भारतीय अन्तर्देशीय जलमार्ग प्राधिकरण
(पत्तन, पोत परिवहन और जलमार्ग मंत्रालय, भारत सरकार)
मुख्यालय : जलमार्ग भवन, ए–13, सैक्टर–1, नौएडा–201 301, (उ० प्र०)
INLAND WATERWAYS AUTHORITY OF INDIA
(Ministry of Ports, Shipping and Waterways, Govt. of India)
Head Office : Jalmarg Bhawan, A-13, Sector-1, Noida-201 301 (U.P.)
Website : www.iwai.gov.in | www.iwai.nic.in
Tel. : +91-120-2544036, 2543972, 2527667, 2448101 Fax : +91-120-2544009, 2544041, 2543973, 2521764

No. IWAI-11039/13/2021-ADMIN RECTT-Part(1) Dated 18.02.2026

CIRCULAR

The undersigned is directed to enclose herewith a copy of the **Manual for Procurement of Works (Second Edition, 2025)** issued by the Department of Expenditure, Ministry of Finance.

All officials involved in the procurement and execution of public works are requested to ensure strict adherence to the provisions of this Manual with immediate effect. The Manual incorporates key updates aligned with GFR 2017 amendments, DFPR 2024, and other relevant guidelines up to December 2025.

This issues with the approval of the Competent Authority.

NEERAJ SINGH Digitally signed by NEERAJ SINGH
Date: 2026.02.18 11:06:18 +05'30'

Assistant Secretary (Admn. & Estt.)
Email Id: nsingh@iwai.gov.in
Phone: 0120-2474050

Encl: As above

Copy also to: (By e-mail)

i. CE (Tech)/CE (JMVP)/ CE (Tr. & Log. & NER) / Hydrographic Chief /CAO /Deputy Secretary (P&C) /Director (RE) /Director (OW) /Director (P&C) /Director (JMVP) /Director (Tech)/ Assistant Secretary (P&C)/ Assistant Secretary (L&H), IWAI, Noida.
ii. Director/Director (I/C), IWAI, Patna/Kolkata/Kochi/Bhubaneswar/Guwahati/ Varanasi/Mumbai
iii. Officer-In-Charge, Sub Offices, Prayagraj, Sahibganj, Farakka, Swaroopganj, Vijayawada/ Srinagar/ Haldia/ Bhagalpur/ Dibrugarh/ Dubri/ Badarpur/ Karimganj/Kollam
iv. PCSA (IT), IWAI, Noida- for uploading on IWAI website
v. Hindi Cell- for Hindi translation
vi. Section Officer (Estt-I)/II/III
vii. Office Copy/Master Copy
viii. Notice Board

Copy for kind information to: (By E.mail)

PPS/PS/PA to Chairman /Vice-Chairman/Member (Fin.)/ Member (Tech.)/ Member (Tr. & Log. - I/c)/Secretary, IWAI.

सत्यमेव जयते

MANUAL FOR PROCUREMENT OF WORKS

Second Edition, 2025

Government of India
Ministry of Finance
Department of Expenditure

Manual for Procurement of Works

(Second Edition, 2025)

Government of India

Ministry of Finance

Department of Expenditure

वी. वुअलनाम आई.ए.एस.
सचिव (व्यय)
V. Vualnam I.A.S.
Secretary (Expenditure)

सत्यमेव जयते

भारत सरकार
वित्त मंत्रालय
व्यय विभाग
Government of India
Ministry of Finance
Department of Expenditure

FOREWORD

(Second Edition, 2025)

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

2. This Works Manual, Second Edition (2025) incorporates significant policy changes since its first edition in 2019 (updated in 2022) – resulting from stakeholder discussions, FTA dialogues, Covid policy responses, various studies and reports, amendments to the General Financial Rules (GFR) 2017, Delegation of Financial Powers Rules (DFPR) 2024, and new legislative developments such as the Mediation Act — as well as evolving practices in the procurement ecosystem.

3. The Works Manual is intended primarily for Ministries and Departments with limited in-house engineering capacity, providing broad procedural guidance for small repair works up to ₹60 lakh, and for procurement of larger works through the agency of Public Works Organisations (PWO) or Public Works CPSEs. Major engineering organisations with established departmental procedures may continue to follow their approved frameworks.

4. I would like to acknowledge the dedicated efforts of the team led by Shri Chinmay Pundlikrao Gotmare (Joint Secretary), Shri Sanjay Aggarwal (ex-Advisor PPD) and comprising Shri Manish Bhatia (Director), Shri Anil Kumar (Deputy Secretary), Shri Praveen Kujur (Under Secretary), Shri Sudesh Kumar (Section Officer), Shri Girish Bhatnagar (Sr. Consultant) and Shri Vikram Rajvanshi (Procurement Specialist). I also extend my gratitude to Ministries, Department and other Organisations that reviewed drafts and provided valuable inputs.

5. It is hoped that this Manual will serve as a practical and dependable guide to all officers and organisations engaged in the procurement and execution of public works.

(V. Vualnam)

Date: 23.12.2025

कमरा सं. 16102, 6वां तल, कर्तव्य भवन-1, नई दिल्ली-110001
Room No. 16102, 6th Floor, Kartavya Bhavan-1, New Delhi-110001, Tel. : 24012000, 24012001, E-mail : secyexp@nic.in

Preface

1. **Compliance**: This Manual adheres to the relevant laws, General Financial Rules (GFR), and clarifications/ OMs issued by the Procurement Policy Division (PPD), Department of Expenditure (DoE), Ministry of Finance ('the Ministry') up to December 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 December 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 written 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 which 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, Second Edition, 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, Second Edition, 2024'.
4. **Annexures:** Voluminous details from various orders/ websites are relegated to annexures to maintain an uninterrupted flow of text on a topic. Since these orders/ websites undergo frequent revision, it would be easier to update the annexures than the body of the Manual.
5. An attempt has been made in this edition of Manuals to illustrate some topics with relevant examples.

Table of Contents

FOREWORD iii
Preface v
Acronyms xvii
Procurement Glossary xix
Chapter 1: Introduction to Procurement of Works 1
1.1 Procurement Rules and Regulations; and this Manual 1
1.2 Clarification, Amendments and Revision of this Manual 1
1.3 Applicability of this Manual 2
1.4 Categorisation of procurements 4
1.5 Authorities competent to Incur Expenditure on Procurements and Consultation with Financial Advisers 6
1.6 Basic Aims of Procurement – Five R's of Procurement 7
1.7 Refined Concepts of Cost and Value – Value for Money 7
1.8 Fundamental Principles of Public Procurement 8
1.9 Standards (Canons) of Financial Propriety 8
1.10 Public Procurement Infrastructure at the Centre 9
1.11 Preferential/ Restriction on Purchase from certain sources 9
1.11.1 Public Procurement Policy for Micro and Small Enterprises (MSEs) 9
1.11.2 Procurement Preference to Make in India 9
1.11.3 Restrictions/ Prior Registration on Entities from a Class of Countries (Rule 144 (xi)), GFR 2017) 18
1.11.4 Support to Start-up Enterprises: 26
1.11.5 Domestically Manufactured Iron & Steel Products (DMI&SP Policy) - Revised, 2025 – as applicable to EPC tenders 27
1.12 Legal Aspects Governing Public Procurement of Works 31
1.13 The Law of Agency – applicable to Procurement of Works 32
1.14 The Basic Principles of undertaking works: 32
1.15 Public Procurement Cycle in Procurement of Works 34
1.16 Administrative Control and Powers to Sanction 35
1.17 Nomenclature Conundrum 35
Chapter 2: Need Assessment and Procurement Planning 37
2.1 Perspective Planning for Works 37
2.2 Preparation of Preliminary Project Report (PPR) or Rough Cost Estimate 37
2.3 Acceptance of necessity and issue of in-Principle Approval 38
2.4 Preparation of Detailed Project Report (DPR) /Preliminary Estimates (PE) 38

2.5 Administrative Approval and Expenditure Sanction (A/A and E/S) 40
2.6 Detailed Designs, Detailed Estimates and Technical Sanction 41
2.7 Appropriation of funds 41
2.8 Reference Documents used in preparation of Estimates 42
2.9 Procurement Planning 42
Chapter 3: Bidding Design for Works 47
3.1 Agency for Procurement 47
3.1.1 Public Works Organisations 47
3.1.2 Public Works PSU/ Organisations 47
3.1.3 Procedure for Assigning Work to PWO or PSU/ Organisations 47
3.2 Types of Contracts 48
3.2.1 Lump sum (Fixed Price) Contract 49
3.2.2 Item rate (Unit Rate) Contract 49
3.2.3 Percentage Rate Contract 50
3.2.4 Piece Work Agreement 50
3.2.5 Engineering, Procurement and Construction (EPC) Contracts 51
3.2.6 Public Private Partnership (PPP) 55
3.2.7 Comparison of Types of Contracts 55
3.3 Systems of Selection of contractors 56
3.3.1 Price based System - Least Cost Selection (LCS) 56
3.3.2 Quality and Cost Based Selection (QCBS) 58
3.3.3 Direct Selection: Single Source Selection (SSS) 62
3.4 Tendering Systems 63
3.5 Channels of Procurement 64
3.5.1 Electronic Procurement (e-Procurement – Rule 160 of GFR 2017) 64
3.5.2 Dynamic Price Discovery - Electronic Reverse Auction (eRA) 65
3.6 Modes of Procurement 65
3.7 Open Tender Enquiry (OTE) 66
3.7.1 Terms and Conditions 67
3.7.2 OTE - Risks and Mitigations 67
3.8 Global Tender Enquiry (GTE) 68
3.8.1 Terms and Conditions 69
3.8.2 Restrictions on Global Tender up to Rs. 200 crores 70
3.8.3 GTE - Risks and Mitigations 71
3.9 Pre-qualification Modes of procurement 71
3.9.1 Pre-qualification Bidding (PQB) 71

3.9.2 Single Stage Pre-qualification 76
3.9.3 PQB Tendering –Risks and Mitigations 77
3.10 Limited Tender Enquiry (LTE) 78
3.10.1 Terms and Conditions 78
3.10.2 LTE - Risks and Mitigations 79
3.11 Special Limited Tender Enquiry (SLTE) for Procurements more than Rs. 10 (Rupees Ten) Lakh 80
3.11.1 Terms and Conditions 80
3.11.2 SLTE - Risks and Mitigations 80
3.12 Single Tender Enquiry (STE) or Selection by Nomination 81
3.12.1 Terms and Conditions 81
3.12.2 STE - Risks and Mitigations 82
3.13 Award of Work through Quotations 82
3.14 Award of works in stalled contracts 82
Chapter 4: Bid Invitation Process 83
4.1 Tender Documents 83
4.2 Preparation of Tender Documents 85
4.2.1 Notice Inviting Tender 85
4.2.2 Instructions to Bidders (ITB) and its Appendix (AITB) 86
4.2.3 General and Special Conditions of Contract 86
4.2.4 Schedule of Requirements 87
4.2.5 Drawing, Technical Specifications and Quality Assurance Plan 87
4.2.6 Qualification Criteria 87
4.2.7 Evaluation Criteria 88
4.2.8 Submission Forms and Formats 89
4.2.9 Financial Bid (BOQ Excel Sheet): 89
4.3 Uploading of Tender Documents: Mandatory e-Publishing 89
4.4 Amendment of Tender Documents 90
4.5 Extension of Deadline of Bid Submission 91
4.6 Obtaining Tender Documents and Submitting Bids 92
4.6.1 Availability and Cost of Tender Documents 92
4.6.2 Participation of Bidders – Eligibility Criteria 92
4.7 Pre-NIT and Pre-bid Conference 93
4.8 Clarification of Tender Documents 94
4.9 Withdraw/ Amendments / Modifications to Bids by Bidders 95
4.10 Sealing/ Marking of Bids in off-line Tenders 95

4.11 Uploading/ Submission of Bids by Bidders 95
4.12 Bid Validity 97
4.13 Opening of Bids 97
4.14 Transparency and Protecting Third-Party Rights of Bidders 99
4.15 Bidding Invitation Process- Risks and Mitigations 99
Chapter 5: Forms of Securities, Prices, Payment Terms and Price Variations 101
5.1 Forms of Security 101
5.1.1 Bid Security/ Earnest Money Deposit (EMD) 101
5.1.2 Performance Guarantee 102
5.1.3 Security Deposit/ Retention Money 103
5.1.4 Verification of Bank Guarantees 103
5.1.5 Safe Custody and Monitoring of EMDs, Performance Securities and Other Instruments 104
5.1.6 Insurances and Indemnities 105
5.2 Payment Terms 105
5.3 Advance Payments 107
5.3.1 Mobilisation Advance 107
5.3.2 Plant, Machinery and shuttering Material Advance 108
5.3.3 Secured Advance against Material brought to Site 108
5.4 Price Variation 109
5.5 Statutory Taxes/ Duties/ Levies 111
5.5.1 Goods and Services Tax (GST) 111
5.5.2 Deduction of Income Tax, etc., from Payments 113
5.5.3 Statutory Variation: 113
5.6 Recovery of Public Money from Contractor's Bill 113
5.7 Payment against Time Barred Claims 113
Chapter 6: Evaluation of Bids and Award of Work 115
6.1 Bid Evaluation Process 115
6.1.1 Evaluation of Bids 115
6.1.2 Evaluation of Different Tendering Systems 115
6.1.3 Preparation and Vetting of Comparative Statement 115
6.1.4 The Stages of Evaluation 116
6.1.5 Contacting Procuring Entity during the evaluation 116
6.2 Composition and Role of Tender Committee (TC) 116
6.2.1 Composition of Tender Committee 116
6.2.2 Role of Tender Committee 117

6.2.3 Handling Dissent among Tender Committee 118
6.2.4 Independence, Impartiality, Confidentiality and 'No Conflict of Interest' at all Stages of Evaluation of Bids 118
6.2.5 Timely Processing of Tenders 119
6.2.6 Extension of Tender Validity Period 119
6.2.7 Consideration of Lack of Competition in OTE/ GTE and LTE [Rule 173 (xx), and (xxi) of GFR 2017] 120
6.2.8 Tender Committee Recommendations/ Report 121
6.3 Preliminary Examination 122
6.3.1 Unresponsive Tenders 122
6.3.2 Non-conformities between Figures and Words 122
6.3.3 Discrepancies between Original and Additional/ Scanned Copies of a Tender 123
6.3.4 Deviations/ Reservations/ Omissions-Substantive or Minor 123
6.3.5 Clarification of Bids/ Shortfall Documents 124
6.3.6 Evaluation of Eligibility: 125
6.4 Evaluation of Responsive Bids 125
6.4.1 Evaluation of Eligible Techno-commercial Bids 125
6.4.2 Evaluation of Financial Bids and Ranking of Tenders in General 127
6.4.3 Least Cost Selection (LCS) 128
6.4.4 Single Source Selection (SSS) 128
6.4.5 Evaluation using Quality-cum-cost based Selection (QCBS) in Works Procurement 128
6.4.6 Global Tender Enquiry (GTE, International Competitive Bidding) 131
6.4.7 Reasonableness of Prices 131
6.4.8 Consideration of Abnormally Low Bids 132
6.4.9 Cartel Formation/ Pool Rates 132
6.4.10 Negotiations for Reduction of Prices 134
6.4.11 Cancellation of Procurement Process/ Rejection of All Bids/ Re-tender 135
6.5 Award of Work 136
6.5.1 LoA to Successful Bidder 136
6.5.2 Publication of Award of Contract and Return of EMD of Unsuccessful Bidders [Rule 173 (xviii) of GFR 2017] 137
6.5.3 Performance Security 137
6.5.4 Acknowledgement of Contract by Successful Bidder and Execution 138
6.5.5 Framing of Contract 138
6.5.6 Audit Trails –Procurement Records 139

6.6 Evaluation of Bids and Award of Contract – Risks and Mitigation 140
Chapter 7: Execution and Monitoring of Works and Quality Assurance 143
7.1 Contract Management 143
7.2 Contract Administration 143
7.2.1 Aligning the interest of the stakeholders 143
7.2.2 Monitoring Team and System: 144
7.2.3 Ensuring Prerequisites to Commencement of Work 147
7.2.4 Commencement of Work 148
7.2.5 Mobilisation 149
7.2.6 Monitoring Resources Deployed by Contractor 149
7.2.7 Enforcing Contractor's Obligations: 150
7.2.8 Issuing Contract Amendments 153
7.2.9 Safeguarding Assets Handed Over to Contractors 154
7.2.10 Environmental, Social, Health, and Safety (ESHS) Concerns 154
7.3 Monitoring Scope of Work and Quality Assurance 155
7.3.1 Monitoring Scope of Work 155
7.3.2 Monitoring Variations/ Extra/ Substituted Items 156
7.3.3 Preparation of Revised DPR/ Estimates 157
7.3.4 Quality Assurance (QA) 158
7.4 Time Monitoring 160
7.4.1 Contract Effective Date 160
7.4.2 Work Program 160
7.4.3 Site Management: 160
7.4.4 Force Majeure (FM) Clause 161
7.4.5 Delays in Execution 161
7.4.6 Extension of Time (EOT) 162
7.4.7 Liquidated Damages (LD) and Incentives/ Bonus 164
7.4.8 Denial Clause 164
7.4.9 Performance Notice 165
7.4.10 Compensation Events 165
7.4.11 Time At Large 165
7.5 Financial Monitoring 166
7.5.1 Financial Monitoring 166
7.5.2 Payments to Contractors 166
7.5.3 Price Variations 168
7.5.4 Payment of Taxes and Duties 169

7.5.5 Statutory Variation Clause: 170
7.5.6 Claims by Contractor - Compensation Events 170
7.5.7 Handling Securities 171
7.5.8 Electronic Bill (e-Bill) Processing System 171
7.6 Closure of Contract 172
7.6.1 Completion of Construction 172
7.6.2 Completion of Contract 172
7.6.3 Material and Works Reconciliation 173
7.6.4 Reconciliation with the User Department 173
7.6.5 Payment Reconciliation 173
7.7 Resolving Disputes and Conflicts 173
7.7.1 Disputes 173
7.7.2 Excepted Matters 175
7.7.3 Adjudication 175
7.7.4 Mediation 176
7.7.5 Arbitration 179
7.7.6 Foreign Arbitration 180
7.7.7 Notice for Arbitration 180
7.7.8 Reference to Arbitration 180
7.7.9 Appointment of Arbitrator 180
7.7.10 The Arbitral Procedure 184
7.7.11 Challenging Arbitration/ Judicial Awards 186
7.7.12 Mechanism for Resolution of Commercial Disputes between CPSEs and Government Agencies 187
7.8 Breach and Termination of Contract 188
7.8.1 Breach of Contract 188
7.8.2 Termination of Contract for Default 189
7.8.3 Termination of Contract for Insolvency 190
7.8.4 Determination of Contract for Default/ Convenience of Procuring Entity or for Frustration of Contract 190
7.8.5 Frustration of Contract 191
7.8.6 Limitation of Liabilities 191
7.9 Execution and Monitoring of Works and Quality Assurance – Risks and Mitigation 191
Chapter 8: Registration/ Enlistment of Contractors and Governance Issues 195
8.1 Contractor Relationship Management 195

