificate or UAM certificate, which is valid till 31st March, 2022.As per notification No. S.O. 2119(E) dated 26.06.2020, in case of any discrepancy or complaint, the General Manager of the District Industries Centre of the District concerned shall undertake an inquiry for verification of the details of Udyam Registration/UAM submitted by the enterprise and thereafter forward the matter with necessary remarks to the Director or Commissioner or Industry Secretary concerned of the State Government who after issuing a notice to the enterprise and after giving an opportunity to present its case and based on the findings, may amend the details or recommend to the Ministry of MSME, Government of India, for cancellation of the Udyam Registration Certificate/UAM.

Q.No.43: Can sub-contracting be considered under the procurement target from MSE?

Ans. Yes, if subcontract is given to MSEs, it will be considered as procurement from MSEs.

Q.No.44: If MSEs participate in tender but the procuring agency denies providing benefits under the Policy, how can the problem be addressed?

Ans. The problem can be resolved through the Grievance Cell constituted to tackle such situations and the matter may be referred to the procuring agency concerned to redress the problem.

Q.No.45: What are the steps taken by the Ministry of MSME to promote marketing through GeM portal for supply of Goods or rendering services from MSEs to Government Departments and CPSEs?

Ans. CEO, GeM has been requested to make a provision in the GeM portal for procurement of goods and services from MSEs through linking URC.

- Udyam Registration Portal has a facility through which an entrepreneur can opt for linking itself with Government e-market (GeM) place by selecting an option on Udyam Portal. The enterprise will be linked to GeM portal and flow of information will start between these two portals. With this facility, MSEs can link themselves with the Government's procurement system and can participate in Government's mandatory procurement programme from MSEs.
- All CPSEs have been requested to procure goods and services from MSEs, through GeM portal only.
- The Ministry of MSME has signed an MOU with CEO, GeM, for mobilizing MSEs for onboarding themselves on the GeM portal for supply of goods & services from MSEs.
- All UAM holders had been requested to register themselves on GeM portal for supply of goods and services through GeM portal.

Q.No.46: What is the difference between PPP-MII Order, 2017 and PPP-MSE Order, 2012?

Ans. The Public Procurement Policy for MSEs Order, 2012 is a delegated legislation deriving authority from the Act of Parliament. PPP-MII, Order, 2017 is an executive Order.

Q.No.47: Can Joint Ventures take the benefits of the Public Procurement Policy for MSEs Order, 2012?

Ans. No, Under Udyam Registration (and earlier under UAM), there is no provision of registration of Joint Ventures. As mentioned in S. No. 3 above, benefits of the Public Procurement Policy for MSEs Order, 2012 can be availed by those MSEs which are registered on the Udyam Registration portal.

Q.No.48: Can Consortiums with Foreign Company takes the benefits of the Public Procurement Policy for MSEs Order, 2012?

Ans. No, Under Udyam Registration (and earlier under UAM), there is no provision of registration of Consortium. As mentioned in S. No. 3 above, benefits of the Public Procurement Policy for MSEs Order, 2012 can be availed by those MSEs which are registered on the Udyam Registration portal.

Q.No.49: Can trader benefits from Public Procurement Policy, for MSEs Order, 2012?

Ans. No, as mentioned in O.M. No. 5/2(2)/2021-E/P & G/Policy dated 02.07.2021, Retail and Wholesale traders can register on Udyam Registration Portal for the purpose of Priority Sector Lending (PSL) only.

Annexure 14: Invitation and Declaration for Negotiations

(Refer Para 7.4.10-7-b) and 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: i) Form of Declaration ii) Form of Revised Offer	(Authorised Officer)

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 on behalf of the bidder

Annexure 15: Format of Revised Offer in Negotiations

(Refer Para 7.4.10-7-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 tender document remain valid and binding on me.

3. I/we undertake to execute the contract as per following Schedule.....

4. I/we agree to abide by this tender on the revised rate quoted by me/us, it is open for acceptance for a period of 120/180 (one hundred twenty to one hundred eighty) days from this date, *i. e*., up to ……. and in default of my/our doing so, I/we will forfeit the earnest money deposited with the original tender/ attached herewith. Eligibility as valid bidders 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 16: Letter (Notification) of Award (LoA) of Contract

(Refer Para 7.5.1-2)

Name of the procuring entity_____

Letter of Award of Contract

Confidential

Contract No: (Insert date)

Contract Title:

To,

M/s. (Insert name & address)

Sub: Award of contract for contract no: (insert contract number) and contract title: (insert contract title)

REF. Your offer no. (insert offer number) against our tender no. (insert tender no) opened on (insert date of opening of tender)

Dear Sir/ Madam

I am directed to inform you that after evaluating the bids submitted by you on ----(enter date) ---------(Enter Name of Procuring Entity) is pleased to inform you that you have been selected as the successful bidder for the performance of Services (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 tender documents.

You/your authorised representative(s) are requested to be personally present at (insert address) for the signing of the contract by (enter date).

In this respect, we also request you to submit the performance security of (insert amount of Rupees in words) by (insert date). Security deposit being 10% (ten percent) of the total cost = Rs._____.

Please apply for refund of EMD deposited over and above the SD of if any.

You are requested to execute necessary agreement within seven days from the date of issue of this letter in the enclosed agreement form. Special adhesive stamp of Rs.10 (Rupees Ten) and revenue stamp of Rupee one shall be affixed on the enclosed agreement form. Treasury receipts of EMD and SD shall be deposited in office within the stipulated time limit as above.

This notification concludes the legally binding contract between you and the Government of India, till issue of a formal contract.

Yours truly,

(Authorised Officer)

Enclosure: Agreement Form along with the schedule of delivery

Annexure 17: Proposal for Extension of Delivery Period

(Refer Para 9.4.3-2,3)

Proposal for Extension of Delivery Period

Department		Office	
Description		Contract value	
Contract No:		Date:	
Variations applicable	PVC/ ERV/ Statutory Variations	Type of contractor	Govt. Dept. / PSU/ MSE
Contractor & Regn. No.:		Quantity on order	
Quantity already supplied		Quantity remaining	
Details of earlier extensions granted		Is it a contract:	Development/ Indigenisation
Reference and date of request for extension		Reasons cited for extension	
Original/extended delivery period/ date		Proposed extension of period/ date	
Signature of Procuring Officer		Date	

Remarks of Indentor:

Regarding the proposed extension of delivery period/date, the following remarks are given regarding loss and inconvenience due to delay:

Loss: (strike out options not applicable): No loss would be incurred/ loss is incurred but cannot be quantified/ loss to the extent of Rs. ---------- would be incurred

Inconvenience: (strike out what is not applicable): No inconvenience would be incurred/inconvenience would be incurred

Proposed extension in delivery is recommended with above remarks.

Signature of Indenting Officer and Date

Proposal by Procuring Entity

It is certified that:

a) That a higher rate in the original tender was not accepted against other lower quotations in consideration of the earlier delivery;

b) That there is no falling trend in prices for this item as evidenced from the fact that in the intervening period neither orders have been placed at rates lower than this contract nor

any tender has been opened where such rates have been received even though tender is not yet decided.

It is proposed to grant extension of delivery period/date up to _____, (strike out options not applicable) with recovery of liquidated damages/ with recovery of token liquidated damages/ without any liquidated damages and with/without denial clause, in view of justifications recorded below:

In view of value of the contract and proposal regarding liquidated damages, this would require approval of ---------- (competent authority). This would/ would not require financial concurrence.

Signature of Procuring Officer and Date

Head of Office recommendations/approval

Signature of Superintending Engineer/date

Annexure 18: Format for Extension of Delivery Period/ Performance Notice

(Refer Para 9.4.3-7 and 9.4.5)

Name of the Procuring Entity_____

Extension of Delivery Period/Performance Notice

To M/s (name and address of form)

Sub: Contract No ---------- dated ----------for the supply of ----------

Ref: Your letter no. ---------- dated: ----------

Dear Sir,

1. You have failed to deliver {the (fill in details of services)} within the contract delivery period (as last extended up to) (fill in date). In your letter under reply you have asked for (further) extension of time for delivery. In view of the circumstances stated in your said letter, the time for delivery is extended from (fill in date) to (fill in date)
2. Please note that notwithstanding the grant of this extension in terms of Clause (fill in clause number) of the subject contract an amount equivalent to.....% (.....per cent) of the delivered price of the delayed services for each week of delay or part thereof (subject to the ceiling as provided in the aforesaid clause) beyond the original contract delivery date/the last unconditionally re-fixed delivery date (as & if applicable), viz., (fill in date) will be recovered from you as liquidated damages. You may now tender the services for inspection/ review (balance of the services) in terms of this letter. Services if any already tendered by you for inspection/ review but not inspected/ reviewed will be now inspected/ reviewed accordingly.
3. You are also required to extend the validity period of the performance guarantee for the subject contract from (fill in present validity date) to (fill in required extended date) within 15 (fifteen) days of issue of this amendment letter.
4. The above extension of delivery date will also be subject to the following Denial Clause.

1) That no increases in price on account of any statutory increase in or fresh Imposition of customs duty, excise duty, GST or on account of any other taxes/duty, including custom duty), leviable in respect of the Services specified in the said contract which takes place after (insert the original delivery date) shall be admissible on such of the said Services, as are delivered after the said date; and.

2) That notwithstanding any stipulation in the contract for increase in price on any other ground including foreign exchange rate variation, no such increase which takes place after (insert the original delivery date) shall be admissible on such of the said Services as are delivered after the said date.

3) But nevertheless, the purchaser shall be entitled to the benefit of any decrease in price on account of reduction in or remission of customs duty, excise duty, GST or on account of any other Tax or duty or on any other ground as stipulated in the price variation clause or foreign exchange rate variation which takes place after the expiry of the above-mentioned date namely (insert the original delivery date)

5. All other terms and conditions of the contract remain unaltered. This is without any prejudice to purchasers' rights under the terms and conditions of the subject contract.

6. Please intimate your unconditional acceptance of this amendment letter within 10 (ten) days of the issue of this letter failing which the contract will be cancelled at your risk and expense without any further reference to you.

Yours faithfully,

(Authorised Officer)

Duly authorised, for and on behalf of

The President of India

Note: Select one option within { } brackets; delete portion within ( ) brackets, if not applicable; fill in ( ) brackets. Brackets and this note are not to be typed.

Substitute following first para instead of first para in format above, for issuing a performance notice.

1. You have failed to deliver {enter the detail of the Services} within the contract delivery period (as last extended up to) (fill in date). In spite of the fact that the time of delivery of the services stipulated in the contract is deemed to be of the essence of the contract, it appears that (fill in the outstanding services) are still outstanding even though the date of delivery has expired. Although not bound to do so, the time for delivery is extended from (fill in date) to (fill in date) and you are requested to note that in the event of your failure to deliver the services within the delivery period as hereby extended, the contract shall be cancelled for the outstanding services at your risk and cost.

Annexure 19: Model Format for Correspondence with Service Provider after Expiry of Delivery Date

(Ref Para 9.4.3-6 and 9.4.4)

Registered Acknowledgement Due

To

M/s _____

_____

_____

Sub : Contract No…… dated ……..….. for supply of ……...

Dear Sirs,

The date of delivery of the subject contract expired on _____. As services against the same have not yet been delivered/ completed, there is a breach of the contract on your part. As information is required regarding past services delivered against this contract, you are requested to send the particulars regarding the services rendered so far and, also, the quantum of services inspected/ reviewed so far, but not yet dispatched and the quantum of services so far not tendered for inspection/ review before the expiry of the date of delivery.

The above information is required for the purpose of verification of our records and is not intended to keep the contract alive and does not waive the breach. This is without prejudice to the rights and remedies available to the purchaser in terms of the contract and law applicable in this behalf.

Yours faithfully,

(----------)

for……

Annexure 20: No Claim Certificate

(Refer Para 9.5.1-6 and 9.6.2)

(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 delivery of services of _____under the above mentioned contract agreement, between us and Government of India. We here by unconditionally and without any reservation whatsoever, certify that with this payment, we shall have no claim whatsoever, of any description, on any account, against Procuring Entity, against aforesaid contract agreement executed by us. We further declare unequivocally, that with this payment, we have received all the amounts payable to us, and have no dispute of any description whatsoever, regarding the amounts worked out as payable to us and received by us, and that we shall continue to be bound by the terms and conditions of the contract agreement, as regards performance of the contract.