8.2 Code of Integrity for Public Procurement (CIPP) 195
8.2.1 Introduction 195
8.2.2 Code of Integrity for Public Procurement 195
8.2.3 Obligations for Proactive Disclosures 196
8.2.4 Punitive Provisions 196
8.3 Integrity Pact (IP) 197
8.4 Grievances and its Redressal 198
8.5 Conduct of Public Servants in Public Procurement - Risks and Mitigations 199
8.6 Development of New Sources and Registration/ Enlistment of Contractors 202
8.7 Debarment of Contractors 206
8.7.1 GFR's Provisions 206
8.7.2 Guidelines on Debarment of firms from Bidding 206
8.8 Enlistment of Indian Agents 211
ANNEXURES 213
Annexure 1: Financial Powers to Sanction Expenditure for Purchases and Execution of Contracts 215
Annexure 2: Suggested Structure of Schedule of Procurement Powers (SoPP) 217
Annexure 3: Bid Opening Attendance Sheet cum Report 219
Annexure 4: Tender Committee Minutes Format 220
Annexure 5: Example of Formula for Price Variation Clause 222
Annexure 6: Invitation and Declaration for Negotiations 224
Annexure 7: Format of Revised Offer in Negotiations 225
Annexure 8: Letter (Notification) of Award (LoA) of Contract 226
Annexure 9: No Claim Certificate 227
Annexure 10: A Sample MoU 228
Annexure 11: Flowchart of Process of Procurement of Works 235
Annexure 12: Additional Resources Relating to Procurement of Works 237
Annexure 13: Template for Qualification Criteria for Joint Ventures 239
Annexure 14: Integrity Pact Format 244
Annex-1 to Integrity Pact - Guidelines for Indian Agents of Foreign Suppliers 248
Annex-2 to Integrity Pact – Appointment and Role of IEMs 250
Annexure 15: Format for Show-cause Notice for Debarment 253
Annexure 16: Format for Debarment Order 255
Annexure 17: Format of Declaration by the Appointed Arbitrator 257
Annexure 18: FAQs About PPP-MII Order, 2017 258

Annexure 19: Model Clause/ Certificate to be inserted in tenders etc. w.r.t Order (Public Procurement No.4)..... 261

Annexure 20: Appendix-A, B & C of DMI&SP Policy 264

Annexure 21: Form-1 of DMI&SP Policy 272

Acronyms

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

AITB	Appendix to Instructions to Bidders (ITB, also named as BDS, sometimes, see below)
AMC	Annual Maintenance Contract
BDS	Bid Data Sheet
BG	Bank Guarantee
BIS	Bureau of Indian Standards
BOC	Bid Opening Committee
BOQ	Bill of Quantities
BRO	Border Roads Organisation
BSD	Bid Securing Declaration
C&AG	Comptroller and Auditor General (of India)
CA	Competent Authority
CBI	Central Bureau of Investigation
CCI	Competition Commission of India
CEO	Chief Executive Officer
CIPP	Code of Integrity for Public Procurement
CMC	Comprehensive Maintenance Contract/ Contract Management Committee
CMD	Chairman and Managing Director
CPCB	Central Pollution Control Board
CPO	Central Purchasing Organizations
CPPP	Central Public Procurement Portal
CPSE	Central Public Sector Enterprise, see PSU also
CPWD	Central Public Works Department
CV	Curriculum Vitae
GST	Goods and Services Tax
CGST	Central Goods and Services Tax
IGST	Integrated Goods and Services Tax
SGST	State Goods and Services Tax
CVC	Central Vigilance Commission
CVO	Chief Vigilance Officer
DFPR	Delegation of Financial Power Rules
DG	Director General
DLC	Defect Liability Certificate
DLP	Defect Liability Period
DoE	Department of Expenditure
DPIIT	Department for Promotion of Industry & Internal Trade
DPR	Detailed Project Report
DSC	Digital Signature Certificate
DSPE	Delhi Special Police Establishment Act, 1946
ECS	Electronic Clearing System
EIA	Environmental impact assessment
EMD	Earnest Money Deposit
EOI	Expression of Interest (Tender)
EPC	Engineering, Procurement and Construction
EPF	Employee Provident Fund
ESI	Employee State Insurance
FA	Financial Advisor
FBS	Fixed Budget System
FEMA	Foreign Exchange Management Act
FM	Force Majeure
GCC	General Conditions of Contract
GeM	Government e-Marketplace
GePNIC	Government e-Procurement (System) of National Informatics Centre
GFR	General Financial Rules, 2017
NIC	National Informatics Centre
NIT	Notice Inviting Tender
OTE	Open Tender Enquiry
PAN	Personal Account Number
PBG	Performance Bank Guarantee

[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.

GOI	Government of India
GTE	Global Tender Enquiry
H1	Highest Scoring Bidder
HOD	Head of the Department
HUF	Hindu Undivided Family
ICT	Information & Communications Technology
IEM	Independent External Monitor
IP	Integrity Pact
ISO	International Organization for Standardization
IT	Information Technology
ITB	Instructions to Bidders (may in some instance be called Instructions to Tenderers - ITT)
JV	Joint Venture (Consortium)
L1	Lowest Bidder
LCC	Life Cycle Cost
LCS	Least Cost System
LD	Liquidated Damages
LoA	Letter of Acceptance
LOI	Letter of Invitation
LTE	Limited Tender Enquiry
MB	Measurement Book
MES	Military Engineering Services
MoF	Ministry of Finance
MoU	Memorandum of Understanding (of JV)
MoHUA	Ministry of Housing and Urban Affairs
MSA	Mediated Settlement Agreement
MSTC	Metal Scrap Trading Corporation
TOC	Taking Over Certificate
TOR	Terms of Reference
URDG	Uniform Rules for Demand Guarantees
PE	Preliminary Estimate
POL	Petroleum Oils and Lubricants
PPD	Procurement Policy Division
PPP	Public Private Partnership
PPP-MII	Public Procurement (Preference to Make in India), Order
PPR	Preliminary Project Report
PQB	Prequalification Bidding
PQC	Pre-qualification Criteria
(C)PSU/ PSE	(Central) Public Sector Undertaking/ Enterprise
PWO	Public Works Organisations
QA	Quality Assurance
QCBS	Quality and Cost Based Selection
(S)RFP	(Standard) Request for Proposals (Document)
RFQ	Request for Qualification
RTI	Right to Information (Act)
SBD	Standard Bidding Document
SCC	Special Conditions of Contract
SD	Security Deposit
SLA	Service Level Agreement
SoPP	Schedule of Procurement Powers
SOR	Schedule of Rates
SSS/ STE	Single Source Selection/ Single Tender Enquiry
STP	Simplified Technical proposal
TC	Tender Committee also called Tender Purchase or Evaluation Committee (TPC/ TEC) or Tender Scrutiny Committee
TCO	Total Cost of Ownership
VAT	Value Added Tax
VfM	(Best) Value for Money
WOL	Whole of Life (Cost) or Total Cost of Ownership above

Procurement Glossary

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

1. "Agent" is a person employed to do any act for another or represent another in dealings with a third person. In the context of public procurement, an Agent is a representative participating in the Tender Process or Execution of a Contract for and on behalf of its principals;
2. "Allied firm" ('affiliates'/ 'affiliated firm', 'sister concern', 'associated firm', or 'related party') 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 –
   a) being a proprietary firm, owns the Allied Firm,
   b) 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
   c) has common Management (say majority of director) with the Allied firm;
   d) its partners or directors have a majority interest in the management of the Allied Firm;
   e) has a controlling voice by owning substantial (20% or more) shares in the Allied Firm;
   f) 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,
   g) has the Allied Firm as its successor/ subsidiary or vice-a-versa;
   h) has common offices/ manufacturing facilities with the Allied Firm;
3. "Bid" ('tender', 'offer', 'quotation' or 'proposal') 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" ('tenderer', 'consultant', 'contractor' or 'service provider') 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 enlistment document" means a document issued by a procuring entity, including any amendment thereto, that sets out the terms and conditions of enlistment proceedings and includes the invitation to enlist;
6. "Bid security" ('Earnest Money Deposit'(EMD), or 'Bid Security Declaration') means a 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 the term Price Schedule or BOQ) means the priced and completed Bill of Quantities forming part of the bid;
8. "Central Public Sector Enterprise/ Undertaking" (CPSE or CPSU) means a body incorporated under the Companies Act or established under any other act in which the Central Government directly or indirectly owns more than 50 (fifty) per cent of the issued share capital;

9. “Class-I local supplier” means a supplier or service provider, whose goods, services or works offered for procurement, meet the minimum local content as prescribed for ‘Class-I local supplier’ under the Public Procurement (Preference to Make in India), Order 2017[2];
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[3];
11. “Competent authority” (Competent Financial Authority) in respect of the powers of approval in a procurement process or execution of a resultant contract means an authority to which such power is delegated by or under General Financial Rules (GFR) 2017, Delegation of Financial Power Rules 2024 (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 that are consequential to such services; (Rule 177 of GFR 2017)
13. “Contract” (Procurement Contract', ‘Purchase Order’, ‘Supply Order’, ‘Withdrawal Order’, ‘Work Order’, ‘Consultancy Contract’, ‘Contract for Services’, ‘Rate Contract’, ‘Framework Agreement’, ‘Letter of Award – LoA’ (letter or memorandum communicating to the contractor the acceptance of his bid), ‘Agreement’, ‘Repeat Order’, or a ‘formal agreement’), 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” (‘Supplier’ or ‘Service Provider’ or ‘Consultant’ or ‘Firm’ or ‘Vendor’ or ‘Manufacturer’ or ‘Successful Bidder’) 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.), custom duties, freight, transportation, installation, commissioning, warranties, maintenance, and any other incidental charges;
16. “e-Procurement” means the use of information and communication technology (specially the internet) by the procuring entity in conducting its procurement processes with bidders

[2]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
[3]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

for the acquisition of goods (supplies), works and services with the aim of open, non-discriminatory and efficient Procurement through transparent procedures;

17. "Enlisted Contractor" means any contractor who is on a list of enlisted contractors of the procuring entity or a Central Purchase Organisation (Please refer to “Registration” to appreciate the differentiation);
18. “Enlisting authority” means an authority which enlists bidders for different categories of procurement (Please refer to “Registration” to appreciate the differentiation);
19. “Enlistment” means including the name of the contractor in the list of enlisted bidders after verification of credentials. (Please refer to “Registration” to appreciate the differentiation);
20. "Goods" (‘Stores’, Item(s) or ‘Material(s)’) 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)
21. “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;
22. “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;
23. “Inspecting Officer” means the person or organisation stipulated in the contract for inspection under the contract and includes his/ their authorised representative;
24. “Intellectual Property Rights” (IPR) means the rights of the intellectual property owner concerning a tangible or intangible possession/ exploitation of such property by others. It includes rights to Patents, Copyrights, Trademarks, Industrial Designs, Geographical indications (GI);
25. “Inventory” means any material, component or product that is held for use later;
26. "Invitation to (pre-)qualify" means a document including any amendment thereto published by the Procuring Entity inviting offers for pre-qualification from prospective bidders;
27. "Invitation to Enlist" means a document including any amendment thereto published by the procuring entity inviting offers for bidder enlistment from prospective bidders;
28. “Letter of Award” (‘Letter of Intent’ or ‘Notification of Award’) means the letter or memorandum communicating to the contractor the acceptance of his bid for award of the contract;
29. “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[4];

[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

30. "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 Tender Document after making suitable changes for specific procurement;
31. “Non-Consultancy Services” (‘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)
32. “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[5];
33. "Notice inviting tenders" (including ‘Invitation for Bids (IFB)’ or ‘Letter of Invitation in Request for Proposals’) 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;
34. “Parties”: The parties to the contract are the "Contractor" and the Procuring Entity, as defined therein;
35. “Performance Security” (includes the terms ‘Security Deposit’ or ‘Performance Bond’ or ‘Performance Bank Guarantee’ or other specified financial instruments in specific 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;
36. “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;
37. "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;
38. "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;
39. "Procurement" (or "Public Procurement" or ‘Government Procurement/ Purchase’ including an award of Public-Private Partnership projects) means acquisition by way of purchase, lease, license or otherwise, either using public funds or any other source of funds (e.g. grant, loans, gifts, private investment etc.) of goods, works or services or any combination thereof, 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;

[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

40. “(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 Manual for Procurement of Goods, Second Edition, 2024;
41. “Procurement Officer” means the officer signing the Letter of Award (LoA) and/or the contract on behalf of the Procuring Entity;
42. "Procurement process" means the process of procurement extending from the assessment of need; issue of invitation to pre-qualify or to enlist or to bid, as the case may be; bid evaluation, award of contract, execution of contract till closure of the contract;
43. "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’;
44. “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;
45. “Project” means one-time, short-term expenditure resulting in creation of capital assets, which could yield financial or economic returns or both. A project may comprise one or more related but independent task-oriented ‘Works’. Projects may either be approved as individual projects within an approved scheme envelope or on a stand-alone basis. They may be executed through budgetary, extra-budgetary resources, or a combination of both;
46. "Prospective bidder" means anyone likely or desirous to be a bidder;
47. "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;
48. "Rate contract" (‘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;
49. “Registration” means simply registering the bidder/ supplier/ service provider/ contractor, say on a website etc. (Please refer to “Enlistment” to appreciate the differentiation);
50. “Registering authority” is an authority that registers bidders for various procurement categories;
51. "Registered Contractor" means any contractor who is on a list of registered contractors of the procuring entity or a Central Purchase Organisation;
52. "Scheduled Bank" means a bank listed in the Second Schedule of the Reserve Bank of India Act, 1934;

53. "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';
54. "Special Conditions of Contract" (SCC) means Special Conditions that override the General Conditions of Contract (GCC) if and to the extent of the conflict between the two;
55. "Subject Matter of Procurement" means any object of Procurement, whether in the form of goods, services or works or a combination thereof;
56. "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;
57. "Tender Process" is the entire process from the publishing of the Tender Document to the resultant award of the contract;
58. 'Total Cost of Ownership' - 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;
59. "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:
    a) civil works for roads, railways, airports, shipping ports, bridges, buildings, irrigation systems, water supply, sewerage facilities, dams, tunnels, and earthworks; and so on, and
    b) mechanical and electrical works involving fabrication, installation, erection, repair, and maintenance of a mechanical or electrical nature relating to machinery and plants.

Chapter 1: Introduction to Procurement of Works

1.1 Procurement Rules and Regulations; and this Manual

1. Various Ministries, Departments, attached and subordinate offices, local urban bodies, public sector enterprises and other Government (including autonomous) bodies (hereinafter referred as 'Procuring Entities') spend a sizeable amount of their budget on 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 powers to make their own arrangements for procurement of works under the Delegation of Financial Power Rules, which have to be exercised in conformity with the 'Procurement Guidelines' described below.
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 bidders/ contractors, 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, Second Edition ,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 authorized to do so. The Constitution also enshrines Fundamental Rights (In particular Article 14 – 'Right to Equality before law' and Article 19 (1) (g) – 'Right to 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, is a significant legislation governing contracts 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 5 to 9); Delegation of Financial Powers Rules, 2024 (DFPR); Government order regarding purchase preference/ restrictions like Public Procurement (Preference to Make in India) Order 2017, Restrictions on Entities from a Class of Countries (Rule 144 (xi), GFR 2017) and relaxation of the conditions of prior turnover and prior experience for start-up enterprises etc. (*Also refer to para 1.12 for applicable laws)*
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. **Category of Procurements:** This manual is applicable to procurement of all "Works" as defined in the 'Procurement Glossary' section. The Manual for Procurement of Works (and other Manuals on Procurement of Consultancy Services/ Non-consultancy Services) are generically based on the Manual for Procurement of Goods, Second Edition, 2024 (Goods Manual). Hence, for any topic for which guidance cannot be found in this Manual, the Goods Manual shall apply mutatis mutandis. For the sake of brevity, this Manual refer to some of the section of the Goods Manual without reproducing them.
2. **Classification of Works:** The civil works are classified in GFR 2017 (Rule 130) into three categories: (a) Original Works (b) Minor Works and (c) Repairs Works. "Original works" means all new constructions, site preparation, additions and alterations to existing works. It also includes special repairs to newly purchased or previously abandoned buildings or structures, including remodelling or replacement. "Minor works" mean works which add capital value to existing assets but do not create new assets. "Repair works" means works undertaken to maintain building and fixtures. Expenditure on Repair Work does not add to the value of the asset and only restores the functionality of the asset. Repair Work can be further categorized as (1) Annual repairs covering routine and yearly operation and maintenance work on buildings and fixtures (2) Special repairs, which are undertaken as and when required, covering major repairs to existing buildings or structures. Some types of the Special repairs may qualify to be categorised as 'Original Work' as mentioned earlier.
3. **Procuring Entities:**
   a) This manual inter-alia covers fundamental provisions relating to the Constitution; Government instructions relating to Preferential Procurement Policies; GTE; Land Border restriction; and General Instructions on Procurement and Project Management (NO.F.1/1/2021-PPD dated 20.10.2021), which are mandatory for all entities of Central Government.
   b) This manual is addressed to Ministries/ Departments, their attached and subordinate offices, and autonomous bodies whose in-house capabilities are limited to repair works of up to Rs 60 lakhs and who assign larger repair works (and original works) to third parties[6] (Public Works Organisations or CPSEs). Refer para 3.1 for further details.
   c) This Manual may also be useful for Ministries/ Departments, their attached and subordinate offices, and autonomous bodies who have in-house capabilities for direct execution of larger works but may not have their own detailed procurement guidelines.
   d) The manual does not purport to address procurement of larger works for which major works procuring Ministries/ Departments (like the Central Public Works Department (CPWD); Military Engineering Service (MES); Border Roads Organisation (BRO); Ministries of Railways; Information & Broadcasting and Departments of Posts, and Space etc.) that already have their own detailed guidelines tailored to unique individual requirements. They may however ensure that their procurement guidelines comply with mandatory provisions mentioned in sub-para a) above, which are detailed in this manual.
4. **Statutory Bodies and CPSEs:** These guidelines shall also be applicable to bodies substantially owned or controlled by or receiving substantial financing assistance from the

[6] Rule 133 of GFR, 2017 (as amended)

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 in CPSEs).

5. **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 3) and 4) 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.

      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-h), 1.11.4-3-f-ii), and 4.17.1-5, respectively, in the 'Manual for Procurement of Goods, 2024'.
6. **Portals:** Central Public Procurement Portal (CPPP of NIC, eproc.gov.in), and various such platforms of different Organisations carry out a substantial proportion of Public Procurement. Hence the procedures of such platforms should conform to these 'Procurement Guidelines'.
7. **Procurements financed by Loans/ Grants extended by International Agencies:**
   a) For projects funded by the World Bank, Asian Development Bank, and other International Funding Agencies (IFA), the Article of Agreement, with the approval of the Ministry of Finance, stipulate the Indian (or State) Government's own

[7] They may however ensure that their procurement guidelines comply with mandatory provisions mentioned in para 1.3-3 a) above, which are detailed in this manual.

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

b) These guidelines would not be applicable 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 allowed.

8. **Outsourced Procurement:** These procurement guidelines shall continue to apply if entities to whom these are applicable (as brought out above) outsource the procurement process or bundle the procurement process with other contractual arrangements or utilise the services of procurement support agency or procurement agents to carry out the procurement on their behalf.
9. **Customisation:** This Manual is to be taken as generic guidelines, which are necessarily broad in nature. 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 order applicable to them.
10. **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 sub-para 3) and 4) 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.'

1.4 Categorisation of procurements

1. 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 their definition in the 'Procurement Glossary' section):
   a) Goods.
   b) Services
      i) Consultancy Services and
      ii) Non-consultancy 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) **Composite Contracts**[8]: 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

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

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.

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 Procurements and Consultation with Financial Advisers

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, 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, 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 need for an item, facility or services is identified till the need is satisfied) is designed to achieve following basic aims. Although couched in jargon of procurement of Goods, it's equally applicable to procurement of Works. The term 'Right' is used here in the sense of being optimal:

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

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

1. Transparency principle;
2. Professionalism principle;
3. Broader obligations principle;
4. Extended legal principle; and
5. Public accountability principle.

(For more details on fundamental principles of public procurement, please refer Para 1.8 of Chapter 1 of the Manual for Procurement of Goods, 2024).

1.9 Standards (Canons) of Financial Propriety

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

> ***Rule 21. Standards of financial propriety****: Every officer incurring or authorizing expenditure from public moneys should be guided by high standards of financial propriety. Every officer should also enforce financial order and strict economy and see that all relevant financial rules and regulations are observed, by his own office and by subordinate disbursing officers. Among the principles on which emphasis is generally laid are the following: -*
>
> i) *Every officer is expected to exercise the same vigilance in respect of expenditure incurred from public moneys as a person of ordinary prudence would exercise in respect of expenditure of his own money.*
>
> ii) *The expenditure should not be prima facie more than the occasion demands.*
>
> iii) *No authority should exercise its powers of sanctioning expenditure to pass an order which will be directly or indirectly to its own advantage.*
>
> iv) *Expenditure from public moneys should not be incurred for the benefit of a particular person or a section of the people, unless -*
>
> a) *a claim for the amount could be enforced in a Court of Law, or*
>
> b) *The expenditure is in pursuance of a recognized policy or custom.*

v) *The amount of allowances granted to meet expenditure of a particular type should be so regulated that the allowances are not on the whole a source of profit to the recipients."*

1.10 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).

1.11 Preferential/ Restriction on 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 (ii)). Presently following policies are in vogue:

1.11.1 Public Procurement Policy for Micro and Small Enterprises (MSEs)

(Rule 153 (ii) of GFR 2017): From time to time, the Government of India lays down procurement policies to help inclusive national economic growth by providing long-term support to micro, small and medium enterprises, and disadvantaged sections of society. The Procurement Policy for Micro and Small Enterprises, 2012 [amended 2018 and 2021] has been notified by the Government. 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.

1.11.2 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 of Promotion of Industry and Internal Trade (DPIIT), Ministry of Commerce and Industry, Government of India, issued Public Procurement (Preference to Make in India) Order 2017[9]. 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: -

[9]Latest revision to the Order notified vide OM No. P-45021/2/2017-PP (BE-II)-Part(4)Vol.II issued by DPIIT, dated 19.07.2024.

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.

3A. **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 go spares and consumables of closed system:** 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 8.7 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.

13A. 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 18.

1.11.3 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 Affairs10.
      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 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.)

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

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)
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 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-19. 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:

    1. 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.

    2. 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)	The bidder has procured certain goods to offer the requisite services to a procuring entity. In such case, the bidder does not

S. No	Scenario	Applicability of Rule 144 (xi)
	from a country which shares a land border with India.	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.

1.11.4 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 submission of Earnest Money Deposit/ Bid Security.
   b) [11]**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[12]. 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 3.9.1-6 and 4.2.6-4 (Rule 173 (i) of GFR 2017).

1.11.5 Domestically Manufactured Iron & Steel Products (DMI&SP Policy) - Revised, 2025 – as applicable to EPC tenders.

1. **Background**
   a) This policy issued by Ministry of Steel vide notification no: G.S.R. 341(E) dated 26th May 2025 provides preference for Domestically Manufactured Iron and Steel Products (DMI&SP) in Government procurement.
   b) The policy applies to procurement of iron & steel products notified in Appendix A. In Appendix B, the minimum domestic content and an exempted list of capital goods for manufacturing iron & steel products which can be imported have been listed. Appendix C contains the policy for promoting the procurement of technology from the indigenous technology suppliers.
2. **Definitions**
   a) Bidder may be a domestic/ foreign manufacturer of iron & steel or their selling agents/ authorized distributors/authorized dealers/ authorized supply houses, or any other company engaged in the bidding of projects funded by Government agencies.
   b) Domestically Manufactured Iron & Steel Products are those iron and steel products that are manufactured by entities that are registered and established in India, including in Special Economic Zones (SEZs).
   c) Domestic Manufacturer is a manufacturer of iron & steel products conforming to guidelines in section 7 and the definition of 'manufacturer' as per the Central Excise Act.

[11] Such relaxation can be partial – e.g., 25% relaxation over specified turn-over and experience.
[12] Notified vide OM No.F.20/2/2014-PPD(Pt.) issued by Department of Expenditure dated 29.09.2016.

d) Domestic value addition means the amount of value added in India which shall be the total value of the item to be procured (excluding net domestic indirect taxes) minus the value of imported content in the item (including all custom duties) as a proportion of the total value of the item to be procured, in percent. The 'domestic value addition' definition shall be in line with the DPIIT guidelines and shall be suitably amended in case of any changes by DPIIT in the future. For the purpose of this policy document, domestic value addition and local content have been used interchangeably.

% Domestic value addition = {Total value of the item to be procured (excluding net domestic indirect taxes) – The value of imported content in the item (including all customs duties)} X 100/ {Total value of the item to be procured}

e) Finished Steel shall mean flat and long products, which can be subsequently processed into manufactured items.
f) Government for the purpose of the Policy means Government of India.
g) Government agencies include Government PSUs, Societies, Trusts, and Statutory bodies set up by the Government of India.
h) Indigenous Technology: A technology shall be deemed to be Indigenous technology if, at least 51 % of the entity's equity is held by Indian residents and the IPR is owned or co-owned by an Indian entity or licensed exclusively to them and the core engineering R&D, and project execution capabilities reside in India.
i) L1 means the lowest tender or the 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.
j) MoS shall mean Ministry of Steel, Government of India.
k) Margin of purchase preference means the maximum extent to which the price quoted by a domestic supplier may be above L1 for the purpose of purchase preference. In the case of DMI&SP policy, the margin of purchase preference shall be 20% for items in Appendix B.
l) Melt & Pour is defined as the steel that has been produced in a steel-making furnace and poured into its first solid shape. The location where this process takes place is called the country of melt and pour (COM). The COM is the original location where crude steel is first produced in a liquid state and poured into its first solid shape. The first solid shape can be a semi-finished product, like a slab, billet, ingot, or a finished steel mill product.
m) Net Selling Price shall be the invoiced price excluding net domestic taxes and duties. 2.14. Semi-Finished Steel shall mean Ingots, billets, blooms, and slabs, which can be subsequently processed into finished steel.

3. **Exclusions**
   a) Waivers may be granted by the Ministry of Steel to all such Government procurements subject to the below conditions:
   b) Where specific grades of steel are not manufactured in the country, or
   c) Where the quantities as per the demand of the project cannot be met through domestic sources.
   d) Exemption requests shall be submitted to the Standing Committee along with sufficient proof of unavailability of iron & steel products domestically.
4. **Standing Committee**
   a) A Standing Committee chaired by the Secretary (Steel), shall oversee the implementation of the policy.

b) The Committee shall comprise of experts drawn from Industry/ Industry Association/ Government Institution or Body/ Ministry of Steel. The said Committee in MoS shall have the mandate for the following:
   i) Monitor the implementation of the policy.
   ii) Review and notify the list of Iron & Steel products, the domestic content requirement criteria and policy directives as mentioned in Appendix A, Appendix B and Appendix C.
   iii) Issue necessary clarifications for implementation of the policy including grant of exclusions to procuring agencies as per Para 3.
   iv) Constitute a grievance redressal committee for preliminary examination of complaints related to implementation of this policy.
   v) Issue directions for suitable action to Ministries/Departments concerned in case of non-compliance with this policy by the procuring agency and advise.

c) Wherever a procuring entity concludes that an unreasonably high price has been quoted by the sole bidder/manufacturer, the matter may be referred to the Committee. In such cases, the procuring entity would be required to substantiate its case with complete and thorough documentation.

d) Specifying foreign certifications/unreasonable technical specifications in 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 Committee.

5. **Applicability**

a) The policy applies to every Ministry or Department of Government and all agencies/entities under their administrative control and to projects funded by these agencies for the purchase of iron & steel products for government projects. All Central Sector Schemes (CS)/Centrally Sponsored Schemes (CSS) for which procurement is made by States and Local Bodies, come within the purview of this Policy if that project/ scheme is fully/partly funded by the Government of India.

b) The policy applies to public sector steel manufacturers and agencies/entities under their administrative control for purchase of capital goods (Appendix-B) for manufacturing iron & steel products.

c) Appendix-B contains the exemption list of capital goods used in manufacturing iron & steel products which can be imported, and the minimum domestic content requirement for respective packages. The domestic value addition for Capital Goods, as indicated, is subject to change; for example, if some capital goods components can be manufactured in the country, the domestic value addition percentage may go up.

d) A purchase preference of 20% is applicable for capital goods used in steel manufacturing. For example, if the lowest bidder (L1) for an importable capital good is a foreign company with a quoted price of INR 100 crores for the product package, under the policy, procurement preference of 20% will be applicable to a domestic supplier of the same capital good.

e) Appendix-C contains directives and methodology for steelmaking CPSEs to procure from indigenous technology suppliers.

f) The policy shall apply to projects and non-projects where the total procurement value of iron and steel products (Appendix-A) in a contract is greater than Rs. 5 lakhs, on itemised basis.

g) No Global Tender Enquiry (GTE) shall be invited for tenders related to the procurement of iron and steel products (Appendix-A of the DMI&SP Policy). No Global Tender Enquiry (GTE) shall be invited for tenders related to the procurement of Capital Goods for manufacturing iron & steel products (Appendix-B of the DMI&SP Policy) having estimated value up to Rs. 200 Crore except with the approval of competent authority as designated by Department of Expenditure.

h) The policy applies to the purchase of iron & steel products by private agencies for fulfilling an EPC contract and/or any other requirement of a Ministry or Department of Government or their PSUs.

6. **Tender procedure for procurement**

a) Procuring agencies shall follow standard procurement procedures, in accordance with instructions of the Ministry of Finance and CVC while adhering to DMI&SP policy.\

b) The tender document, for procurement of both Goods as well as for EPC contracts, should explicitly outline the qualification criteria for adherence to the requirement as mentioned in Appendix A and Appendix B.

c) Domestic manufacturers of products under Appendix-A and Appendix-B shall self-certify the local content as per form-1 placed in the policy, at the time of bidding.

d) Bidders who are selling agents/authorized distributors/authorized dealers/authorized supply houses of the domestic manufacturers of iron & steel products, covered by Appendix-A, are eligible to bid with self- certification on behalf of the domestic manufacturers under the policy, subject to the bidder furnishing an authorisation certificate issued by the domestic manufacturer at the time of delivery.

e) For products covered under Appendix B of the DMI&SP policy, the bidder shall furnish certification issued by 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) declaring that the capital goods to be used in iron & steel industry are domestically manufactured in terms of the domestic value addition prescribed.

f) If 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 the procuring entities for appropriate reciprocal action.

g) Entities of countries that have been identified by the Ministry of Steel as not allowing Indian companies to participate in their Government procurement for any item related to the Ministry of Steel shall not be allowed to participate in Government procurement in India for all items related to Ministry of Steel, except for the list of items published by Ministry of Steel permitting their participation.

h) The stipulation above shall be part of all tenders including those on GeM portal invited by the Central Government procuring entities.

i) 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 action shall be sent to the Standing Committee under the DMI&SP policy.

j) A supplier debarred by any procuring entity for violation of this Order shall not be eligible for preference under this 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.

k) In case, the matter is referred to the Ministry of Steel, the grievance redressal committee set up under the MoS shall dispose of the complaint within 4 weeks of its reference and receipt of all documents from the bidder after taking into consideration, the view of the Government Agency. The bidder shall be required to furnish the necessary documentation in support of domestic value addition claimed in iron & steel products to the grievance redressal committee under MoS within 2 weeks of the reference of the matter.

l) Procuring agency shall define the penalties, in case of a wrong declaration by the bidder of the prescribed domestic value addition, in the tender document. The penalties may include forfeiting of the EMD, other financial penalties, and blacklisting of such manufacturer/service provider etc., in terms of extant rules.

7. **Implementation monitoring by the Ministry of Steel**

a) The policy provisions shall be applicable for 5 years from the date of publication and may further be extended at the discretion of the Ministry of Steel.

b) MoS shall be the nodal ministry to monitor the implementation of the policy.

c) Agencies covered under DMI&SP policy shall send declaration on a quarterly basis indicating the extent of compliance to the policy and reasons for non-compliance thereof, during the preceding financial year.

8. **Conclusion - Applicability to EPC Tenders**

Para 6-b) of the policy above makes it explicitly applicable to both Goods and EPC tenders. Except for the rare cases of EPC tenders for setting up of Steel Manufacturing facilities (where Appendix B and C shall also be applicable), normally only Appendix A shall be applicable in EPC tenders, and these products can only be procured from domestic sources. Purchase preference of 20% is applicable only to capital goods as per Appendix B and not to Appendix A. Appendix A, B & C and Form 1 of this policy are given in Annexure 20 and 21 respectively.

1.12 Legal Aspects Governing Public Procurement of Works

A public procurement contract, besides being a commercial transaction, is also a legal transaction. There are several 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.

1. The Constitution of India.
2. Indian Contracts Act, 1872.
3. Arbitration and Conciliation Act, 1996 as amended with The Arbitration and Conciliation (Amendment) Act, 2015, 2019 and 2021.
4. Competition Act, 2002 as amended with Competition (Amendment) Act, 2007 and 2023.
5. The Information Technology Act, 2000 (IT Act, regarding e-procurement and e-auction, popularly called the Cyber Law) as amended with Information Technology (Amendment) Acts 2008 and 2015 and as modified by Jan Vishwas (Amendment of Provisions) Act, 2023.
6. Right to Information (RTI) Act 2005.

7. Central Vigilance Commission Act, 2003.
8. Delhi Special Police Establishment Act, 1946 (DSPE – basis of the Central Bureau of Investigation).
9. Prevention of Corruption Act, 1988 as amended with Prevention of Corruption (Amendment) Act, 2018.
10. Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) (replaces Code of Criminal Procedure, 1973, Section dealing with sanction for prosecution §218).
11. Insolvency and Bankruptcy Code, 2016 as amended with Insolvency and Bankruptcy Code (Amendment) Acts 2018, 2019, 2020 and 2021 (Governs insolvency and liquidation of business enterprises) and Other allied laws applicable to business entities participating in works contracts
12. Various labour laws applicable at the works' site.
13. Various building and safety acts, codes, standards applicable in the context of the scope of work; and
14. Various environmental and mining laws, codes, standards applicable in the context of the scope of work.

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

1.13 The Law of Agency – applicable to Procurement of Works

In addition to Laws which are applicable to Public Procurement of Works referred above, the Law of Agency (Section 182 to section 238, of the Indian Contract Act, 1872) implies that Contractor would be an Agent of the Procuring Entity, to execute the works on its behalf. Hence, there exists a Principal/ Employer and Agent relationship between Procuring Entity and such Contractor. As per this law, the principal/ employer is vicariously, legally and financially liable for actions of its Agents. For example, a violation of certain labour laws in deputing staff for Procuring Entity's contract by the agents may render the Procuring Entity legally and financially liable for such violations, under certain circumstances. The Procuring Entities need to be aware of such eventualities. Standard Bidding Documents should take care of this aspect.

1.14 The Basic Principles of undertaking works:

1. No new works should be sanctioned without
   a) Careful assessment of the assets or facilities already available and time and cost required to complete the new works;
   b) A concept plan/ preliminary drawing has been approved by the Authority competent to accord sanction. While designing projects to the extent possible, principles of Life Cycle Costing may also be considered;
2. As budgetary resources are limited and granted on annual basis, adequate provisions should be ensured for works and services already in progress before new works are undertaken.
3. No project or work will be split up to bring it within the sanctioning powers of a lower authority.
4. [13]For purpose of approval and sanctions, a group of works which forms one project, shall be considered as one work. The approval or sanction of the higher authority for such a

[13] Rule 137, GFR, 2017

project which consists of such a group of work should not be circumvented by resorting to approval of individual works using the powers of approval or sanction of a lower authority.