Yours faithfully,

Signatures of contractor or

officer authorised to sign the contract documents

on behalf of the contractor

(company stamp)

Date:_____

Place:_____

Annexure 21: Guidelines for Evaluation of Concurrent Application of the MSE and MII Preferences

(Refer Para 7.4.6)

1. The concurrent application of the two procurement orders i.e., MSE Procurement Order of 2012 and PPP-MII Order may create confusion to the procuring entities on how to evaluate the bidders falling within the purview of both policies. To bring predictability both to the procuring entities as well as bidders, guidelines were issued by DoE. These guidelines are explained below. Examples to illustrate the application of these guidelines are given in the Annex to this Annexure.
2. The Class-I local suppliers, under PPP-MII Order, participating in any government tender, may or may not be MSEs, as defined under the MSME Act. Similarly, MSEs participating in any government tender, may or may not be Class-I local suppliers. Suppliers may be categorised in following four broad categories for consideration or applicability of purchase preference:

Category: If Supplier is:	Terminology: Supplier	Acronym for this Para
both MSE & Class-I local supplier	"MSE Class-I local"	M-C1
MSE but not Class-I local supplier	"MSE but non-Class-I local"	M-NC1
not MSE but is Class-I local supplier	"Non-MSE but Class-I local"	NM-C1
Supplier is neither MSE nor Class-I local	"Non-MSE non-Class-I local"	NM-NC1

3. The applicability of PPP-MSE Order and PPP-MII Order in various scenarios, involving simultaneous purchase preference to MSEs and Class-I local suppliers under PPP-MSE Order and PPP-MII Order respectively, shall be as under:
    a) **Scenario-1:** Items for which Nodal Ministry has notified sufficient local capacity and competition *(para 1.10.2-3A-a) of this manual)*: For these items, only Class-I local suppliers are eligible to bid irrespective of purchase value. Hence, Class-II local suppliers or Non-local suppliers, including MSEs which are Class-II local suppliers/ Non-local suppliers, are not eligible to bid. Possible scenarios can be as under:
        i) L-1 is "MSE Class-I local supplier" - 100% of the tendered quantity is to be awarded to L-1.
        ii) L-1 is "Non-MSE but Class-I local supplier" - Purchase preference is given to MSEs as per PPP-MSE Order. Balance quantity is to be awarded to the L-1 bidder.
    b) **Scenario 2:** Items reserved exclusively for procurement from MSEs as per PPP-MSE Order: These items are reserved exclusively for purchase from MSEs. Hence, non-MSEs are not eligible to bid for these items. Possible scenarios can be as under:

i) L-1 is "MSE Class-I local supplier" - 100% of the tendered quantity is to be awarded to L-1

ii) L-1 is "MSE non-Class—I local supplier" - Purchase preference is to be given to “MSE Class-I local supplier” if any, as per PPP-MII Order. Balance quantity is to be awarded to L-1 bidder.

c) If items are neither notified for sufficient local capacity nor reserved for MSEs, then the process will be as follows:

i) **Scenario 3:** Items covered under (para 1.10.2-3-b) of this manual) which are divisible items and both MSEs as well as Class-I local suppliers are eligible for purchase preference. Possible scenarios can be as under:

1) L-1 is "MSE Class-I local supplier" - 100% of the tendered quantity is to be awarded to L-1.

2) L-1 is "Non-MSE but Class-I local supplier" - Purchase preference is to be given to “MSE Non-ClassI Local Supplier”, if any if eligible, as per PPP-MSE Order. Balance quantity is to be awarded to L-1 bidder.

3) L-1 is "MSE but non-Class-I local supplier" - Purchase preference is to be given to “Non-MSE Class-I local supplier”, if any if eligible, as per PPP-MII Order. Balance quantity is to be awarded to L-1 bidder.

4) L-1 is "Non-MSE non-Class-I local supplier" - Purchase preference is to be given to MSEs as per PPP-MSE Order. Thereafter, purchase preference is to be given to Class-I local suppliers for "50% of the tendered quantity minus quantity allotted to MSEs above" as per PPP- MII Order. For the balance quantity, contract is to be awarded to L-1 bidder. (Kindly refer to the illustrative example in the annex to this annexure).

ii) **Scenario 4:** Items covered under (para 1.10.2-3-b) of this manual) which are non-divisible items and both MSEs as well as Class-I local suppliers are eligible for purchase preference. Possible scenarios can be as under:

1) L-1 is "MSE Class-I local supplier" - Contract is awarded to L-1.

2) L-1 is not "MSE Class-I local supplier" but the "MSE Class-I local supplier" falls within 15% margin of purchase preference Purchase preference is to be given to lowest quoting "MSE Class-I local supplier". If the lowest quoting "MSE Class-I local supplier" does not accept the L-1 rates, the next higher "MSE Class-I local supplier" falling within 15% margin of purchase preference is to be given purchase preference and so on.

3) If conditions mentioned in sub paras 1) and 2) above are not met i.e., L-1 is neither "MSE Class-I local supplier" nor "MSE Class-I local supplier" is eligible to take benefit of purchase preference, the contract is to be awarded/ purchase preference to be given in different possible scenarios as under:

h) L-1 is "MSE but non-Class-I local supplier" or "Non-MSE but Class-I local supplier" — Contract is to be awarded to L-1.

i) L-2 is "Non-MSE non-Class-I local supplier" - First purchase preference to be given to MSE as per PPP-MSE Order. If MSE is not eligible/ does not accept - purchase preference to be given to Class- I Local supplier as per PPP-MII Order. If Class-I Local supplier also not eligible/ does not accept — contract to be awarded to L-1.

d) **Scenario 5:** Items reserved for both MSEs and Class-I local suppliers: These items are reserved exclusively for purchase from MSEs as well as Class-I local suppliers.

Hence, only "MSE Class-I local supplier" are eligible to bid for these items. Non-MSEs/ Class-II local suppliers/ Non-local suppliers cannot bid for these items. Hence the question of purchase preference does not arise.

e) **Scenario 6:** Non-local suppliers, including MSEs falling in the category of Non-local suppliers, shall be eligible to bid only against Global Tender Enquiry.

Annex to Annexure 21: Examples of Evaluation of Concurrent Application of the MSE and MII Preferences

1. Given below are the examples to explain the different scenarios that may arise during the concurrent evaluation of MSE and Class-I local suppliers. The scenarios are further divided into the various sub-scenarios considered as 'Distribution (D)' to provide clarity on the quantity distribution, which shall take place among the MSE and Class-I local suppliers. Please note the following acronyms, in table in para 2 of Annexure 21.
2. Example explaining applicability in scenario explained in Scenario 3 in Annexure 21 (: Divisible items, both MSEs as well as Class-I local suppliers eligible for purchase preference.) Item — Desktop computer, Qty — 100 Nos.

i) **L-1 is 'Non-MSE but Class-I Local Supplier' (NM-C1)** (Scenario 3 -2) in Annexure 21) Details of bids received:

S.#	Bidder	Rates quoted (INR)	Rank	Status of bidder	D-1	D-2	D-3	D-4
1.	A	100	L1	NM-C1	74 (L1)	75 (L1)	75 (L1)	100 (L1)
2.	B	110	L2	M-NC1	Accepts 13 (MSE)	Accepts 25 (MSE)	Does not accept	Does not accept
3.	C	112	L3	NM-NC1	Not Eligible	Not Eligible	Not Eligible	Not Eligible
4.	D	115	L4	M-NC1	Accepts 13 (MSE)	Does not accept	Accepts 25 (MSE)	Does not accept
5.	E	118	L5	NM-C1	Not Eligible	Not Eligible	Not Eligible	Not Eligible
6.	F	120	L6	MC1	Not Eligible	Not Eligible	Not Eligible	Not Eligible

a) First purchase preference is to be given to MSEs as per PPP-MSE Order.
b) MSE bidders to be invited for placement of 25% of tendered quantity of 100 Nos. i.e., 25 Nos.
c) Those MSE bidders are to be invited whose quoted rates falls within 15% margin of purchase preference, to match the L1 price.
d) Accordingly, the following distributions may happen:

A. Distribution-1 (D-1)

1) MSE bidders B (L2) and D (L4) are invited to match L1 price i.e., INR 100/-.
2) Both bidders B and D agree to match the L1 price.
3) The quantity of 25 nos. is distributed equally among bidders B and D i.e., 25/2=12.5 nos. (say 13 nos.)