5. [14]If the component parts of a project are mutually independent of each other and are not dependent on the execution of one or more such component parts, each such part should be treated as a separate project.
6. In case the functioning of a project is dependent on the execution of one or more other projects, the entire group of such projects should be taken as a single scheme/ project and provision made accordingly. If however, a scheme consists of revenue component, capital expenditure and loan content, etc. the provision for which is required to be exhibited separately under respective Heads of Account, there is no objection to the provision being made in the relevant Heads of Account; but the authorities concerned should ensure that the sanction of the Competent Authority is obtained for the integrated scheme as a whole depending on the total cost of the scheme. It will not be permissible in such cases to split up a scheme treating each part as a scheme in order to avoid the sanction of a higher authority.
7. [15]Any anticipated or actual savings from a sanctioned estimate for a definite project, shall not, without special authorisation, be applied to carry out additional work not contemplated in the original project.
8. [16]Any development of a project considered necessary while a work is in progress, which is not contingent on the execution of work first sanctioned, shall have to be covered by a supplementary estimate.
9. The construction period and sanctioned cost stipulated in the sanction of Project will not be exceeded as far as possible.
10. [17]Ministry or Department shall put in place, as far as possible, empowered project teams for all large value projects and these teams should be tasked only with project execution and not given other operational duties.
11. The competent financial authority according the administrative approval should be kept informed of the physical and financial progress of the work till their completion through regular periodical reports.
12. [18]Subject to the observance of general rules (Rule 130 – 141, Rule 144 of GFR, 2017), the initiation, authorization, procurement and execution of works allotted to a particular Ministry or Department shall be regulated by detailed rules and orders contained in the respective departmental regulations and by other special orders applicable to them. The detailed procedure relating to expenditure on such works shall be prescribed by departmental regulations framed in consultation with the Accounts Officer, generally based on the procedures and the principles underlying the financial and accounting rules prescribed for similar works carried out by the Central Public Works Department (CPWD).
13. No works shall be commenced or liability incurred[19] in connection with it until: -
    a) Feasibility Study Report/ Preliminary Project Report (PPR) has been prepared in case of works of substantial value;

[14] MoF OM No. F.1(26)-E-II(A)/66 dated 04.01.1967 & 27.10.1967
[15]Rule 138, GFR, 2017
[16]Rule 136(3), GFR, 2017
[17]Rule 135(2), GFR, 2017
[18]Rule 135(1), and 139(i), GFR, 2017
[19]Rule 136(1) and 139(vi), GFR, 2017

b) A proper Detailed Project Report (DPR) has been prepared by a competent agency;
c) Administrative approval (A/A) has been obtained from the appropriate authority, in each case;
d) Expenditure Sanction (E/S) to incur expenditure has been obtained from the competent authority;
e) Technical approval has been obtained of the detailed and coordinated design of all the Architectural, Civil, Electrical, Mechanical, Horticulture and any other services included in the scope of the sanction and of the Detailed Cost Estimates containing the detailed specifications and quantities of various items prepared on the basis of the schedule of rates maintained by CPWD or other Public Works Organizations;
f) Funds to cover the work, which will be executed, at least during the current year, have been provided by competent authority;
g) Tenders have been invited and processed in accordance with rules;
h) Award of work and execution of Contract Agreement;
i) A work order has been issued;
j) Time taken in grant of statutory and other clearances also contributes to the time and cost overrun in public projects. These clearances are required to achieve specific objectives like concern for the environment, aviation safety, preservation of national heritage, conservation of forest and wildlife etc. Public Authorities/ Project Executing Authorities should plan for obtaining all necessary clearances quickly and proper efforts be made for the same, which also should be duly recorded. The progress regarding follow up of obtaining the statutory clearances should be closely monitored;
k) The process of land acquisition shall be started by the Procuring Entity, well ahead and completed entirely, or at least substantially, before the work is started. Availability of auxiliary services has been ensured - like roads/access, power, water, solid & liquid waste disposal system, street lighting and other civic services shall be ensured. It is desirable to have 100% of the required land in possession before award of contract; however, it may not always be possible to have the entire land due to prevailing circumstances. Also, it may not be prudent to put the entire process of award of contract on hold for want of the remaining portion of land, which in the assessment of public authority or the project executing authority, could possibly be acquired in a targeted manner after award of the contract, without affecting progress. Minimum necessary encumbrance free land should be available before award of contract. The minimum may be determined based on the circumstances of each case or general guidelines, issued by the concerned authorities. Such land, non-availability of which, will prevent essential components of work from execution, should be insisted upon. Public Authorities/ Project Executing Authorities should plan for acquiring balance land quickly and proper efforts be made for the same, which also should be duly recorded. The progress regarding land acquisition should be closely monitored.

1.15 Public Procurement Cycle in Procurement of Works

Following are the stages in planning, sanctioning and execution of work.

1. **Need Assessment**:
   a) Perspective Planning for works;
   b) Preparation of Preliminary Project Report (PPR) or Rough Cost Estimate;
   c) Acceptance of necessity and issue of in-Principle Approval;

   d) Preparation of Detailed Project Report (DPR) or Preliminary Estimate (PE);
   e) Administrative Approval and Expenditure Sanction (A/A&E/S) or 'Go ahead' Approval;
   f) Detailed Design, Estimate and Technical Sanction;
   g) Appropriation/ re-appropriation of funds;
2. **Bid Invitation Process:** Preparation of Bid 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 works and Quality Assurance.

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

Note: For repair works up to Rs. 60 (Sixty) lakh, expenditure sanction may be given on the basis of Preliminary Project Report itself. Annexure 11 shows the above-mentioned process of procurement of Public Works as a flow-chart.

1.16 Administrative Control and Powers to Sanction

1. [20]Administrative control of works includes. —
   a) assumption of full responsibility for construction, maintenance and upkeep;
   b) Proper utilization of buildings and allied works;
   c) Provision of funds for execution of these functions.
2. [21]**Powers to Sanction Works:** The powers delegated to various subordinate authorities to accord administrative approval, sanction expenditure and re-appropriate funds for works are regulated by the Delegation of Financial Powers Rules (DFPR) and other orders contained in the respective departmental regulations. The powers of the Department relating to works are detailed in Rule 133 (1) and 133(2) of GFR, 2017 (Refer para 3.1.1 and 3.1.2 for details).
3. [22]**Work under the administrative control of the Public Works Departments-** Works not specifically allotted to any Ministry or Department shall be included in the Grants for Civil Works to be administered by Central Public Works Department. No such work may be financed partly from funds provided in departmental budget and partly from the budget for civil works.

1.17 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

[20]Rule 131, GFR, 2017
[21]Rule 132, GFR, 2017
[22]Rule 134, GFR, 2017

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 CPP Portal.

Chapter 2: Need Assessment and Procurement Planning

2.1 Perspective Planning for Works

1. Each Ministry/ Department shall prepare a perspective plan for undertaking different types of works. There shall also be a provision for annual review of the plan for making modifications, if any.
2. During procurements, in place of considering only the initial acquisition cost, other costs like cost of operation, maintenance, and disposal during the lifetime of the external resource procured should also be considered. This practice refers to the concept of Total Cost of Ownership (TCO) or Life Cycle Cost (LCC) or Whole-of-Life (WOL) as mentioned under para 1.7 above. These advanced concepts are explained in *Appendix 1 in Manual for Procurement of Goods, 2024)*.

2.2 Preparation of Preliminary Project Report (PPR) or Rough Cost Estimate

In case the work is to be executed under its own arrangement by the Ministry/ Department, a preliminary project report (PPR) or Rough Cost Estimate shall be prepared by the Works Committee (refer to para 3.1.3-7) based on Land, Site Details, functional and space requirements (or Various Facilities, Special Requirements/ Features and Broad Specifications for specialised Equipment and Plants), Layout Plans etc, with the technical details/ documents mentioned below being prepared by (or under the guidance of) the technical member(s) of the Works Committee. In case of execution of Work through Public Works Organisation (PWO) or the Public Sector Undertaking (PSU – refer Para 3.1 below), on requisition from Ministry/ Department for procurement of works, PWO or the PSU to whom work is entrusted for execution shall prepare such PPR or Rough Cost Estimate and submit it to the requiring Department/ Ministry. Based on PPR and Rough Cost Estimate, the competent authority in Administrative Ministry/ Department grants in Principle approval indicating approval of the concept and scope of the project at the rough cost assessed. Ministry of Finance (DoE) has issued detailed instructions regarding appraisal and approval of Public Funded projects/ schemes[23][24]. The preliminary project report shall provide the following details:

a) Background of the work/ project justifying the need for the work;
b) Details of scope of the project;
c) Exclusions (if any) - This will cover part of the work, which is not included in this particular project estimate;
d) Availability of land - There should be a clear indication about the availability of land required for completion of whole project. The land shall be made available free of all encumbrances;
e) Availability of auxiliary services - like roads, power, water, solid & liquid waste disposal system, street lighting and other civic services shall be ensured;

[23]No. 24(35)/PF-II/2012 dated 05/08/2016 (where Schemes refers to a collection of Projects/Works of either Central Sector Schemes or Centrally Sponsored Schemes and Project refers to work which can be standalone or part of a scheme). The OM can be downloaded from: http://doe.gov.in/sites/default/files/GuidelinesAppraisal_Approval_Schemes_Projects.pdf

[24] It is suggested that the website of Department of Expenditure may be checked for the latest instructions in this regard (https://doe.gov.in/appraisal-and-approval)

f) Reference to Concept Plans/ Preliminary Drawings, if any and their acceptance - This shall indicate the details of Concept Plans/ Preliminary Drawings prepared and their approval by the requisitioning authority;

g) Agency of Procurement – through direct procurement, outsourcing to PWO/ PSUs or otherwise (Refer Para 3.1 below);

h) **Rough Cost Estimate**: Ministries/ Department may carefully assess alternative technological options, their area requirements and obtain Rough Cost on the basis of prevailing Plinth Area rates (or any other reliable basis) without preparation of drawings to enable the competent authority to accord in principle approval;

i) If relevant, Cost benefits analysis of the project, including evaluation of options for cost sharing/ recovery (user charges) for infrastructure/ services. Principles of Life Cycle Cost may also be considered, to the extent feasible;

j) **Cash flow**: This will show year-wise requirement;

k) Source & availability of funds - The manner of transferring the fund to the executing agency to be spelt out;

l) Appendices:
   i) Requisition of the Department/ Ministry;
   ii) Concept Plans/ Preliminary Drawings;
   iii) Reference to approval of Concept Plans/ Preliminary Drawings.

m) Any other relevant documents;

n) As directed in the Department of Expenditure's General Instructions on Procurement and Project Management[25] a presentation on the findings of the feasibility study/ PPR may be made by a team (which may include engineers/ consultants/ outside experts, finance officers etc.) before the public authority/ or designated competent authority. This is to provide an opportunity to the public authority to have an overall assessment of the situation, appraisal of various options as well as likely challenges and mitigation measures. In the case of very large projects, such presentation may be made to the head of the public authority. The record of discussions during the presentation may become part of the Detailed Project Report (DPR) and tender file/ project record.

2.3 Acceptance of necessity and issue of in-Principle Approval

Approval of competent financial authority for accepting the necessity of works and its Scope should be sought on the basis of PPR or Rough Cost Estimate and in Principle Approval of the concerned Ministry/ Department shall be made available for preparation of Detailed Project Report or Preliminary Estimates.

2.4 Preparation of Detailed Project Report (DPR) /Preliminary Estimates (PE)

1. On receipt of in-Principle Approval of the project, the procuring entity shall finalize the Detailed Project Report with due care and accuracy, using latest technological tools collecting all relevant ground information, including consultation with the field units, wherever applicable, giving reference to the documents mentioned below. The DPR should provide a level playing field to the bidders and should ensure as far as feasible, the widest possible competition:

[25] OM No.F.1/1/2021-PPD dated 29.10.2021

a) Reference to Concept plan/ preliminary drawings and their acceptance - This shall indicate the details of Concept plan/ preliminary drawings prepared and their approval by the requisitioning authority;
b) Details of scope of the project indicating clearly the list of Engineering Services (Mechanical/ Electrical/ Plumbing) as well as Operation and Maintenance included or not included in the DPR/PE;
c) Preliminary estimated cost – This will also include the expected escalation for the period of completion of the project and also the departmental or lump sum charges to be paid to the executing agency (Public Works Organization or PSUs). Cash flow projection should show year-wise requirement. While designing the projects etc, if and to the extent possible, principles of Life Cycle Cost may also be considered;
d) Time of the completion – This will consist of two parts, one for pre- construction activity till award of the work and the other one for the execution;
e) Details of land required along with land plan schedule to implement timely land acquisition procedures;
f) Environmental impact assessment (EIA) of the project and approval thereof, wherever applicable;
g) Social Impact Assessment and Resettlement and Rehabilitation: Social Impact Assessment needs to be done, based on baseline socio-economic survey and census survey data, to identify the Project Affected People (PAPs). A Resettlement and Rehabilitation Plan should be prepared for the PAPs in accordance with the LARR Act 2013 or National Policy on Resettlement and Rehabilitation (NPRR), and State Governments framework of resettlement policies and other social safeguard policies designed to protect the rights of the affected persons and communities as applicable;
h) List of Approval of Statutory Bodies required;
i) Annual plan allocation and cash flow;
j) Systems to be adopted for project monitoring;
k) Works accounting system;
l) Quality assurance system/ mechanism;
m) Bidding Systems - Single, two parts, pre-qualification, Post - qualification;
n) In case the work is being executed by the Ministry/ Department themselves, DPR and PE will be prepared by the Ministry/ Department itself. In case the Work is assigned to Public Works Organisation or the Public Sector Undertaking, that agency shall prepare the DPR and PE;
o) For repair works costing up to Rs. 60 (sixty) lakhs, preparation of DPR and PE may be dispensed with, since repair work does not need detailed designing. Sanction may be accorded by the competent authority based on PPR itself.

2. Major reasons for the problem in works contracts (in particular relating to construction of roads, highways, ports, runways, dams etc. on item-rate or percentage rate basis) is the out-sourcing of preparation of Detailed Project Reports to consultants without sufficient relevant experience or giving them sufficient time to do so. It is therefore essential to stipulate & ensure successful project design/ supervision experience while selecting consultants, especially for large works contracts. DPR in such contracts is required to be based on proper ground investigation at each specified stretch (normally 50 metres), called “reach”, and the Consultant be directed to exercise such due diligence. Wherever

consultants are appointed for preparation of DPR, field units of the public authorities should also be associated with the process. The inputs from these field units can be useful in proposing best solutions for design and execution of the work as they are the custodian of legacy data, which may not be available with the consultants, as they may not be operating regularly in that geographical region.

3. The involvement of the Ministry/ Department in providing proper inputs including user requirements during the preparation of the DPR and before accepting the draft DPR is paramount in ensuring successful implementation. Proper field surveys and investigations of ground conditions are critical in preparation of a reliable DPR. Providing scientifically valid data to bidders will depend on the quality of the investigations done by the DPR consultant. As a corollary, the Ministry/ Department must insist on a qualified team of engineers with experience for carrying out DPR studies. It is also essential that the Ministry/ Department insists that the Consultant offers them technology options at the early stage of preparation of the DPR, so that a cost-efficient choice may be made using principles of Life Cycle Costing.
4. In case the deviations between actual ground situation and the situation recorded in such DPR results in significant cost and time over-runs, the engineer, while doing valuation of variations (refer to Para 7.3.2-6), must bring to Procuring Entity‘s notice the reach-wise differences and the Ministry/ Department may consider stringent action against the consultant who has prepared such DPRs, including debarment from future consultancy contracts, after following due procedure. Such clauses may be included in the contracts for preparation of DPR. Wherever consultants are appointed for preparation of DPR, field units of the public authorities should also be associated with the process. The inputs from these field units can be useful in proposing best solutions for design and execution of the work as they are the custodian of legacy data, which may not be available with the consultants, as they may not be operating regularly in that geographical region.
5. Presentation may be made about the DPR before the public authority, for projects above a threshold value, as decided by Project Executing Authorities. The presentation may include salient features of the project including general layout, architectural drawings, broad specifications, cash flow (over the life of the project), composition of the project team, quality management plan for the project, important milestones in the project execution, obligations of the authority and the contractor/ concessionaire (hereinafter referred to as "contractor") and possible risks and mitigation measures. In the case of very large projects such presentation may be made to the head of the public authority. The record of discussions during the presentation shall become part of tender file/project record.

2.5 Administrative Approval and Expenditure Sanction (A/A and E/S)

1. Administrative approval and Expenditure Sanction (A/A and E/S) will be accorded to the execution of work by the competent Financial authority in the Ministry/ Department after due examination of Detailed Project Report and Preliminary estimates. Post Sanction changes in scope and specification lead to delay, loss of quality and contractual penalties therefore such A/A and E/S shall be accorded after carefully assessing their requirements. The estimates framed by a PWO or other engineering organisation may be modified for such sanction only with their concurrence.

2. The sanction order should contain scope of work, estimated cost, and time schedule for completion of work and funding sources along with the breakup of the share of each funding agency.
3. A Department of Government of India may sanction expenditure on any scheme, projects, as per the powers delegated from time to time by the Finance Ministry[26], subject to its outlay having been approved by the Competent Authority in accordance with the appraisal and approval process prescribed by the Finance Ministry from time to time. (Rule 16, DFPR 2024)

2.6 Detailed Designs, Detailed Estimates and Technical Sanction

1. Except where the work is to be undertaken in the EPC (Turnkey) mode, on receipt of sanction of the project, based on DPR or PE and assurance of funds, the procuring entity in consultation with the Works Committee (as mentioned in para 3.1.3-6 below) shall prepare and accord Technical Sanction to detailed and coordinated design of all the Architectural, Civil, Electrical, Mechanical, Horticulture and any other services included in the scope of the sanction and of the Detailed Cost Estimates containing the detailed specifications and quantities of various items prepared on the basis of the schedule of rates maintained by CPWD or other Public Works Organizations - so as to ensure that proposals are structurally sound and that the estimates are accurately calculated based on adequate data. In case the work is to be executed through a Public Works Organization or Public Sector Undertaking, preparation of detailed design/ estimates and technical sanction shall be done/ accorded by that organization.
2. **Architectural and structural drawings**: Architectural and structural drawings (fit for construction) are among the core requirements for projects. Finalization of these drawings at the earliest, preferably at the time of preparation of the cost estimate itself, can help to determine quantities of various items of the work. Adverse consequences of not preparing these drawings before invitation of tenders may manifest in the form of delay in execution of the work and deviations in quantities of the items of work. Hence,approved architectural and structural drawings should be available before invitation of tenders. Fit for construction (sometimes called Good for construction) drawings means the architectural and structural drawings approved by the project executing authority as well as by the authority governing the extant rules/ laws, including byelaws, such as local authorities.
3. Endeavour may be made to enlarge the base of the ‘Schedule of Rates’ published by various organizations to bring a maximum number of items under its ambit. For non-scheduled items, rates may be finalized by a committee constituted by the organization concerned/ consultants as the case maybe.

2.7 Appropriation of funds

Before taking up the execution of work, it shall be ensured that proper funds are available to meet out the expenditure on the work. It should also be emphasized that the DPR consultant is able to provide realistic year wise requirement of funds. This information is necessary so that concerned Ministries/ organizations may be intimated regarding the same. This will enable them to include such funds projection in their budget.

[26] DoE’s O.M. No. 24(35)/PF-II/2012 dated 05.08.2016

2.8 Reference Documents used in preparation of Estimates

For preparation of estimates and during execution of work following reference documents are used by PWOs. These may be separate for different regions, various types of works - Building, Electrical and Mechanical. *Annexure 12 lists further resources regarding Procurement of Works.*

1. **Plinth Area Rates** which provide a quick but fairly accurate method of estimation of cost of buildings (e.g. CPWD DPAR – Delhi Plinth Area Rates).
2. **Schedule of Rates** for each kind of work commonly executed to facilitate the preparation of estimates, as also to serve as a guide in settling rates in connection with contract agreements, maintained up-to-date (e.g. CPWD DSR - Delhi Schedule of Rates). Endeavour may be made to enlarge the base of the 'Schedule of Rates' published by various organizations to bring a maximum number of items under its ambit. For non-scheduled items, rates may be finalized by a committee constituted by the organization concerned/ consultants as the case may be.
3. **Analysis of Rates** by taking market rates of labour, materials, cartage etc and their quantities for each kind of work commonly executed (e.g. CPWD Analysis of Rates)
4. **Specifications** describing inputs, processes, tests and mode of measurement for each kind of work commonly executed (e.g. CPWD Specifications)

2.9 Procurement Planning

1. **Works as Part of a Larger Project**: The Works may be part of a larger project 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. This will also require planning of the sequence and contents of the different components, including Works, adoption of the most appropriate method of selection and type of contract and ensuring that selection of contractor is initiated and completed to meet the overall requirements of the project implementation. For example, if a contractor 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 contractor 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 (*Rule 157 of GFR 2017*). Provided that in the interest of efficiency, economy, timely completion or supply, wider competition, or access to smaller contractors, 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 smaller contractors. 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. **Type of Contract, System of Tendering and Mode of Procurement**:
    a) Decide upon type of contract suitable to the procurement requirement (Lump sum; Item Rate; Percentage Rate; Piece Work, EPC or PPP)
    b) Selection of a system of tendering (single/two stage; single/two bids; suitability for e-procurement or reverse auction);
    c) 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); and
6. **Availability of Land and Statutory Clearances**
    a) It is desirable to have 100% of the required land in possession before award of contract; however, it may not always be possible to have the entire land due to prevailing circumstances. Also, it may not be prudent to put the entire process of award of contract on hold for want of the remaining portion of land, which in the assessment of public authority or the project executing authority, could possibly be acquired in a targeted manner after award of the contract, without affecting progress.
    b) Minimum necessary encumbrance free land should be available before award of contract. The minimum may be determined based on the circumstances of each case or general guidelines, issued by the concerned authorities. Only such land, non - availability of which, will prevent essential components of work from execution, should be insisted upon.
    c) Time taken in grant of statutory and other clearances also contributes to the time and cost of public projects. These clearances are required to achieve specific objectives like concern for the environment, aviation safety, preservation of national heritage, conservation of forest and wildlife etc. Public Authorities/ Project Executing Authorities should plan for obtaining all necessary clearances quickly and closely monitor the progress.
7. **Architectural and structural drawings**: Architectural and structural drawings (fit for construction) are among the core requirements for projects. Finalization of these drawings at the earliest, preferably at the time of preparation of the cost estimate itself, can help to determine quantities of various items of the work. Adverse consequences of not preparing

these drawings before invitation of tenders may manifest in the form of delay in execution of the work and deviations in quantities of the items of work. Hence, approved architectural and structural drawings should be available before invitation of tenders. Fit for construction (sometimes called Good for construction) drawings means the architectural and structural drawings approved by the project executing authority as well as by the authority governing the extant rules/ laws, including byelaws, such as local authorities.

8. **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.
9. **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 Contractors in the list/ panel of registered contractors, may empower bidders to conspire against the Procuring Entity:
        i) New firms may be encouraged to register themselves for the subject category.
        ii) Various items in the BOQ may be reviewed (using packaging/ slicing) so that more contractors 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 physical 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 4.7-2 below.
    c) Tendering similar works 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 works in a tender.
        iii) Change the pre-qualification criteria, especially in the case of slicing/ packaging, to broaden the target bidders.
10. **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 work) to maximise VfM and competition. Some of the market parameters to look for are:

a) Total Production Capacities and total demand for similar Works 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 contractors, co-ordination/ cartelisation among them, major contractors/ buyers controlling the market
d) Manpower constraints, Skills/Manpower bottlenecks, logistics, geopolitical issues.
e) Statutory Constraints: patents, Construction processes, pollution, and other legal restrictions, etc. Should we tinker with specifications to get VfM?

Chapter 3: Bidding Design for Works

3.1 Agency for Procurement

1. Rule 133 of the GFR, 2017, permits Ministries/ Departments at its discretion to assign execution of their original and repair works as follows: -
   a) Directly by the Ministry/ Department
   b) Public Works Organisations (PWO)
   c) Public Sector Undertaking (PSU)/ Organisations setup to execute Works
2. **Directly by the Ministry/ Department:** A Ministry or Department at its discretion may directly execute repair works estimated to cost up to Rupees sixty (60) lakh after following due procedure 'laid down for Execution of Works' (Rule 139, 159 and 160 of GFR 2017).

3.1.1 Public Works Organisations

A Ministry or Department may, at its discretion, assign repair works estimated to cost above Rupees Sixty (60) lakh and original/ minor works of any value to any Public Works Organisation (PWO) such as Central Public Works Department (CPWD), State Public Works Department, others Central Government organisations authorised to carry out civil or electrical works such as Military Engineering Service (MES), Border Roads Organisation (BRO), etc. or Ministry/ Department's construction wings of Ministries of Railways, Defence, Environment & Forests, Information & Broadcasting and Departments of Posts, and Space etc.

3.1.2 Public Works PSU/ Organisations

As an alternative a Ministry or Department may assign repair works estimated to cost above Rupees Sixty (60) lakh and original works of any value to:

a) any Public Sector Undertaking (PSU) set up by the Central or State Government to carry out civil or electrical works; or
b) to any other Central/ State Government organisation/ PSU which may be notified by the Ministry of Housing and Urban Affairs (MoHUA) for such purpose after evaluating their financial strength and technical competence.

3.1.3 Procedure for Assigning Work to PWO or PSU/ Organisations

1. For the assignment of work under provisions of para 3.1.2 above to PSUs, the Ministry/ Department shall ensure competition among all such eligible PSUs/ organisations. This competition shall be essentially on the lump sum service charges to be claimed for execution of work. The award of work to a PSU should be taken as Project Management Consultancy (PMC) and the concerned PSU shall be treated as consultancy firm. Relevant methods (QCBS, LCS etc) for procurement of consultancy will be applicable. For better understanding of selection methodology of consultant(s), Rule 192 to Rule 194 of GFR 2017 and Manual for Procurement of Consultancy Services, 2025 may be referred.
2. In exceptional cases, for assignment of work on nomination basis under provisions of para 3.1.2 above to PSU, the conditions for nomination basis would apply (refer to para 3.6-3-d) below). The work under these circumstances shall also be assigned only on the basis of lump sum basis.

3. [27]For original works and repair works entrusted under the provisions of Para 3.1.1 and 3.1.2 above, the administrative approval and expenditure sanction shall be accorded and funds allotted by the concerned authority in accordance with the Paras 2.5, 2.7 above. The Public Works Organisation or the Public Sector Undertaking or any organisation allotted work shall then execute the work entrusted to it in accordance with the rules and procedures prescribed in their own organisation.
4. A Memorandum of Understanding (MoU) may be drawn with the Public Works Organisation or the Public Sector Undertaking for proper execution of work. The MoU should spell out the obligations on the part of Public Works Organization or PSU regarding execution of works as per proper specifications and for maintaining proper quality and speed of execution of works. Different stages at which funds shall be released to the Public Works Organization should also be clearly spelt out. Such MoU would normally be for a specific standalone work but could also be for a Project consisting of a collection of related works.
5. In case of MoU with Public work Organisations (PWOs) it could also be as a long-term framework MoU. A Sample MOU delineating complete procedure of assignment of work to PWO/ PSUs and its monitoring is shown in Annexure 10. Procuring entity may change the MOU format suiting to their requirement, and If felt necessary may also get the MOU document vetted from the Ministry of Law or its own legal cell.
6. For execution of any work, under the provisions of Para 3.1.1 and 3.1.2 above, the Ministry/ Department shall constitute a “Works Committee”, whether on ad hoc or standing basis; comprising of representatives of administrative wing and Finance wing and an officer possessing technical skills and experience of framing estimates and execution of works. If need be, members may be co-opted from User Department; CPWD/ PWOs/ PSUs or any technically sound Government agency such as a relevant National Institute of Technology (NIT)/ Indian Institute of Technology (IIT) or a relevant National Research Institute etc. The Works Committee shall ensure observance of due process in the planning and execution of works, check the reasonability of the estimates and other technical details and monitor the execution of the works.

3.2 Types of Contracts

1. There are various alternative basis for linking payments to the performance of Contract (called types of contracts) – each having different risks and mitigation measures. Bids are called and evaluated based on the type of contract. The choice of the type of contract should be based on Value-for-Money (VfM) with due regard to the nature of Work. Adoption of an inappropriate type of contract could lead to a situation of lack of competition, contractual disputes and non-performance/ failure of the contract. Standard forms for all the types of contracts mentioned below are available with Public Works Organizations like CPWD and the same may be used for calling the tenders.
2. Each type of contract is described briefly in subsequent paras, and criteria are suggested for their adoption. The most commonly used types of contracts are:
   a) Lump sum (Firm Fixed Price) contract;
   b) Item Rate (Unit Rate) contracts;
   c) Percentage Rate contract;

[27]Rule 140, GFR, 2017

d) Piece Work contract.
e) Engineering, Procurement and Construction (EPC) contract
f) Public Private Partnership (PPP)

3.2.1 Lump sum (Fixed Price) Contract

1. This type of contract, bidders are required to quote a lump sum fixed price figure for completing the works in accordance with the given designs, specifications and functional requirements. Bidder's price is deemed to include all elements of cost - no arithmetical correction or price adjustments are allowed during evaluation and execution. Lump sum contracts are easy to administer because it is a fixed price for a fixed scope, and payments are linked to clearly specified outputs/ milestones.
2. There may be tendency for the Contractor to cut corners on quality and scope of work by saving on resources employed. Disputes may arise due to different possible interpretations of quality and scope of work. The contract should include provision for evaluation of quality and scope of work and certificate for its acceptability may be recorded.
3. As time is not linked to the payment, there may be tendency for the Contractor to save on deployment of resources which may result in time-over-run. While the payments are not linked to time, the assignment should be monitored per month to ensure that the progress of work per month is in line with planned and estimated time-line.
4. Lump sum service contracts should be used mainly for assignments in which the quality, scope and the timing of the Work are clearly defined. Lump sum contracts may be used where the Works can be defined in their full physical and qualitative characteristics and risk for change in quantity or specification, and unforeseen difficulties and site conditions (for example, hidden foundation problems) are minimal. Thus, is suitable for stereotype/ repetitive residential buildings or other structures for which standard drawings are normally available. It is also suitable for minor bridge works, chimneys, bins/ silos, overhead tanks, etc. whether on Department's design or that of the contractor. In the latter case, the Department shall spell out the requirements in detail to enable the contractor to prepare his designs and drawings accordingly and submit them to the Procuring Entity for check and approval before construction.
5. A Schedule of Rates (SOR) may still be specified in order to regulate the amounts to be added to or deducted from the fixed sum on account of additions and alterations to drawings, designs and specifications not covered by the contract.
6. The contractor shall be paid from time to time as per the schedule specified in the contract or the full amount on completion of the work. The billing schedule shall be commensurate with the actual work done, and the risk of front-loading strictly guarded against.
7. Detailed measurements of work done in a lump sum contract are not required to be recorded, except in respect of additions and omissions. No reference is made in the contract to the departmental estimate of the work, prevailing SOR or the quantities of work to be done. Payment of additions and omissions is regulated by prevailing SOR as agreed upon while approving the tender or the rates.

3.2.2 Item rate (Unit Rate) Contract

1. For item rate tenders, contractors are required to quote rate for each individual items (detailed sub-activity) comprising a work on the basis of Bill of quantities (BOQ) provided by the Procuring Entity in the Bid Documents. This is the most commonly used contract type for civil works.

2. The payment is made at the rate set out in the contract for the measured quantity. Reasonable variations (typically ±10% to ±15%) in BOQ quantities can be allowed during the execution in terms of the contract. For slightly larger variation (Typically ±25% to ±30%) competent authority's sanction is required. Where the variation in quantity exceeds the prescribed limit, the contract generally provides that either (a) the Procuring Entity may revise the rate with mutual agreement (often based on analysis of current market rates), or (b) the work beyond the limit may be treated as a new item, requiring approval at appropriate levels.
3. This type of contract is suitable for all types of major works such as buildings, bridges, culverts, roads, sewer lines, irrigation works and carries the least risk of uncertainty for the parties.
4. Specifications, design, drawings and contract conditions (including availability of land, forest clearance, social and environmental impact assessment, where applicable) have to be critically appraised before the initiation of procurement process, in order to minimise the incidence of internal inconsistencies, variations, and situation of claims/ disputes or contract failure.

3.2.3 Percentage Rate Contract

1. For percentage rate contract, the contractors are required to quote rate as overall percentage above or below the total estimated cost.
2. This type of contract works best when the work does not involve major design process and directions, and simple drawings are sufficient for execution. It saves on the time and effort of detailed design before the procurement process. This type of tender can be used in respect of for small and routine types of original works for which estimates can be made based on available schedule of rates and all repair works e.g. levelling and development works including such works as storm water drainage, water supply and sewer lines.
3. Bills for percentage rate contracts shall be prepared at the estimated rates for individual items only and the percentage excess or less shall be added or subtracted from the gross amount of the bill. The payment is made for the measured quantity. Contract provisions are made to determine the price of the items not included in SOR. In the absence of a standard schedule of rates, a project-specific schedule of items and their rates is drawn.

Note: Percentage rate contracts should not be confused with lump-sum contracts since the pricing structure in both the cases is fundamentally different.

3.2.4 Piece Work Agreement

1. In Piece Work Agreement bidders quote and are paid for each piece (or unit) of a work element (neither the complete work as in lumpsum contract nor as granular work element as in item rate contract), without necessarily providing detailed quantities upfront. The Procuring entity has flexibility to put an end to the piece work agreement at his option at any time. It incentivises productivity of the Contractor and cost control for the procuring entity.
2. Piece Work Agreement is used mainly in following cases:
    a) **Anticipatory Work Commencement**: The cases, in which it is necessary to start the work in anticipation of formal acceptance of detailed contract, a piece work agreement may be drawn, and the agreement may be cancelled as soon as regular contract is signed.

b) **For Ongoing Requirements**: For ongoing requirements i.e. those for pipes, laying of sewerage, maintenance of colonies/ facilities etc. quotations are called periodically, and a running piece work agreement is drawn up as a result of those quotations usually for a period of one year. The piece work agreement provides for payment of stipulated rates only when it refers to such quantity of time and also stipulates that the procuring entity may put an end to the agreement at his option at any time.

3. Important Provisions of such contracts are:
   a) **Quality Assurance**: Contractor might prioritize speed over quality to maximize earnings. Therefore, contract must clearly define the quality standards each unit of work must meet to be acceptable. Implement processes for inspecting and approving completed work before payment. Define the scope of work meticulously to prevent misunderstandings. Maintain open lines of communication with contractors to address issues promptly. Establish KPIs (Key Performance Indicators) to monitor progress and quality.
   b) **Payment Terms**: Specify the payment rate per unit of work and any conditions that might affect this rate. Outline when payments will be made (e.g., upon completion of each unit, weekly, monthly).
   c) **Termination Clauses**: Include a clause that allows the procuring entity to terminate the contract at their option at any time. Specify any notice period required and obligations upon termination.
   d) **Labour Laws**: There's a potential for unfair labour practices if not properly managed. Therefore, contract must stipulate strict compliance with local labour regulations, including minimum wage requirements and worker protections.
   e) **Documentation**: Keep thorough records of work completed and payments made for transparency and legal purposes.

3.2.5 Engineering, Procurement and Construction (EPC) Contracts

1. The Engineering, Procurement and Construction (EPC) (also called 'Design & Build' Contracts) approach relies on assigning the responsibility for investigations, design and construction to the contractor for a lump sum price determined through competitive bidding. The objective is to ensure implementation of the project to specified standards with a fair degree of certainty relating to costs and time while transferring the construction risks to the contractor.
2. On the recommendations of National Institution for Transforming India (NITI Aayog) the Cabinet Committee on Economic Affairs (CCEA)[28] has recommended that Item Rate contracts may be substituted by EPC contracts wherever appropriate.
3. Unlike the normal practice of construction specifications, the technical parameters in the EPC Agreement are based mainly on output specifications / performance standards. Procuring Entity specifies only the core requirements of design and construction of the project that have a bearing on the quality durability, reliability, maintainability and safety of assets and enough room is left for the contractor to add value. The Contractor has full freedom to design and plan the construction schedule using best practices to achieve quality, durability, reliability, maintainability, and safety as specified along with efficiency and economy.