4) Bidders B and D are awarded the quantity of 13 nos. of computers each (i.e., a total of 26 nos. of computers placed on MSE bidders)
5) The remaining quantity of 74 nos. of computers (100-26) is placed on the L1 bidder.

B. Distribution-2 (D-2)/ Distribution-3 (D-3)

1) Either bidder B or bidder D agrees to match the L1 price.
2) 25 nos. quantity (25% of 100 nos.) is placed on the bidder (B or D).
3) The balance quantity of 75 nos. computers (100-25) is placed on the L1 bidder.

C. Distribution-4 (D-4)

1) None of the MSE bidders agree to match the L1 price. No MSE preference given.
2) Entire quantity of 100 nos. computers is placed on the L1 bidder i.e., Bidder "A", being a Class I bidder.

ii) **L-1 is "MSE but non-Class-I Local Supplier (M-NC1)** (Scenario 3 -3) in Annexure 21). Details of bids received:

S.#	Bidder	Rates quoted (INR)	Rank	Status of bidder	D-1	D-2	D-3	D-4
1.	A	100	L1	M-NC1	50 (L1)	50 (L1)	50 (L1)	100 (L1)
2.	B	110	L2	NM-NC1	Not Eligible	Not Eligible	Not Eligible	Not Eligible
3.	C	112	L3	NM-C1	Accepts 50 (MII)	Does not accept	Does not accept	Does not accept
4.	D	115	L4	M-NC1	Not Eligible	Not Eligible	Not Eligible	Not Eligible
5.	E	118	L5	NM-C1	Not Eligible	Accepts 50 (MII)	Does not accept	Does not accept
6.	F	120	L6	MC1	Not Eligible	Not Eligible	Accepts 50 (MII)	Does not accept

a) First purchase preference is to be given to Class-I local supplier as per PPP-MII Order, for placement of 50% of tendered quantity of 100 Nos. i.e., 50 Nos.
b) The Class-I local supplier is to be invited whose quoted rates falls within 20% margin of purchase preference, to match the L1 price.
c) Accordingly, the following distributions may happen:

A. Distribution-1 (D-1)

1) Class-I bidder C (L3) is invited to match L1 price i.e., INR 100/-.
2) Bidders C agrees to match the L1 price.
3) Bidder C is awarded the quantity of 50 nos.
4) The balance quantity of 50 nos. of computers (100-50) is placed on the L1 bidder.

B. Distribution-2 (D-2)/ Distribution-3 (D-3)

1) The bidder C does not agree to match the L1 price, then the next Class-I bidder i.e., Bidder E is invited to match the L1 price.
2) Bidder E agrees to match the L1 price, and the 50 nos. quantity is awarded on Bidder E.
3) The balance quantity of 50 nos. computers (100-50) is placed on the L1 bidder 'A'.
4) In case, Bidder E does not agree to match the L1 price, the next Class-I bidder is invited which is Bidder 'F'.
5) Bidder F agrees to match the L1 price, then the 50 nos. of quantity are awarded to Bidder F, while the balance quantity of 50 nos. computers is placed on the L1 bidder 'A'.

C. Distribution-4 (D-4)

1) None of the Class-I local suppliers agree to match the L1 price. No MII preference given.
2) Entire quantity of 100 nos. computers is placed on the L1 bidder i.e., Bidder 'A'.

iii) L-1 is "Non-MSE non-Class-I local supplier" (NM-NC1) (Scenario 3 -4) in Annexure 21)**. Details of bids received:**

S.#	Bidder	Rates quoted (INR)	Rank	Bidder Status	D-1	D-2	D-3	D-4	D-5	D-6	D-7
1.	A	100	L1	NM-NC1	37 (L1)	37 (L1)	37 (L1)	37 (L1)	37 (L1)	50 (L1)	75 (L1)
2.	B	110	L2	NM-C1	Accepts 37 (MII)	Accepts 38 (MII)	Does not accept	Does not accept	Does not accept	Accepts 50 (MII)	Does not accept
3.	C	112	L3	M-NC1	Accepts 13 (MSE)	Accepts 25 (MSE)	Does not accept	Accepts 13 (MSE)	Accepts 25 (MSE)	Does not accept	Accepts 25 (MSE)
4.	D	115	L4	MC1	Accepts 13 (MSE)	Does not accept	Accepts 25 (MSE) + 38 (MII)	Accepts 13 (MSE) + 37 (MII)	Does not accept	Does not accept	Does not accept
5.	E	118	L5	NM-C1	Not Eligible	Not Eligible	Not Eligible	Not Eligible	Does not accept	Not Eligible	Does not accept

6.	F	120	L6	MC1	Not Eligible	Not Eligible	Not Eligible	Not Eligible	Accepts 38 (MII)	Not Eligible	Does not accept
7	G	120	L7	M-NC1	Not Eligible	Not Eligible	Not Eligible	Not Eligible	Not Eligible	Not Eligible	Not Eligible

a) First purchase preference is to be given to MSEs as per PPP-MSE Order.
b) MSE bidders having their quoted rates within 15% margin of purchase preference to be invited for placement of 25% of tendered quantity, subject to matching the L1 price.
c) The next purchase preference is to be given to Class-I local supplier as per PPP-MII Order, whose quoted rates falls within 20% margin of purchase preference, to match the L1 price.
d) Post these purchase preferences, the balance quantity is placed on the L1 bidder who is Non-MSE non-Class-I local supplier.
e) Accordingly, the following distributions may happen:

A. Distribution-1 (D-1)

1) MSE bidders C and D are invited to match L1 price i.e., INR 100/-. Bidder F and G, being the MSE bidders are not invited since their quoted prices falls beyond the margin of preference of 15%.
2) Both bidders C and D agree to match the L1 price.
3) The quantity of 25 nos. is distributed equally among bidders B and D i.e., 25/2=12.5 nos. (say 13 nos.)
4) Bidders C and D are awarded the quantity of 13 nos. of computers each (i.e., a total of 26 nos. of computers placed on MSE bidders)
5) The balance quantity remaining is 74 nos. (100-26). Next, purchase preference shall be given as per MII Order for the placement of 50% of the balance quantity, i.e., for 37 nos. of computers (50% of 74).
6) Bidder B, being a Class-I local supplier, is invited to match the L1 price, since its quoted rate falls within margin of purchase preference of 20%.
7) Bidder B agrees to match the L1 price. The quantity of 37 nos. of computers is awarded to bidder ‘B’.
8) The balance quantity of 37 nos. of computers (100-26-37), is placed on the L1 bidder ‘A’.