[28]Niti Aayog OM No. N-14070/14/2016-PPPAU dated September 05, 2016

4. Projects risks such as soil conditions and weather or commercial and technical risks relating to design and construction are assigned to the Contractor. The Procuring Entity bears the risk for any delays in handing over the land, approvals from local authorities, environment clearances, shifting of utilities and approvals in respect of engineering plans.
5. Selection of the contractor is based on open competitive bidding. All project parameters such as the contract period, price adjustments and technical parameters are to be clearly stated upfront, and short-listed bidders are required to specify only the lump sum price for the project. The bidder who seeks the lowest payment is awarded the contract. The contract price is subject to adjustment on account of price variation during the contract period as per a specified formula. It also lays down a ceiling of 10 (Ten) per cent of contract price to cater for any changes in the scope of project, the cost of which the Procuring Entity will bear. Once this ceiling is reached, no further variations shall be issued under the existing contract. Any additional requirement beyond this limit must be procured separately through a competitive bidding process, so as to preserve transparency, fairness, and value for money. In exceptional cases where continuity of work demands that the existing contractor execute such additional scope, this shall be permitted only through a formally approved supplemental agreement, with revised price and timelines duly concurred by the competent authority and finance. The original contractor shall, however, be required to extend reasonable cooperation to ensure coordination with any other agency engaged for excess works. Given below are the suggested technical and financial eligibility criteria for EPC tenders.
    a) Technical Capacity: The bidder has received payments for construction of eligible projects over the past five financial years preceding the bid due date. The payment amounts should be at least:
        i) 60% of the estimated project cost from one eligible project, or
        ii) 40% of the estimated project cost from each of two eligible projects, or
        iii) 30% of the estimated project cost from each of three eligible projects.
    b) **Financial Capacity**: The bidder should possess a minimum net worth of at least 15% of the estimated project cost at the close of the preceding financial year. If the bid due date falls within three months of the closing of the latest financial year, that year can be ignored for calculation purposes.
    c) Eligible works, as defined for EPC tenders, specifically refer to construction projects that have been directly awarded by either a Government Ministry or Department or by a Public Listed Company. The latter should be listed on major Indian stock exchanges, such as the National Stock Exchange (NSE) or the Bombay Stock Exchange (BSE). In the case of awards from public listed companies, the tender documents need to clearly outline specific financial requirements. This includes detailing the average annual turnover of the company over a defined period, typically the past three or five years. Additionally, the tender should specify a minimum duration for which the company must have been registered, for example, a period of five years. This stipulation is aimed at ensuring that the awards considered for eligibility come from established and financially sound entities.
6. The selected Contractor carries out survey and investigations and also develops designs and drawings in conformity with the specifications and standards laid down in the Agreement. Procuring Entity's engineer (also called owner’s engineer) reviews the design and drawings to ensure that these conform to the scope of the project, design standards and specifications. Any comments by the Procuring Entity on the design proposals

submitted by the contractor are to be communicated in totality once in a time-bound manner as indicated in the schedule. The contractor is free to proceed with construction after the expiry of specified period in case no remarks/ clearances are given by the Procuring Entity.

7. The contractor is also responsible for shifting of any utility (like electric lines, water pipes, telephone cables etc.) to an appropriate location or alignment, if the utilities are under the purview of the procuring entity and adversely affect or infringes the execution of Works. This requirement should be part of the tender document, so as to avoid such a requirement at latter stage that may lead to amending the scope of work. For those utilities, that are not owned by the procuring entity, the concerned organization, under whose ambit such utilities fall, shall be intimated by the procuring entity for shifting of utilities, and the price shifting shall be paid to the organization by the procuring entity. If there is delay in shifting of the utilities, for which the contractor is not accountable, reasonable time extension may be given to the contractor by the procurer.
8. The Contractor is liable to pay Liquidated Damages (LD) for each day of delay beyond the specified date of completion, subject to the total amount of Damages not exceeding 10 (ten) per cent of the Contract Price. However, the Contractor is entitled to time extension arising out of delays on account of change of scope and force majeure or delays caused by or attributable to the Procuring Entity. If so, provided in the Bid Document, Procuring Entity is also liable to pay bonus (normally should not exceed ten percent) to the Contractor for completion of the project before the scheduled completion date, if so, provided in the contract documents. If the delays have happened in achieving the individual milestones, however, the overall project completion is within time, then LD deducted should be refunded (without any interest).
9. Monitoring and supervision of construction are undertaken through Procuring Entity's engineer, (a qualified firm that will be selected through a transparent process) acting as a single window for coordination with the contractor.
10. Each item of work is further sub-divided into stages and payment based on output specifications and performance standard is to be made for each completed stage of work. Defects liability period of two years may be specified in the Agreement in order to provide additional comfort to the Procuring Entity. Grace period of say 30 days for achieving the individual project milestones as per payment schedule may be provided in the tender document, so that any unavoidable delay, may be covered during the grace period. The applicability of liquidated damages would be beyond the grace period.
11. Federation Internationale Des Ingénieurs-Conseils (FIDIC - an International Federation of Consulting Engineers, known by its French acronym) has also published such contractual frameworks. Model EPC contract documents have been developed for Highways and Railways and published by the erstwhile Planning Commission. National Highways Authority of India (NHAI) has already adopted these documents, and all construction contracts are currently being structured on this model. Ministry of Railways has also started using such documents. Model bidding documents and Model EPC contracts suitably revisited or modified wherever required to suit the requirements of particular sectors, may be adopted.
12. The selected Procuring Entity's Engineer (Consultant) has to have good experience in design, project supervision and works management. The Procuring Entity organisation must have an experienced team with (works committee) to super check the quality of supervision exercised by the owner's engineer, including quality of design review, site

supervision, quality audits, etc. Periodic audits of the Procuring Entity's Engineer functioning are desirable in ensuring that the Procuring Entity's Engineer carries out his tasks professionally.

13. In complex projects, a third-party consultant be deployed for specific tasks like design audit, quality audits, safety audits, etc., to cross-check the Procuring Entity's Engineer's diligence in the process.
14. The tender document should consist of provisions of Change of Scope in terms of specifications, omission of any work from the Scope of the Project, or any additional work, however, the total value of all change of scope order should be limited (say 10%) of the contract price. In the event, the parties are unable to agree to the proposed change of scope, the Procuring entity may award such works or services to any other party, preferably on the basis of open competitive bidding. Contractor should have the option of matching the first ranked bid in terms of the selection criteria, subject to payment of certain percentage (say 2%) of the bid amount to the Procuring entity. Such an option is possible when the contractor also participated in the bidding process and its bid did not exceed the first ranked bid by more than 10%.
15. **Sub-Contracting**: Sub-contracting by the EPC contractor must be limited and should not exceed 50% of the contract price. Any work, to be sub-contracted by the main contractor, must be brought to the notice of the procuring entity.
16. **Qualification of Sub-contractor**: Preceding 3 years, at least one work of a similar nature with a contract value exceeding 40% of value of the sub-contract to be awarded and received payments I respect thereof for an amount equal to at least 80% of such contract. Provided, however, that in any event the Contractor shall communicate the name and particulars to the procuring entity for any sub-contract including the relevant experience prior to entering into any such sub-contract. Overall responsibility of all Works lies on the contractor.
17. **General Instructions on Procurement and Project Management[29] on EPC**
    a) In EPC contracts, since primary responsibility to execute the work lies with the EPC contractor, success of the project also depends upon the quality of the tender document wherein enough clarity on the broad framework for execution of the work and the obligations of the contractor needs to be built in.
    b) Milestones for payment to the contractor should be fixed in a manner that facilitates smooth cash flow for the contractor as well as for progress of the work. Milestones fixed should avoid excessive front loading or back loading, i.e., amount of payment should be commensurate with stage-wise quantum of work/ cost incurred. Milestones for payment to the contractor should also be linked with the deliverables.
    c) In case of EPC contracts, only general arrangement drawings and architectural control parameters should be part of the EPC tender document. In case of EPC contracts, timelines for submission of drawings by the contractors and approval thereof by the competent authority should be clearly prescribed in the tender document, wherein, damages for non-adherence of such timelines ins this regard may also be incorporated.
    d) EPC contracts shall specify broad technical specification and key output parameters. Over-specification of design may lead to increase in cost. Technical specifications

[29] OM No.F.1/1/2021-PPD dated 29.10.2021

shall be framed in such a manner to allow sufficient freedom to the contractor to optimize design. Provisions on the following should be included in commercial conditions:

i) Limitation of liability for procuring entity as well as contractor.
ii) Deviation limits and procedure for change of scope.
iii) Contract closing timelines and procedure to ensure timely closing of contract.
iv) Performance parameters and liquidated damages for shortfall in performance
v) Risk matrix and responsibilities of the contractor and the procuring entity.

e) In addition, a latent defect period beyond the defect liability period may be included to protect the procuring entity and public authority interest in case of any design/ engineering defect after the defect liability period is over, wherever appropriate.

f) To mitigate the risk involved in the methodology proposed by the contractor, the project executive authority shall either have an in-house engineering, quality assurance and project management expert or alternatively hire an experienced engineer to intensively examine the proposal submitted by the contractor. Project executing authorities are to ensure that optimal technological solutions are provided by the contractor.

g) To ensure equality, regular inspection and quality checks must be carried out. The Project, executing authority shall carry out stage inspections in manufacturing of critical equipment/critical activities of the project.

Note: In this sub -para 17) instructions containing "shall" are mandatory; any deviation from these instructions shall require relaxation from Ministry of Finance (for Ministries/ Departments etc.) or from the Board of Directors (for Central Public Sector Enterprises).

3.2.6 Public Private Partnership (PPP)

PPP means an arrangement between a government/ statutory entity/ government owned entity on one side [Sponsoring (PPP) authority – or simply the Authority] and a private sector entity (a legal entity in which 51% or more of equity is with the private partner/s - concessionaire) on the other, for the creation and/ or management of public assets and/ or public services, through investments being made and/ or management being undertaken by the concessionaire, for a specified period of time (concession period) on commercial terms, where there is well defined allocation of risk between the concessionaire and the Authority; and the concessionaire (who is chosen on the basis of a transparent and open competitive bidding), receives performance linked payments that conform (or are benchmarked) to specified and pre-determined performance standards, measurable by the Authority or its representative. For further information, PPP instructions issue by Department of Economic Affairs (DEA), Ministry of Finance from time to time, may be referred. The provisions contained within this Manual are also applicable to works procurement carried out under PPP mode.

3.2.7 Comparison of Types of Contracts

Following table summarises the properties of various types of contracts:

Contract Type	Payment Structure	Scope Flexibility	Risk to Contractor	Common Use Cases|
Lump Sum Contract	Fixed price for the entire project	Low	High (if costs are underestimated)	Simple, well-defined projects

Contract Type	Payment Structure	Scope Flexibility	Risk to Contractor	Common Use Cases|
Item Rate Contract	Payment based on rates for units of work/materials	High	Medium	Projects with variable quantities
Percentage Rate Contract	Payment based on a percentage of a standard schedule	Medium	Medium	Projects with standardized rates
Piece Work Contract	Fixed rate per unit of work completed	Medium	Depends on productivity	discrete unit work as in repair works
EPC Contract	Payment for design, procurement, and construction	Low (complete facility delivery)	High (responsible for entire project)	Large, complex projects
PPP Contract	Payment based on performance and availability of services	Medium	Shared between public and private entities	Infrastructure projects, public services

3.3 Systems of Selection of contractors

1. The relative importance of Quality and Price aspects may vary from contractor to contractor 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 contractors 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. In the procurement of Works, 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 Works for highly technically complex and critical assignments where it is justifiable to pay appropriately higher prices for a higher quality proposal.

3.3.1 Price based System - Least Cost Selection (LCS)

1. In this method of selection, bidders 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 6.4.3 below)*

2. LCS is considered suitable for engaging contractors in most works procurement assignments that are of a standard or routine nature (such as construction works or non-complex engineering projects) 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 works procurement, a fail/ pass criteria is sufficient, and it avoids subjectivity.

3.3.2 Quality and Cost Based Selection (QCBS)

1. In the QCBS system of selection, both the quality of the proposal and the cost of the executing the work are considered as deciding factors. This approach is employed when the quality of deliverables is crucial, but the cost of 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[30] to use QCBS for procurement of works in the following cases[31]. In this para 3.3.2, 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) QCBS shall not be used in the procurements planned to be done through two-stage bidding (Procuring Entity is unable to define the technical specifications or performance parameters with adequate clarity) or through Reverse Auction or through Limited tenders.
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, second edition, 2025 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 shall be as follows: -
   a) For declaring a procurement as QOP:
      i) [32]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

[30] General Instructions on Procurement and Project Management - DoE's OM NO.F.1/1/2021-PPD dated 29.10.2021.
[31] QCBS is allowed to be used for procurement of Non-Consultancy Services as well. For details, please refer to Manual for Procurement of Non-Consultancy Services, 2025.
[32] As amended by OM No.F.1 /1/2021-PPD dated 08.03.2024

2) Secretary of Public Authority[33] with the concurrence of the procuring entity/ project executing authority[34] 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.

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;

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*

[33] "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.)

[34] "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.

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.

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.
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 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 Contractor 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 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 6.4.5 for evaluation of QCBS bids

12. **Caution against Joint Ventures (JVs)/Consortium in QCBS Procurements:**

a) Since quality is given weightage in the evaluation itself, in QCBS procurement, therefore, JVs may be avoided as far as possible. JVs could, however, become necessary in high technology or innovative projects where a single entity may not be able to execute the work alone.

b) If JVs are allowed, measures should be taken to ensure that all the JV partners are present and execute work all through the contract period. An Implementation Board with the participation of all JV partners may be provided for wherein the Project Manager from the procuring entity shall also be allowed an audience when required. Meeting of 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	Weightage different from 70:30 (seventy: thirty) 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.

Risk	Mitigation
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.

3.3.3 Direct Selection: Single Source Selection (SSS)

1. Under some special circumstances, it may become necessary to select a particular Contractor 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 6.4.4).* Direct selection is also called the Nomination mode of procurement (Please refer to para 3.6-3-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 Contractor has the requisite expertise. 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;
   d) Under some special circumstances, it may become necessary to select a particular Contractor 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 work is 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 work is not split into smaller sized procurement to avoid competitive processes.
b) **Cost may be unreasonably High:** The single contractor 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 contractors to examine reasonableness of quoted price.

3.4 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.

3.5 Channels of Procurement

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

3.5.1 Electronic Procurement (e-Procurement – Rule 160 of GFR 2017)

1. Electronic procurement (e-procurement) is the use of information and communication technology (specially 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'.
2. It is mandatory for ministries/departments to receive all bids through e-procurement portals that are GCQE[35] compliant for all procurements. This condition will not be applicable for the procurement made through purchase committee (under Rule 155 of GFR, 2017).
3. Normally, in e-procurement, no physical/ off-line tender documents are provided, nor are any manual bids accepted. It is not a good practice to call both electronic and manual bids in the same tender. Sub-paras 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. (refer to para 4.3-1 below).
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 Government e-Procurement of NIC (GePNIC). There are other service providers in the Public Sector (e.g., MSTC) and Private sector that can be utilized for e-procurement. Details about the process of e-procurement are available from the service providers. *Appendix 3 under the Manual for Procurement of Goods, Second Edition, 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 solution developed by NIC or engage any other service provider (GCQE[36] 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)

[35] 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).
[36] 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).

3.5.2 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.

3.6 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 one hand, and complexity 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 are laid down procedures for delegation of powers of procurement to various competent authorities under different modes 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 at Annexure 2
3. The various modes of procurement that can be used in public procurement of works are (GFR 2017[37]):
    a) **Advertised Modes**: These modes of procurement aim for the widest possible competition through wide publicity (Rule 161 GFR 2017):
        i) Open Tender Enquiry (OTE, also known as National Competitive Bidding – NCB, or simply Advertised Tender Enquiry, but this manual would stick to OTE)[38];
        ii) Global Tender Enquiry (GTE, also known as International Competitive Bidding – ICB, but this manual would stick to GTE)
    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.

[37] 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

[38] Please also refer to Rule 139 of GFR 2017 regarding the thresholds for modes of procurement pertaining to Works.

i) Pre-Qualification Bidding Mode (PQB)
ii) Approved Vendor Lists (AVL): Procurement is restricted to contractors 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, 2024 for details on the AVL).

c) **Restricted Modes**: These modes of procurement are restricted to known, selected bidders. Unlike the Pre-qualification mode, the shortlisting is not based on rigorous qualification criteria through wide publicity. The shortlisting/ registration of bidders (as per para 8.6 below) is based on less rigorous checks of capability and past experience. (Rule 162, GFR 2017).
   i) Limited Tender Enquiry - LTE (up to Rs. 10 (Rupees Ten) lakh[39]);
   ii) Special Limited Tender Enquiry (SLTE above Rs. 10 (Rupees Ten) lakhs under exceptional circumstances)

d) **Nomination Modes**: Procurement in this mode of procurement is done from a single source in special circumstances (Rule 166 GFR 2017)
   i) Single Tender Enquiry (STE) or selection by nomination

e) **Award of Work through Quotations/ Shopping Modes**: Procurement in these modes of procurement is done without tendering or calling for formal bids for small value procurements. (Rule 154, 155 GFR 2017)
   i) Procurement of Works through Quotations;

f) **Framework Agreements**: Also known as Rate Contracts, are agreements with contractors to execute works at pre-agreed rates during a specified validity 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.

3.7 Open Tender Enquiry (OTE)

1. In OTE[40], an attempt is made to attract the widest possible competition by publishing the NIT simultaneously on the designated websites. This is the default mode of procurement and gives the best value for money, but the procedure is relatively complex and prolonged. *The systemic cost of this procedure may be high enough to be unviable for smaller value procurements.*
2. OTE procedures through e-procurement or through traditional tendering should be adopted in the following situations:
   a) Procurements exceeding the threshold of Rs. 10 lakhs (Rupees Ten Lakh) in works procurement;
   b) All requirements with clear technical specifications;
   c) For requirements that can ordinarily be fulfilled by the players available in the open market, it is necessary to evaluate competitive offers to decide the most suitable and economical option available and;
   d) When the requirement cannot be fulfilled from known contractors or contractors are presently limited, and the requirement is to be made broad based. In such situations,

[39] Rule 139, GFR 2017
[40] Rule 161, GFR 2017

even for procurements below Rs. 10 (Rupees Ten) lakhs, the OTE mode may be used if warranted.

3.7.1 Terms and Conditions

1. Participation should not be restricted to only Bidders enlisted with the Procuring Entity. Bidders already enlisted are also free to participate. However, a requirement that successful un-enlisted Bidders may have to get enlisted with the Procuring Entity, before contract is placed on them, may be mentioned in the tender document.
2. Advertisements in such cases should be given on the GeM- Central Public Procurement Portal (GeM-CPPP) at www.eprocure.gov.in. An organization that has its own website should also publish all its advertised tender enquiries on the website. The procuring entity should also post the complete tender document on its website and GeM- CPPP to enable prospective bidders to make use of the document by downloading it from the website/ the advertisements for the tender invitations should give the complete web address from which the tender documents can be downloaded. While it is no longer mandatory to issue advertisements in newspapers, there is no bar to issuing such advertisements if the procuring entity consider the necessary. To promote wider participation and ease of bidding, no cost of tender documents may be charged for the tender documents downloaded by the bidders.
3. The tender documents should be prepared on the basis of the relevant approved Model Tender Document (MTD) for the category of procurement. Further details on preparing tender documents are provided in Chapter 4.
4. The sale/ availability for downloading of tender documents against NIT should not be restricted and should be available freely. Tender documents should preferably be sold/ made available for download up to the tender closing date and time.
5. In offline tenders, the procuring entity shall maintain proper records about the number of tender documents sold, list of parties to whom sold, details of the amount received through sale and, also, the number of unsold tender documents, which are to be cancelled after the opening of the tenders.
6. In domestic tenders, bid can be submitted only in INR, and any bid in foreign currency should be summarily rejected. Foreign bidders can also participate if they submit a bid in INR. However, purchase preference for local content as per the PPP-MII shall apply (please refer to para 1.11-2)
7. In case of domestic open tender for projects (including turnkey projects), allowing consortium bidding, a foreign bidder can be a consortium member, subject to the condition that the consortium as a whole meets the minimum local content criteria, as per the Make in India Order, 2017. The leader of the consortium can be a foreign party, and the bids are to be solicited in Indian Rupee only i.e., no payment can be made in foreign currency to the foreign consortium member.

3.7.2 OTE - Risks and Mitigations

Risk	Mitigation
a) The crux of this mode of procurement is attracting bids from all possible perspective bidders. The risk is that this may not be achieved, even after	It should be ensured that the NIT on the website is easily searchable and visible, not hidden under layers of clicks. The matter should not be left entirely to the website or media publicity

Risk	Mitigation
incurring extra cost of open tendering. This could be due to: i) Insufficient publicity; ii) Hindrances in availability of bid documents; iii) insufficient time for bid preparation; or iv) Due to onerous cost of bid-documents or EMD	alone. Due diligence should be done to locate likely bidders. All registered contractors (including past successful contractors) should be given intimation about forthcoming tenders via SMS/mail/email. Further a limited or open tender which results in only one effective offer shall be treated as a single tender enquiry situation, with relevant powers of approval etc. It should be also ensured that there is no impediment to issue/ access of bid documents. Ordinarily, the due date fixed for opening of the tender shall be minimum 21 (twenty-one) days from the date of advertisement, which may vary, considering the nature of work to be executed and the timelines required. The due date may be subsequently extended with the approval of the CA, only if it is felt necessary to have better competition. The tender documents, shall be priced minimally (if at all priced, *refer Para 4.6.1 Availability and Cost of Tender Documents*) keeping in view the value of the tender as also the cost of preparation and publicity of the tender documents. EMD should be sufficient to ensure that bidders honour their bids but at the same time should not be large enough to reduce competition.
b) Lack of clarity in description/ specification of requirement or undue stringency in qualifying criteria or other conditions	Mitigations of such risks can be addressed at the time of need assessment and procurement planning (please refer to Chapter 2), so as to attract adequate competition.

3.8 Global Tender Enquiry (GTE)

GTE[41] is similar to OTE but, through appropriate advertising and provision for payment in Foreign Currencies through Letter of Credit, it is aimed at inviting the participation of inter-alia foreign firms. Bids in foreign currency in any other mode of procurement shall be summarily rejected. Subject to restriction on GTE (para 3.8.2 below), GTE can also be in SLTE, LTE or STE mode if justified with proper approvals as per SoPP. *The point of balance between VfM and cost/ complexity of procedure is further aggravated as compared to OTE. The development of local industry also needs to be kept in mind.* Hence, it may be viable only in following situations:

[41]Rule 161, GFR 2017

a) Where required Technology/ specifications/ quality are not available within the country and alternatives available in the country are not suitable for the purpose, it is necessary to also look for suitable competitive offers from abroad;
b) Non-existence of a local branch of the global principal of the contractors.
c) Requirement for compliance to specific international standards to technical specifications.
d) In case the requirement cannot be executed by indigenous contractors at the reasonable rates

3.8.1 Terms and Conditions

1. Advertisement in such cases should be given on GeM- Central Public Procurement Portal (GeM-CPPP) at www.eprocure.gov.in. An organisation that has its own website should also publish all its advertised tender enquiries on the website. The procuring entity should also post the complete tender document on its website and on GeM-CPPP to enable prospective bidders to make use of the document by downloading it from the website. The advertisements for the tender invitations should give the complete web address from which the tender documents can be downloaded. To promote wider participation and ease of bidding, no cost of tender documents may be charged for the tender documents downloaded by the bidders.
2. The sale/ availability for downloading of tender documents against NIT should not be restricted and should be available freely. Tender documents should preferably be sold/ available for download up to the tender closing date and time.
3. The tender documents, shall be priced minimally (if at all priced, refer Para 4.6.1 below), keeping in view the value of the tender as also the cost of preparation and publicity of the tender documents.
4. GTE tender documents must contain technical specifications which are in accordance with national requirements or else based on an international trade standard.
5. In Global Tender Enquiry, e-procurement may not be mandatorily insisted upon.
6. The due date fixed for opening of the tender shall be a minimum of four weeks from the date of advertisement, which may vary considering the complexity of the project as well as the time required to prepare the bids. The due date may be subsequently extended with the approval of the CA only to promote better competition and also considering the project delivery requirement.
7. For those works procurement that involve supply, installation, commissioning of an equipment, including civil works, Relevant INCOTERMS (presently 2020 version) should be included in the tender (Please refer to Para 6.9 of Manual for Procurement of Goods, 2024 for further reading on INCOTERMS 2020).
8. **Currency of Bidding**: 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[42], or a combination thereof. However, prices for goods, works, or services (including Agency Commission) performed or sourced in India must be quoted and paid for in Indian Rupees.

[42] 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.).

Indian bidders are required to quote in INR only. During the evaluation, all quoted prices are converted into Indian Rupees as per the procedure mentioned in para 6.4.6.

9. **Agency Commission:** The amount of Agency Commission, (normally not exceeding five percent) payable to the Indian Agent (who shall provide self-attested documentary evidence about their identity, business details to establish that they are a bonafide business and conform to regulations) should not be more than what is specified in the Agency agreement (a certified copy should be submitted along with the financial bid) between the bidder and the Indian Agent. Agency commission shall be paid by the Procuring Entity in India in equivalent Indian Rupees on satisfactory completion of the Project or supplies of Goods and Spares the Indian Agent will be required to submit a certificate along with their Agency Commission bill, confirming that the amount claimed as Agency Commission in the bill has been spent/will be spent, strictly to render services to the foreign Principal, in terms of the Agency Agreement. The Procuring Entity or their authorized agencies and/or any other authority of the Government of India shall have rights to examine the books of the Indian Agent and defects or misrepresentations in respect of the afore indicated confirmation coming to light during such examinations will make the foreign Principal (i.e. the Contractor) and their Indian Agent liable to be banned/suspended from having business dealings with the Purchaser, following laid down procedures for such banning/suspension of business dealings.

3.8.2 Restrictions on Global Tender up to Rs. 200 crores

1. No Global Tender Enquiry (GTE) shall be invited up to Rs. 200 crores[43] or such limit as may be prescribed by the Department of Expenditure from time to time.
2. In exceptional cases where the Ministry or Department feels that there are special reasons for inviting GTE, for tenders below such limit (including those in SLTE/ LTE mode, or on Single Tender basis), it may record its detailed justification and seek prior approval for relaxation from the Competent Authority specified by the Department of Expenditure.
   a) The agencies/subordinate offices under the administrative control of a Ministry/Department that require to float a Global Tender Enquiry (GTE) for procurement of works shall submit their applications and comments online through the GTE Portal under the e-Samiksha platform via https://esamiksha.gov.in/GTE_NFEProposalForm.aspx OR https://cabsec.gov.in/more/globaltenderenquiryproposal/ starting from 5th May 2022 and no physical application will be received.
   b) 'GTE portal', a user-friendly IT application under the e-Samiksha platform, was developed by Cabinet Secretariate[44]. For more details on this process, please refer to GTE Guidelines on the eSamiksha portal - GTE_Guidelines.pdf (esamiksha.gov.in)
3. Before sending the proposals for approvals of the Global Tenders, the following is to be ensured: -
   a) Domestic open tender must be floated to identify the domestic contractors for the Works for which approval is being sought for issuance of Global Tenders. In case, if the Ministry/ Department has not floated a domestic open tender after 15.05.2020 for the works to be procured through GTE, such proposals will not be entertained. The

[43]Rule 161 of GFR, 2017 Amended vide DoE OM No. F.12/17/2019-PPD dated 15.05.2020.
[44] Issued by Cabinet Secretariat vide ID No. 213/2/1/2021-C.A.IV dated 02.05.2022.

proposal must contain the details of domestic open tenders, issued after 15.05.2020. These details shall cover tender number, date of opening, number of offers received, details of offers received, reasons why domestic contractors were not considered etc.

b) The proposal must contain the details of deliberations with DPIIT/ relevant industrial bodies/ construction industries for identification of domestic contractors

(For exemptions/ clarifications for floating GTE even up to Rs 200 Crores please refer to para 4.3.2-4 of the Manual for Procurement of Goods, 2024. Note that GTE restrictions upto Rs. 200 crores is not applicable for PPP projects)

3.8.3 GTE - Risks and Mitigations.

Risks	**Mitigations**
a) Risks are same as in OTE	Same mitigation as in case of OTE also applies here.
b) The involvement of agents of foreign bidders in GTE procurements is also a major risk area.	For works procurement, procurements should preferably be made directly from the contractors. Either an agent on behalf of the foreign contractor or the foreign contractor directly could participate in the tender, but not both. Furthermore, in cases where agents participate in a tender on behalf of one contractor, they should not be allowed to quote on behalf of another contractor along with the first contractor. The commissions and scope of services to/by the agents should be explicit and transparent in the bids/contracts.

3.9 Pre-qualification Modes of procurement

Where the procurement is significantly complex, and the capability of the contractor crucial, for the successful performance of the contract, it may be necessary to ensure that there is competition only among bidders equally capable of performing the contract and incapable bidders don't queer the pitch by their low quality/ low price bids. In such a situation, a pre-qualification of bidders may be required to shortlist bidders who are equally capable of performing the contract. Evaluation of Techno-commercial and Financial bids is restricted to this shortlist only.

3.9.1 Pre-qualification Bidding (PQB)

1. In situations mentioned above, where the time, effort and money required from the bidder to participate in a tender is high, a two-phase pre-qualification bidding may be considered. Pre-qualification Bids (PQBs) should meet the norms of transparency, fairness, and maintenance of competition. Although there is a separate phase of PQB bidding, it's not semantically counted as a two-stage bidding.
2. In the first PQB phase, competent, qualified bidders are shortlisted by using a Pre-qualification Criterion (PQC covering - i) past experience of similar contracts, ii) performance capability and iii) financial strength). No Techno-commercial or Financial details are asked for in the first phase pf PQB. In the second phase, tender documents (Techno-commercial and Financial) are issued as usual through eProcurement/ ePublishing; bids only from shortlisted qualified bidders are evaluated, and others are rejected.

3. **Where PQB is not Desirable**: Since the two phase PQB system may strain the transparency principle and there is a heightened risk of Anti-competitive practices, two phase PQB should be done only as an exception under specified circumstances. *Hence, the procuring entities may lay down restricted powers to approve such modes at sufficiently high levels in SoPP.* It should not be a routine/ normal mode of procurement of works, and qualification criteria as part of a single/ two/ multiple envelopes system should suffice in such situations. PQB bidding as a separate phase is contraindicated in the following circumstances:
   a) Where procurement is being done through limited tender enquiries;
   b) Where the requirement is technically and commercially not complex enough that pre-qualification of the bidder is not crucial for the performance of the contract;
   c) Where the procurement is significantly complex and the time, effort and money required from the bidder to participate in a tender is not significant, clear-cut, fail-pass pre-qualification criteria can be specified in single-stage tendering (instead of two-phase tendering) as per para 3.9.2 below.
4. **Pre-qualification Criteria:** PQC should be unrestrictive enough not to leave out even one capable contractor. Otherwise, it can lead to higher goods/works/services prices. However, on the other hand, these criteria should be restrictive enough so as not to allow even one incapable contractor and thus vitiate fair competition for capable contractors to the detriment of the buyer's objectives. A misjudgement in either direction may be detrimental. Due consideration should be given while framing PQC to its effect on the adequacy of competition. PQC should 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 the quality or creditworthiness of the supplier. (please refer to para 1.11.3-9 of the Manual for Procurement of Goods, second edition, 2024). PQC should therefore be carefully decided for each procurement with the approval of competent authority (CA). It should be clarified in the PQB documents that bidders have to submit authenticated documents in support of qualification criteria. Specific criteria of 'pass' for each attribute will be as specified in the standard pre-qualification document. A bidder may be awarded more than one contract in a Tender if he: (a) meets the PQC of each of them; (b) demonstrates having the resources in respect of financial, personnel and equipment capabilities to meet the aggregate of the specified capabilities for each contract; and (c) has available bid capacity at the time of bidding, as calculated by formula in sub-para f) below, more than the total estimated cost of these works. The attributes PQC should cover inter-alia:
   a) **General Construction Experience: Annual Turnover**

      The applicant should have achieved minimum annual value of general construction work (as certified by Chartered Accountant, and at least 50(fifty) percent of which is from Engineering (Civil/ Electrical/ Mechanical as relevant to the work being procured) construction works, carried out in any of the year over a stated period (normally five to seven years, ending 31st March of previous year), calculated by applying an appropriate multiplier to the projected annual construction expenditure on the subject contract. The multiplier of 2 may be used, but for very large contracts should not be less than 1.5.

b) **Particular Construction Experience and Key Production Rates**

i) The applicant should have successfully completed or substantially completed similar works during last seven years ending last day of month previous to the one in which applications are invited should be either of the following: -

1) Three similar completed works costing not less than the amount equal to 40(forty) percent of the estimated cost; or

2) Two similar completed works costing not less than the amount equal to 50 (fifty) percent of the estimated cost; or

3) One similar completed work costing not less than the amount equal to 80 (eighty) percent of the estimated cost; and

3.1 "Substantially completed works "means an ongoing work in which payment equal to or more than 90% of the present contract value has been made to the contractor in that ongoing contract, and the work or a major part of it is in a usable condition for its intended purpose. No proceedings for termination on account of the contractor's default should be pending in such cases. The Engineer-in-Charge or the Employer shall issue a certificate of substantial completion containing two parts. Part -I shall contain both the financial value of the work executed and certified for payment as a percentage of total current contract value, and part-II shall contain 'certificate of functional completion of the work or a major part of it'. To remain valid for pre-qualification or tender evaluation, such certificates should have been issued within sixty days prior to the date of invitation of the tender.

3.2 The pre-qualification criteria specified in the tender document should neither be made very stringent nor very lax to restrict/ facilitate the entry of bidders. It is clarified that the guidelines issued are illustrative and the organizations may suitably modify these guidelines for specialized jobs/works, if considered necessary. However, it should be ensured that the PQ criteria are exhaustive, yet specific and there is fair competition. It should also be ensured that the PQ criteria are clearly stipulated in unambiguous terms in the bid documents.)

3.3 The similarity of work shall be pre-defined based on the physical size, complexity, methods/ technology and/ or other characteristics described, and scope of works. For contracts under which the applicant participated as a joint venture member or sub-contractor, only the applicant's share, by value, shall be considered to meet this requirement. For arriving at cost of similar work, the value of work executed shall be brought to current costing level by enhancing the actual value of work at simple rate of seven percent per annum, calculated from the date of completion to the date of Bid opening.

3.3 Public authorities should also keep the experience criteria broad based so that bidders with experience in similar nature of works in various sectors can participate.

ii) The applicant should also have achieved the minimum annual production value of the key construction activities (e.g. dredging, piling**,** or earthworks etc) stipulated.

c) **Financial Capabilities:**

The applicant should have:

i) access to or possess available liquid assets and other financial means (independent of any contractual advance payments) sufficient to meet the construction cash flow requirements for the subject contract, of the certain minimum amount specified.

ii) adequate sources of finance to meet the cash flow requirements of works currently in progress and for future contract commitments; and

iii) financial soundness as established by audited balance sheets and/ or financial statements. Average Annual Financial Turnover of the bidders during the last three years ending 31st March of the previous financial year should be at least 30% of the estimated cost.

iv) In the pre-qualification process for bidders, it's essential to consider the financial capacity not only of the primary bidder but also of any associated partners. The financial strength of associates will be considered during the evaluation. A valid experience certificate from private companies that are listed on major stock exchanges such as the Bombay Stock Exchange (BSE) or the National Stock Exchange (NSE) will be accepted as proof of capability. Additionally, the experience or qualifications contributed by subcontractors should represent no more than 5% of the total project cost. This ensures that the main bidder and their associates possess the predominant share of expertise and financial stability required for the project.

d) **Personnel Capabilities**

The applicant's key personnel, as listed in the pre-qualification document, should meet the requirements of qualification and experience specified. The pre-qualification criteria should, refer to a limited number of such key personnel, for instance, the project or contract manager and those superintendents working under the project manager who will be responsible for major components (for example, superintendents specialised in dredging, piling, or earthworks, as required for each particular project). Criteria of acceptability should be based on:

i) A minimum qualification related to the work, if considered desirable;

ii) A minimum number of years of experience in a similar position; and

iii) A minimum number of years of experience and/ or number of comparable projects carried out in a specified number of preceding years.

e) **Equipment Capabilities**

The applicant should own, or have assured access (through hire, lease, purchase agreement, other commercial means) to the specified key items of equipment, in full working order, and satisfy that, based on known commitments; it will be available for timely use on the proposed contract. The pass–fail criteria adopted should be limited only to those bulky or specialised items that are critical for the type of project to be implemented (say heavy lift cranes and piling barges, dredgers, asphalt mixing plants), and so on. Contractors may not own the specialised items of equipment and may rely on specialist sub-contractors or equipment–hire firms.

f) **Available Bid Capacity**

The bidder should possess the bidding capacity as calculated by the specified formula. The formula generally used is:

Available bid capacity = A x M x N -B, where

A = Maximum value of engineering (Civil/ Electrical/ Mechanical as relevant to work being procured) works executed in any one year during the last five years (updated at the current price level), considering the completed as well as works in progress.

M = Multiplier Factor (usually 1.5)

N = Number of years prescribed for completion of the work in question.