B. Distribution-2 (D-2)

1) MSE bidder C and D are invited to match L1 price i.e., INR 100/-.
2) MSE bidders C agrees to match the L1 price, but MSE bidder D does not agree to match the L1 price.
3) The quantity of 25 nos. (25% of 100 nos.) is placed on the MSE bidder C.
4) The balance quantity remaining is 75 nos. (100-25). Next, purchase preference shall be given as per MII Order for the placement of 50% of the balance quantity, i.e., for 37.5 or say, 38 nos. of computers.
5) Bidder B, being the Class-I local supplier, is invited to match the L1 price, since its quoted rate falls within margin of purchase preference of 20%.
6) Bidder B agrees to match the L1 price. The quantity of 38 nos. of computers is awarded to bidder ‘B’.

7) The balance quantity of 37 nos. of computers (100-25-38), is placed on the L1 bidder 'A'.

C. Distribution-3 (D-3)

1) MSE bidder C and D are invited to match L1 price i.e., INR 100/-.
2) MSE bidders C does not agrees to match the L1 price, but MSE bidder D agrees.
3) The quantity of 25 nos. (25% of 100 nos.) is placed on the MSE bidder D.
4) The balance quantity remaining is 75 nos. (100-25). Next, purchase preference shall be given as per MII Order for the placement of 50% of the balance quantity, i.e., for 37.5 or say, 38 nos. of computers.
5) Bidder B, being the Class-I local supplier is invited to match the L1 price, since its quoted rate falls within margin of purchase preference of 20%.
6) Bidder B does not agree to match the L1 price. Hence, the next Class-I local supplier, bidder 'D' is invited to match the L1 price. Bidder D agrees and the quantity of 38 nos. of computers is awarded to bidder 'D'.
7) The balance quantity of 37 nos. of computers (100-25-38), is placed on the L1 bidder 'A'.

D. Distribution-4 (D-4)

1) MSE bidder C and D are invited to match L1 price i.e., INR 100/-.
2) MSE bidders C and D agree to match the L1 price. The quantity of 25 nos. is distributed equally among bidders B and D i.e., 25/2=12.5 nos. (say 13 nos.) each.
3) The balance quantity remaining is 74 nos. (100-26). Next, purchase preference shall be given as per MII Order for the placement of 50% of the balance quantity, i.e., for 37 nos. of computers.
4) Bidder B, being the Class-I local supplier is invited to match the L1 price, since its quoted rate falls within margin of purchase preference of 20%.
5) Bidder B does not agree to match the L1 price. Hence, the next Class-I local supplier, bidder 'D' is invited to match the L1 price. Bidder D agrees and the quantity of 37 nos. of computers is awarded to bidder 'D'.
6) The balance quantity of 37 nos. of computers (100-26-37), is placed on the L1 bidder 'A'.

E. Distribution-5 (D-5)

1) MSE bidder C and D are invited to match L1 price i.e., INR 100/-.
2) MSE bidders C agrees to match the L1 price, however, bidder D does not agree. Hence, the 25% of 100 nos. of computers i.e., 25 nos. are awarded to MSE bidder C.
3) The balance quantity remaining is 75 nos. (100-25). Next, purchase preference shall be given as per MII Order for the placement of 50% of the balance quantity, i.e., for 37.5, say 38 nos. of computers.
4) Bidder B, being the Class-I local supplier is invited to match the L1 price, since its quoted rate falls within margin of purchase preference of 20%.
5) Bidder B does not agree to match the L1 price. Hence, the next Class-I local supplier, bidder 'D' is invited to match the L1 price. Bidder D also does not agree to match the L1 price. The next class-I local supplier 'E' is invited that does not agree either. The next class-I local supplier 'F' is invited (who happens to be a MSE bidder as well, however, since the quoted price of bidder 'F' in case of MSE preference was beyond 15% margin of preference, hence it was

not invited to match the L1 price while going for MSE preference). For MII preference, the price quoted is within the margin of 20%. The bidder 'F' agrees to match the L1 price. The quantity of 38 nos. of computers is placed on bidder 'F'.

6) The balance quantity of 37 nos. of computers (100-25-38), is placed on the L1 bidder 'A'.

F. Distribution-6 (D-6)

1) MSE bidder C and D are invited to match L1 price i.e., INR 100/-.
2) Neither of the MSE bidders (C and D) agrees to match the L1 price. Hence, no MSE purchase preference is given.
3) The next purchase preference is given to Class-I local supplier as per the MII Order for the 50% of the tendered quantity i.e., for 50 nos. of computers. Bidder 'B' being the lowest quoting Class-I local supplier with its quoted price falling within the margin of purchase preference of 20% is invited to match the L1 price.
4) Bidder 'B' agrees to match the L1 price. The quantity of 50 nos. of computers is awarded on bidder 'B'.
5) The balance quantity of 50 nos. of computers (100-50) is placed on the L1 bidder 'A'.

G. Distribution-7 (D-7)

1) MSE bidder C and D are invited to match L1 price i.e., INR 100/-.
2) MSE bidder 'C' agrees to match the L1 price only. Hence, 25% of the total tendered quantity i.e., 25 nos. of computers are awarded on the MSE bidder 'C'.
3) The next purchase preference is to be given to Class-I local supplier as per the MII Order for the 50% of the balance quantity of 75 nos. i.e., for 37.5 or say 38 nos. of computers. First Class-I bidder invited is bidder 'B' to match the L1 price. Bidder 'B' does not agree to match the price. Subsequently, bidders 'D,' 'E' and 'F' are invited one by one, after each of the bidder does not agree to match the L1 price.
4) None of the Class-I local suppliers agree to match the L1 price. Hence, no purchase preference under MII order is given.
5) The balance quantity obtained, after the placement of 25 nos. quantity of computers on MSE bidders, is placed on bidder 'A' the L1 bidder for 75 nos. computers.

3. Example explaining applicability in Scenario 4 in Annexure 21 (Non-Divisible items, both MSEs as well as Class-I local suppliers eligible for purchase preference.). Item — Software License, Unit — 100 Nos.

i) **L-1 is "Non-MSE but Class-I Local Supplier"** (Scenario 4 -2) in Annexure 21). Details of bids received:

Sr. No.	Name of bidder	Rates quoted	Price Ranking	Status of bidder
1.	A	100	L1	"Non-MSE but Class-I local supplier"
2.	B	110	L2	"MSE but non- Class-I local supplier"

3.	C	112	L3	"MSE Class-I local supplier"
4.	D	115	L4	"MSE Class-I local supplier"
5.	E	118	L5	"Non MSE non-Class-I local supplier"
6.	F	120	L6	"MSE Class-I local supplier"

a) Here, purchase preference is to be given to the lowest quoting 'MSE Class-I local supplier,' provided its rate falls within the purchase preference of 15%.
b) Bidder 'C' is MSE Class-I local supplier with price within the 15% margin of preference. Bidder C is invited to match the price of L1. If agreed, the entire order (100 nos. of software licenses) is to be placed on Bidder C.
c) If lowest quoting 'MSE Class-I local supplier' (Bidder 'C') does not agree to match the L1 price, the next higher 'MSE Class-I local supplier' i.e., bidder 'D' is invited to match the L1 price. If agreed, the entire order is to be placed on bidder 'D.'
d) Bidder 'F' though MSE Class-I local supplier, cannot be considered since its price falls beyond the 15% margin of preference.

ii) L-1 is "MSE but non-Class-I Local Supplier" (Scenario 4 -1) in Annexure 21): The approach explained in example 2. (i) above to be followed.

iii) **L-1 is neither "MSE Class-I Local Supplier" nor "MSE Class-I Local Supplier" is eligible** (Scenario 4 -3) in Annexure 21), then:

1) L-1 is MSE but non-Class-I local supplier: Entire quantity (100 nos. of software license) is to be placed on the L-1; or
2) L-1 is Non-MSE but Class-I local supplier: Entire quantity (100 nos. of software license) to be placed on the L-1.

iv) L-1 is "Non-MSE non-Class-I Local Supplier". Details of bids received:

Sr. No.	Name of bidder	Rates quoted	Price Ranking	Status of bidder
1.	A	100	L1	"Non-MSE non-Class-I local supplier"
2.	B	110	L2	"MSE but non- Class-I local supplier"
3.	C	112	L3	"Non MSE but Class-I local supplier"
4.	D	115	L4	"MSE but non- Class-I local supplier"
5.	E	118	L5	"Non MSE but Class-I local supplier "
6.	F	120	L6	"MSE but non- Class-I local supplier"
7.	G	125	L7	"MSE Class-I local supplier"

1) First, MSE preference shall be exercised. Hence, lowest quoting MSE but non-Class-I local supplier is invited to match the price of L-1. Bidder 'B' has quoted the price that

falls within the purchase preference of 15%. If Bidder ‘B’ agrees, the entire order is to be placed on bidder ‘B.’

2) If bidder ‘B’ does not agree, bidder ‘D’ shall be invited (price falling within the purchase preference of 15%), to match the L-1 price. If agreed, entire order to be placed on bidder ‘D.’
3) If bidder ‘D’ also does not agree, now, purchase preference to Class-I local supplier shall be provided. Bidder ‘F’ cannot be considered since the quoted price is beyond the margin of preference of 15%.
4) Bidder ‘C’ is invited to match the L-1 price (quoted price within the purchase preference of 20%, as per the PPP-MII Order). If bidder ‘C’ agrees, the entire order is to be placed on ‘C.’
5) If bidder ‘C’ does not agree, bidder ‘E’ to be invited, as the quoted price is within the purchase preference of 20%. If bidder ‘E’ agrees, the entire order is to be placed on bidder ‘E.’

If the non MSE but Class-I local supplier, bidder ‘E’ also does not agree to match the L-1 price, then the entire order is to be placed on the L-1 i.e., bidder ‘A’.

Annexure 22: FAQs About PPP-MII Order, 2017

(Refer para 1.10.2-20)

Question 1. How to calculate Local Content?

Answer: *Para 2 of the* PPP-MII Order, 2017 (as amended on 16.09.2020) defines local content as

Local content' means the amount of value added in India which shall, unless otherwise prescribed by the Nodal Ministry, be the total value of the item procured (excluding net domestic indirect taxes) minus the value of imported content in the item (including all customs duties) as a proportion of the total value, in percent.

Mathematically,

Local content = (Sale price - Value of imported content) * 100/ Sale price

Where, "Sale price" means price excluding net domestic indirect taxes and "Value of imported content" means price of imported content inclusive of all customs duties

Question 2. How to calculate Local Content in bids involving supply of multiple items from single bidder?

Answer: In case of bids requiring supply of multiple items (say "X_1", "X_2" and "X_3") by a single bidder, the local content in the bid shall be

Local content = ((Sale price of "X_1" - Value of imported content in "X_1") + (Sale price of "X_2" - Value of imported content in "X_2") + (Sale price of "X_3" - Value of imported content in "X_3")) * 100/ (Sale price of "X_1" + Sale price of "X_2" + Sale price of "X_3")

Question 3. How to obtain Make in India "MII" certificate?

Answer: No such certificate issued by Government of India. As per para 9 (a) of PPP-MII Order, 2017 (as amended on 16.09.2020), the bidders are required to self-certify the local content in their product for purchase value less than Rs.10 crore. For purchases more than Rs.10 crore, as per para 9 (b) of PPP-MII Order, 2017, 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) is required to be submitted.

Question 4. What is the meaning of class-I local supplier, class-II local supplier and non-local supplier?

Answer: PPP-MII Order, 2017 (as amended on 16.09.2020) classifies the suppliers into following 3 categories:

a. 'Class-I local supplier' – Suppliers offering items with equal to or more than 50% local content
b. 'Class-II local supplier' - Suppliers offering items with equal to or more than 20% but less than 50% local content
c. 'Non-local supplier' - Suppliers offering items with Less than 20% local content

Nodal Ministries/ Departments are authorized to notify a higher minimum local content requirement for any item, i.e., higher than 50/20%, if they deem fit

Question 5. Details of product categories for which nodal Ministry have been notified by DPIIT for PPP-MII, Order 2017 may be provided?

Answer: DPIIT has notified 20 nodal Ministries for different product categories. The details of such product categories and associated Ministry/ Department are available on DPIIT website. Refer link: https://dpiit.gov.in/sites/default/files/Approved%20product%20category%20list

%20as%20per%2012th%20SCM.pdf

Question 6. Can an item be procured from non-local suppliers, if there are no Class-I/ Class-II local suppliers in the country.

Answer: Non-local suppliers can only participate in global tender enquiry. Against domestic/ national tenders, only Class-I and Class-II local suppliers can participate in the bidding process. Hence, in case item is not available locally from Class-I/ Class-II local suppliers, global tender enquiry may be floated for procuring item after taking approval of competent authority, as notified by Department of Expenditure under Rule 161(iv) of GFR.

Question 7. Are provisions of PPP-MII Order applicable only in procurement of the items for which nodal Ministries have been notified and the items for which nodal ministries have issued local content notification?

Answer: No. The provisions of PPP-MII Order are applicable on procurement of all the items by Central Government procurement entities. For the items, for which nodal ministries have not been designated and the items for which nodal ministries have not issued minimum local content notification, the default provision of PPP- MII Order shall apply.

Question 8. Will the cost of transportation, insurance, installation, commissioning, training and after sales service support like AMC/CMC etc. will be considered as a part of local content?

Answer: The cost of transportation, insurance, installation, commissioning, training and after sales service support like AMC/CMC etc. will not be taken into account for calculating local content in any item. DPIIT OM No.P-45021/102/2019-BE-II- Part(1) (E-50310) dated 04.03.2021 refers, available on DPIIT Website. Refer link https://dpiit.gov.in/sites/default/files/Letter%20to%20All%20Ministries030420 21_clarification.pdf

Question 9. Can administrative Ministries grant exemption/ relaxation for procurement of imported items with the approval of Hon'ble Minister In-charge under Para 14 of PPP-MII Order?

Answer: Procurement of imported item is governed by Rule 161 (iv) of GFR. Hon'ble Minister In-charge of administrative Ministry is not the appropriate authority for any exemption/waiver in GFR. As such, procuring entities are advised to follow the procedures as prescribed in GFR Rule 161 (iv) for procurement of imported items. In this regard, minutes of 14th Standing Committee Meeting held on 20.09.2022 issued by DPIIT, refers. (Agenda point Number 5.)

Question 10. Can administrative Ministry/Departments give exemption for wide range of product categories for an extended period of time under Para 14 of PPP- MII Order with the approval of Hon'ble Minister In- charge?

Answer: The administrative Ministries/ Departments shall grant only tender specific exemptions under Para 14 of the Order. Exemptions granted shall remain valid for a period of maximum 01 year only. If the same items are procured again within the aforesaid period of 01year, fresh approval of Minister-in-charge is not required. If any administrative Ministry/ Department intends to grant exemption beyond a period of 01 year, it shall do so only with prior written concurrence of concerned nodal Ministry. In this regard, minutes of 14th Standing Committee Meeting held on 20.09.2022 issued by DPIIT, refers. (Agenda point Number 5.)

Question 11. How do I apply for DPIIT registration under Rule 144 (xi) GFR for entities having beneficial ownership in land border sharing countries?

Answer: The application format for registration of bidders under Rule 144 (xi) GFR is available on DPIIT website. Refer link: https://dpiit.gov.in/sites/default/files/Revised-Format-Bidders-

31March2021.pdf. Applicants are required to submit one hard copy in the prescribed format along with soft copy (pdf), as detailed in the covering letter of the format. The applicant shall be asked to submit additional hard copies, if required at the later stage.

Question 12. What will be the category of the local suppliers having exactly 20% and 50% local content?

Answer: Vide its para 5, the Public Procurement (Preference to Make in India) Order, 2017 dated 16.09.2020 stipulates the minimum local content requirement as under:

> *"The 'local content' requirement to categorize a supplier as 'Class-I local supplier' is minimum 50%. For 'Class-II local supplier,' the 'local content' requirement is minimum 20%. 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% and 20% for 'Class-I local supplier'/" Class-II local supplier' respectively."*

Accordingly, the local suppliers having exactly 20% and 50% local content will be categorized as "Class-II Local Supplier" and 'Class-I Local Supplier' respectively.

Question 13. Whether a Central Government/CPSE Buyer can take cognizance of open undertakings/ futuristic declarations and treat bidder as Class I/ Class II local supplier through the present level of local content of the bidder happens to be below 50%/ 20% respectively?

Answer*:* Detailed Procedure for Verification of local content declared by suppliers /vendors is elaborated on clause 9 of PPP-MII Order, 2017 dated 16.09.2020 and as per the Order, futuristic declarations regarding local content is not allowed.

Annexure 23: Format for Show-cause Notice for Debarment

(Refer para 3.8.2-3-c)

(On Department Letterhead)

File No: (….)

(Date)

(DoE/ Ministry/ Department/ CPSE/ Organisation)

(Address)

To,

The (Company Name)

(Company Address)

Subject: Show Cause Notice for debarment of your Company from participation in Tenders of (Govt. of India/ Ministry/ Department/ CPSE/ Organisation) for the following misdemeanour

References: Relevant Tenders/ Contracts: (…….)

Dear Sir/Madam,

1. As a service provider participating in government tenders/ contracts, you must maintain the highest standards of ethical conduct and transparency, as laid down in the Code of Integrity in Public Procurement and other provisions in the relevant Tender Documents/Contracts.
2. Due to your misdemeanour mentioned below relating to the Tender Document/ Contract referred to above, you are proposed to be debarred from participation in all tenders/ contracts of (Govt. of India/ Ministry/ Department/ CPSE/ Organisation) for a period not exceeding two years.
3. **Articles of Misdemeanours**: As per the imputations detailed in Annexure-1 attached herewith, it is determined that you have committed the following serious misdemeanours relating to the tender/ contract referred to above:
    a) (You breached the Code of Integrity in Public Procurement as specified in (clause …..) in the Tender Document/ Contract referred to above (please also see Rule 175 of GFR 2017).
    b) (You made a false declaration of local content as Class I/ Class II local suppliers under Public Procurement (Preference to Make in India, Order 2017, Dtd 16/09/2020 or later, i.e., the Make in India Order), which is also be treated as a breach of code of integrity.)
    c) (any other actions or omissions[101] by the firm that, in the opinion of the Ministry/ Department, warrants debarment).
4. **Opportunity to Explain**:
    a) In light of the above misdemeanours, we hereby grant you a fair opportunity to explain in writing why you should not be debarred, as mentioned in para 2 above.

[101] (Supply of substandard material; non-supply of material; abandonment of works; substandard quality of works; failure to abide by "Bid Securing Declaration"; conviction under the Prevention of Corruption Act, 1988; conviction under any law for causing any loss of life or property or causing a threat to public health as part of executing a public procurement contract; employs a government servant who has been dismissed or removed on account of corruption; employs a non-official convicted for an offence involving corruption or abetment of such an offence in a position where he could corrupt government servants, or employs a government officer within one year of his retirement who has had business dealings with him in an official capacity before retirement.)

b) Your response should include Specific Reasons, Mitigating Factors, and Corrective Measures that you intend to take to rectify the situation and prevent recurrence.
c) Please also mention if you desire to avail of additional opportunities for an oral hearing in addition to the written submissions.
d) Please address your response to the undersigned using the contact details mentioned below.
e) **Response Deadline**: Please submit your response within 15 days of receiving this notice. Failure to do so will result in further action, including an order for debarment.

5. You are required to give details of all 'allied' firms that come within the sphere of effective influence based on the following criteria:
    a) You, being a proprietary firm, own it,
    b) You, being a partnership firm, have common (all or majority of) partners, or any one of partners having a profit share of 20% or more in it.
    c) You have common Management (say the majority of the directors) with it.
    d) Your partners or directors have a majority interest in its management;
    e) You have a controlling voice by owning substantial or majority (20% or more) shares in it.
    f) You directly or indirectly control it, are controlled by it, or are under common control through any agreement/ MoU or otherwise.
    g) You are a successor/ subsidiary to it or vice-a-versa;
    h) You have common offices/ manufacturing facilities with it.
6. Annexure-1 details the imputation based on which these misdemeanours have been determined.
7. Annexure 2 lists the documents relied upon for establishing such imputation.

Sincerely,

(Name)

(Designation)

(Contact Information)

Annexure 1: (Details of actions/ omissions committed by the firm)

Annexure-2: (List of relied upon documents)

DA: (Copies of documents attached)

Annexure 24: Format for Debarment Order

(Refer para 3.8.2-3-b)

(On Department Letterhead)

File No: (….)

Date: (….)

(DoE/ Ministry/ Department/ CPSE/ Organisation)

(Address)

To,

The (Company Name)

(Company Address)

Subject: Your company has been debarred from participating in Tenders of (Govt. of India/ Ministry/ Department/ CPSE/ Organisation).

References:

a) Relevant Tender/ Contract: (….)
b) This office Show-Cause notice No. (….), dated (….)
c) Your Written reply(ies) to the show-cause notice No (….), dated (….) and
d) (Oral Hearing grant to you on (….) with (….))

Dear Sir/Madam,

1. After thoroughly evaluating the evidence and your submission mentioned above, it has been established that your company committed the serious misdemeanour mentioned below. As a result, this (Govt. of India/ Ministry/ Department/ CPSE/ Organisation) has decided to debar your company from participating in any of our tenders of all entities covered under the jurisdiction mentioned below for a period mentioned below.
   a) The Debarment shall automatically extend to all your allied firms, listed in Annexure-2, attached herewith. In the case of a joint venture/ consortium, all partners shall also stand debarred.
   b) Debarment does not impact the procuring entities' other contractual or legal rights.
   c) Contracts concluded before the issue of the debarment order shall not be affected by the debarment Orders.
2. **Reasons for Debarment**:
   a) It is determined that you have committed the following serious misdemeanours relating to the tender/ contract referred to above. Details of these misdemeanours are given in Annexure-1, attached herewith:
   b) (Please see the format of show-cause notice for possible misdemeanours)
3. **Other Consequences of Debarment:**
   a) During the validity of the debarment order, no contract of any kind whatsoever shall be placed on your firm, including your allied firms, by any Ministries/ Departments/ Attached/Subordinate offices, including autonomous bodies and CPSEs, covered under the jurisdiction mentioned above.
   b) If your firm, including your allied firms, submitted the bid before this debarment, it shall be ignored.
   c) Your firm, including your allied firms, stands removed from the list of registered/ approved contractors maintained, if any, by all entities covered by the jurisdiction mentioned above.

d) Your firm's Bid Security/ Performance Security for the subject tender/ contract shall be forfeited.

4. Jurisdiction of Debarment:

(This debarment applies to this Ministry and all its departments, attached and subordinate offices, Public Sector Enterprises, and autonomous bodies.

OR

This debarment applies to this Ministry and all its departments, attached and subordinate offices, Public Sector Enterprises, and autonomous bodies as an interim measure. However, the Government of India reserves its right to extend this debarment to all its Ministries, Departments, and their attached and subordinate offices, Public Sector Enterprises, and autonomous bodies after following due process.)

OR

This debarment applies to the Government of India and all its Ministries and departments, their attached and subordinate offices, Public Sector Enterprises, and autonomous bodies.)

5. Debarment Duration:

Effective immediately, your company is debarred from participating in any procurement process of the entities covered by the jurisdiction mentioned above for a period of (six to two years).

6. Appeal Process:

If your company wishes to appeal against this decision, you may submit an appeal within 15 days of receiving this letter. The appeal, supported by relevant evidence and addressed to the appellate authority (….), should be sent to the undersigned using the contact details below.

7. Revocation of Debarment:

Upon completion of the debarment period, this debarment shall automatically stand revoked, and your company may apply for registration again as per procedure.

We trust that your company shall rectify its conduct after the debarment period.

Sincerely,

(Name)

(Designation)

(Contact Information)

Annexure 1: (Details of actions/ omissions committed by the firm)

Annexure-2: (List of Allied Firms that also stand debarred)

Copy To:

1. All Allied Firms as per Annexure-2 – Your firm also stands debarred as above.
2. Ministry/ Department (or GeM-CPPP in case of debarment by DoE) for publication on the Website
3. Circulation to Procuring Entities

Annexure 25: Format of Declaration by the Appointed Arbitrator

(Refer para 9.7.9-3-d,e))

(On letterhead of the Arbitrator)

1. Name

2. Contact Details:

3. I hereby certify that I have retired from (*Organisation/ Unit)* w.e.f. _____in_____grade.

Or

I hereby certify that I am serving Officer and am presently posted as_____ in grade.

Or

I hereby certify that I am currently empanelled as arbitrator by Indian Council for Arbitration (ICA) in the category of _____.

4. I have no past or present relationship in relation to the subject matter in dispute, whether financial, business, professional or other kind.

Or

I have past or present relationship in relation to the subject matter in dispute, whether financial, business, professional or other kind. The list of such interests is as under:

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5. I have no past or present relationship with or interest in any of the parties whether financial, business, professional or other kind, which is likely to give rise to justifiable doubts as to my independence or impartiality in terms of the Arbitration and Conciliation Act 1996.

Or

I have past or present relationship with or interest in any of the parties whether financial, business, professional or other kind, which is likely to give rise to justifiable doubts as to my independence or impartiality in terms of the Arbitration and Conciliation Act 1996. The details of such relationship or interest are as under:

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6. There are no concurrent circumstances which are likely to affect my ability to devote sufficient time to the arbitration and in particular to finish the entire arbitration within twelve months.

Or

There are circumstances which are likely to affect my ability to devote sufficient time to the arbitration and in particular to finish the entire arbitration within twelve months. The list of such circumstances is as under:

Signature

(Name_____)

Government of India
Ministry of Finance
Department of Expenditure