B = Value (updated at the current price level) of the existing commitments and ongoing works to be completed in the next 'N' years.

g) **Pre-qualification of JV**

JV members are “jointly and severally responsible and liable” in a contract. For pre-qualification, the JV should fulfil the criteria specified in the pre-qualification document. The attributes to be evaluated will be the same as for individual contractors; however, certain parameters up to the specified limits have to be essentially met by them collectively, some by the lead partner, and some by the other partner, as briefly described below:

i) Qualifying factors to be met collectively:
   1) annual turnover from construction;
   2) particular construction experience and key production rates;
   3) construction cash flow for the subject contract;
   4) personnel capabilities; and
   5) equipment capabilities.

ii) Qualifying factors for lead partner:
   1) Annual Turnover from Construction;
   2) particular construction experience;
   3) financial capability to meet cash flow requirement of subject contract –not less than of 50 (fifty) per cent of the respective limits prescribed in case of individual contractors may be accepted;
   4) adequate sources to meet financial commitments on other contracts;
   5) financial soundness.

iii) Qualifying factors for other partner: Same as for lead partner except that for the factors specified in (ii) (3) above, a lower limit of 25 (twenty-five) per cent may be accepted instead of 50 (fifty) per cent. A suggestive template for Qualification Criteria for Joint Ventures is placed at an Annexure 13 as used in certain large organisations.

h) **Disqualification**

Even if an applicant meets the eligibility criteria (Please refer Para 4.6.2 below) and PQC, he shall be subject to disqualification if he or any of the constituent partners is found to have:

i) made misleading or false representations in the forms, statements, affidavits and attachments submitted in proof of the qualification requirements; and/ or;

ii) Records of poor performance during the last five years, as on the date of application, such as abandoning the work, rescission of the contract for reasons which are attributable to non-performance of the contractor, inordinate delays in

completion, consistent history of litigation resulting in awards against the contractor or any of the constituents, or financial failure due to bankruptcy, and so on. The rescission of a contract of venture JV on account of reasons other than non-performance, such as the most experienced partner (major partner) of JV pulling out.

5. **Advertisement and Notification:** The invitation for the first phase PQB shall be processed (advertised, tender document preparation, publicity, evaluation, and so on) in the same manner as a normal GTE or OTE (as the situation calls for) tender, ensuring the widest possible coverage. The PQC and evaluation criteria should be clearly noted in the PQB documents. The PQB documents should also indicate a complete schedule of requirements for which this PQB is being done, including the work requirement to the extent possible. A minimum period of 3 weeks (4 weeks in case foreign bidders are also involved) may be allowed for the submission of PQBs. In the case of urgency duly approved by CA, the time limit may be reduced to 10 (ten) days.
6. **Evaluation:** At least in high-value and critical procurements, the credentials regarding experience and past performance submitted by the successful bidder may be verified as per pre-qualification criteria (PQC), as far as reasonably feasible, from the parties for whom work has been claimed to be done. The procuring entity shall evaluate the qualifications of bidders only in accordance with the PQC specified and shall give due publicity to the particulars of the bidders that are qualified on the relevant portals/ websites. Procuring Entity reserves its right to relax the condition of prior turnover and prior experience for start-up enterprises (MSME or otherwise) recognized by the Department for Industry & Internal Trade (DPIIT), subject to meeting quality & technical specifications. 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. Please refer to para 1.11-4, 4.2.6-4 and 6.4.1-1-b).
7. **Empanelment of contractors:** Public authorities may empanel/ register contractors of those specific goods and services which are required by them regularly. Performance of such empanelled contractors should be reviewed periodically. The list of registered contractors shall be updated on a regular basis. The category/ class of contractors may be upgraded/ downgraded, or contractors may be de-listed based on their performance. Empanelment of contractors shall be done in a fair and equitable manner, preferably online after giving due publicity. The practice of inviting bids for works tenders only from empanelled contractors may be confined to tenders up to certain threshold value, as decided by the project executing authorities.
8. **Subsequent Procurement Tender:** The pre-qualification shortlist shall be for a single subsequent procurement. In this subsequent procurement, bids are invited from these qualified bidders only, and all other bids may be treated as unsolicited offers, which are normally rejected. This second phase of the procurement process is handled as a normal two-envelope tender. The time gap between the pre-qualification approval and the floating of the linked main procurement tender should normally be less than six months.

3.9.2 Single Stage Pre-qualification

1. In the situation described in para 3.9.1 above, i.e., significantly complex procurement, the capability of the contractor is crucial, the necessity to ensure competition only among equally capable bidders, but where the time, effort and money required from the bidder to

participate in a tender is not very high, instead of a separate phase of Pre-Qualification bidding (as described in para 3.9.1 above), a clear-cut, fail-pass Pre-Qualification Criteria (PQC – please see para 3.9.1-4) above) can be asked to be submitted as the first (additional) envelope in a single-stage three envelopes system so that a bidder's risk of having his bid rejected on the grounds of qualifications is remote if he exercises due diligence. In eProcurement, separate files shall be uploaded by the bidder, mutatis mutandis.

2. Strictly speaking, this is not a pre-qualification but a post-qualification of bidders (i.e., after the techno-commercial and financial bids have been received). In respect of pre-qualification, in the first instance on the pre-announced bid opening date, only the PQB envelopes (also containing the EMD and other eligibility documents) are opened and evaluated to shortlist the responsive bidders who pass the Pre-qualification.
3. The rest of the procedure is the same as the two envelope systems (Techno-commercial and Financial Bids) for only qualified bidders. In e-procurement, the other two envelopes of unqualified bidders would remain encrypted and unopened. In off-line tenders, the other two envelopes of unqualified bidders are returned unopened to the respective bidders by registered acknowledgement due/reliable courier or any other mode with proof of delivery.

3.9.3 PQB Tendering –Risks and Mitigations

Risk	Mitigation
a) **Pre-qualification criteria:** PQB has the potential of getting misused or being applied without considering the restrictive nature of competition. PQC should be relevant to the quality requirements, and neither is very stringent nor very lax in restricting/facilitating the entry of bidders. These criteria should be clear, unambiguous, exhaustive, and yet specific. Also, there should be fair competition.	**Lay down** criteria when prequalification in single-stage or two-stage tendering is warranted. Also, model PQC criteria for diverse types of procurements should be laid down on the lines of para 3.9.1-4.
b) **Dangers of Anti-competitive bidding:** Since in a two-stage PQB, shortlisted bidders are announced, there is a heightened possibility of these bidders forming a cartel and quoting anti-competitive prices in the second stage of tendering.	Two-stage PQB should be done only in appropriately justified situations. Alternatively, a single-stage multiple envelope system may be used for prequalification, in which the chances of anti-competitive behaviour and cycle time are significantly lower.
c) **Two-phase PQB** is a time-consuming process.	
d) **Contentious and Disputes:** Both the successful and unsuccessful bidders tend to view the PQB process as a means for creating rights/ privileges/ entitlement for them by way of hair-splitting, contentious or viciously	In the PQC, a caveat against such tendencies may be included, asserting the right of the procuring agency to interpret the PQC on common usage of terminologies and phrases in public procurement instead of legalistic and hair-splitting judgements

legalistic interpretations of PQC criteria, disregarding the very rationale of the PQB and PQC.	and that their decision in this regard would be final.

3.10 Limited Tender Enquiry (LTE)

LTE[45] is a restricted competition procurement, where a pre-selected list of bidders (enlisted with the Procuring Entity along with those enlisted with other Public Works Organisations/ Works PSUs) is directly approached for bidding. Bids from uninvited bidders are treated as unsolicited and are normally not entertained, except in exceptional circumstances. However, Ministries/ Department should evolve a system by which request for registration/ enlistment of interested/ unsolicited firms should be decided before the bid in next round of tendering. *This mode provides a short and simple procedure but may not provide as good a VfM as in case of open tendering – still a good balance for procurements below a threshold.* LTE procedures should be the default mode of procurement when the estimated value of procurement is upto Rs 10 lakhs (Rupees Ten Lakh), or when limited numbers of tenderers are known to possess requisite skills, technology and resources, by reason of their high complex or specialized nature, or for works of a secret nature

3.10.1 Terms and Conditions

1. The panel of contractors in the list of enlisted/ registered contractors for the subject matter of procurement, to whom it is proposed to send tender documents shall be got approved from competent authority, before floating the tender.
2. In case the number of enlisted/ registered bidders for a work is large and unwieldy, a transparent system of rotation of invitation to bid may be used to keep the invited shortlist to a manageable number (say 8 to 12).
3. In the off-line tendering, copies of the tender documents should be sent free of cost (except in case of priced specifications/ drawings) directly by speed post/ courier/ e-mail to the firms which are enlisted bidders/ contractors. Further, Procuring Entity should also mandatorily publish its limited tender enquiries on GeM- Central Public Procurement Portal (GeM-CPPP). Apart from GeM- CPPP, the organisations should publish the tender enquiries on its own/ Department's or Ministry's web site.
4. The minimum number of bidders to whom LTE should be sent is more than three. In case less than three approved contractors are available, LTE may be sent to the available approved contractors with the approval of the CA, duly recording the reasons. Efforts should then be made to identify a higher number of approved contractors by the enlistment/ registration section to obtain more responsive bids on a competitive basis.
5. A simplified Tender Document with brief terms and conditions should be used, instead of a detailed Tender Document. In any case, all registered contractors, who normally are invited to quote in such limited tenders, have already acknowledged acceptance of "general conditions of contract" as part of the registration application, which is applicable to such procurements, in addition to these brief "terms and conditions" in LTE tender form. If necessary, specifications and drawings or any other document may be enclosed with the limited tender form.
6. In domestic tenders, any bid in foreign currency should be summarily rejected.

[45]Rule 162, GFR 2017

7. Since selected bidders are normally enlisted/ registered with the Procuring Entity, Bid Security/ EMD and Performance Security are normally not taken in LTE.

3.10.2 LTE - Risks and Mitigations

Risk	Mitigation
a) Major risk in this mode is that the demand may be artificially split to avoid OTE or higher -level approvals	The e-procurement portal may be programmed to raise an alert if the same item is attempted to be procured through LTE repeatedly. Audit should take up a larger percentage of cases in LTE for review.
b) There is a risk that LTE may not attract sufficient number of bids and sometimes there may be a single acceptable offer. c) This may be because of an insufficient database of enlisted/ known vendors. d) It could also be due to bid documents not reaching the targeted bidders – intentionally or otherwise. e) It could also be due to bidders not getting adequate time for submission of bids. f) On the other hand, unsolicited bidders may also quote – causing a transparency dilemma about consideration of such offers.	To ensure sufficient response, in addition to mails/emails to selected vendors, web-based publicity should be given for limited tenders, with suitable clarifications that unsolicited bids shall not be considered. Sufficient time should be allowed for the submission of bids, say two weeks. A shorter or longer period, if considered sufficient for the submission of bids, could be allowed if justified according to the urgency/ complexity of the requirement. Further, a limited or open tender that results in only one effective offer shall be treated as a single tender enquiry situation, with relevant powers of approval, etc. See para below for an insufficient database of vendors.
g) There is also a risk that the selection of vendors may not be transparent. At the evaluation stage, some invited bidders may be passed over on grounds of being ineligible/ unreliable. On the other hand, unsolicited bidders may also quote, causing a dilemma of transparency regarding the consideration of such offers.	Maintenance of a panel of registered suppliers for each subject matter of procurement is a sine-qua-non for LTE (Ref Rule 150 GFR 2017 and para 8.6 of this manual). Such panels of vendors should be reviewed every year to ensure an adequate number of registered suppliers. The panel should not be changed after the LTE tender has been published. All past successful vendors/ bidders should invariably be invited. In case it is proposed to exclude any registered/ approved vendor/ contractor from being shortlisted for inviting LTE, detailed reasons, such as failure in supply, should be duly recorded, and approval of the CA should be taken before exclusion. Bidders should be selected with due diligence to ensure that bidders who do not meet eligibility criteria are not shortlisted. At the evaluation stage, in LTE, passing over of a duly shortlisted bidder on

Risk	Mitigation
	grounds of poor past performance or eligibility may raise questions about transparency.

3.11 Special Limited Tender Enquiry (SLTE) for Procurements more than Rs. 10 (Rupees Ten) Lakh

SLTE mode is permissible in certain special circumstances for values higher than Rs. 10 lakh (Rupees Ten Lakh) (*Rule 139 (v) and 162 of GFR 2017*), where normally OTE should have been done. Powers to sanction procurement on an SLTE basis in such exceptional cases may be laid down in SoPP based on a certificate of urgency signed by the indentor. *This mode has the merit of being quicker, but the VfM obtained may be less than in the case of OTE; hence, it should be restricted to the following situations*:

a) The competent authority in the Ministry / Department certifies that there is an existing or prospective urgency for operational or technical requirements, and any additional expenditure involved by not procuring through advertised tender enquiry is justified in view of urgency. The Ministry/Department should also put on record the nature of the urgency and reasons why the procurement could not be anticipated earlier.
b) There are sufficient reasons to be recorded in writing by the competent authority, indicating that it will not be in the public interest to procure the works through advertised tender enquiry.
c) The sources of supply are definitely known, and the possibility of fresh source(s) beyond those being tapped is remote.
d) Government policy designates procurement from specific agencies.

3.11.1 Terms and Conditions

1. The tender process would be the same as in the case of a normal LTE described above. However, the tender documents are more detailed, as in the case of OTE.
2. The indentor should certify that there is an existing or prospective urgency for operational or technical requirements and that any additional expenditure involved by not procuring through an advertised tender enquiry is justified in view of urgency. The indentor should also put on record the nature of the urgency and reasons why the procurement could not be anticipated.
3. In domestic tenders, any bid in foreign currency should be summarily rejected.
4. Unlike LTE, Bid Security and Performance Security are taken in SLTE as in OTE tenders.

3.11.2 SLTE - Risks and Mitigations

Risk	Mitigation
Risks, as applicable in both LTE and OTE, are also applicable here. In addition, there is a risk that this mode may be used unjustifiably to avoid open tendering (OTE).	All mitigation strategies of LTE and OTE shall also apply here. In addition, the checks and balances systems should be tighter by way of enhanced and severely restricted delegation of powers for certification of urgency and approval of this mode of procurement. A system of reports from the authority signing the urgency certificate and

	post facto review of utilisation of received goods/works/services to tackle the expressed urgency may be laid down.

3.12 Single Tender Enquiry (STE) or Selection by Nomination

The selection by direct negotiation/ nomination is called a single tender[46]. *This mode may be shortest but since it may provide lesser VfM as compared to LTE/ OTE and may also strain the transparency principle, it should be resorted to only under following conditions*:

1. There is an urgent need for the work and engaging in competitive tendering process would, therefore, be impractical, provided that the circumstances giving rise to the urgency were neither foreseeable by procuring entity nor the result of dilatory conduct on its part.
2. Works that represent a natural continuation of previous work carried out by the firm when considering the limited size of the additional work in relation to the original procurement and the reasonableness of the price it will be cost effective to resort to single source procurement. However, the incremental work should not be more than 25 (twenty-five) percent of the original contract value;
3. In case of an emergency situation, situations arising after natural disasters, situations where timely completion of the work is of utmost importance subject to the reason for such decision being recorded and approval of the competent authority obtained.
4. Situations where execution of the work may involve use of proprietary techniques or only one contractor has requisite expertise.
5. The procurement entity engages in procurement involving national defence or national security and determines that single source procurement is the most appropriate method of procurement.
6. Under some special circumstances, it may become necessary to select a particular Agency where adequate justification is available for such single-source selection in the context of the overall interest of the Ministry or Department.

3.12.1 Terms and Conditions

1. The reasons for a STE and selection of a particular firm must be recorded and approved by the CA as per the delegation of powers laid down at in DFPR/ SoPP, prior to single tendering. It is to be understood that powers of procurement of STE are more restricted.
2. The Procuring Entity shall ensure fairness and equity and shall have a procedure in place to ensure that: the prices are reasonable and consistent with market rates for work of a similar nature; and the required work is not split into smaller sized procurements.
3. In case of Single Tender procurements:
   a) a report relating to such awards on nomination basis shall be submitted every quarter:
      i) The Secretary, in case of Ministries/Departments.
      ii) The Board of Directors or equivalent managing body, in case of Public Sector Undertakings, Public Sector Banks, Insurance companies, etc;
      iii) The Chief Executive of the organisation where such a managing body is not in existence.
   b) The audit committee or similar unit in the organisation may be required to check at least 10% of such cases.

[46]Rule 166, GFR 2017

3.12.2 STE - Risks and Mitigations

Risk	Mitigation
Risks as applicable in both LTE and OTE are also applicable here. In addition, there is a risk that this mode may be used unjustifiably to avoid open tendering (OTE), thereby making the selection of the contractor non-transparent and unjustified.	All mitigation strategies of LTE and OTE would apply here also. In addition, the systems of checks and balances should be tighter by way of enhanced and severely restricted delegation of powers in this regard for certification of urgency and approval of this mode of procurement. A system of reports from the authority signing the urgency certificate and post facto review of utilisation of executed works and receipt of incidental goods/ services to tackle the expressed urgency may be laid down. Audit should take up the bulk of such cases for review to judge the genuineness of urgency certification.

3.13 Award of Work through Quotations

1. Use of quotations up to Rs Five lakh in each instance shall be adopted for procurement of minor civil works like construction of boundary walls, installation of safety barriers or guardrails, repairing/ maintenance/ plumbing works etc. for which there is an established market. Procuring entity shall not divide its procurement into separate contracts to bring the amount less than the amount set forth for such purpose.
2. Procuring entity shall request quotations from as many contractors as practicable but positively from at least three contractors. Each contractor from whom a quotation is requested, shall be informed whether any elements and other than the charges for the works to be executed, such as, transportation and insurance charges, duties and taxes are to be included in the price.
3. Each contractor or contractor is permitted to give only one price quotation and is not permitted to change its quotation.
4. Award of work through quotations shall be resorted only in emergent cases and suitable reasons shall be recorded.

3.14 Award of works in stalled contracts

1. Where a contractor abandons or stops the work mid-way, either due to insolvency or a dispute or other reason, engagement of the new contractor takes considerable time and in the meanwhile public money is locked up in assets which cannot be utilized, apart from inconvenience and loss of amenities to the general public due to such half completed works.
2. Notwithstanding anything in the GFR or the Manual, procuring entities should devise methods (including limited/ single tenders) to deal with part completed contracts, wherever the work is abandoned by the contractor mid-way. However, for issuance of limited/single tenders in such cases, at least 20% of work should have been billed by the contractor who has abandoned the work. Procurement approval of such limited/single tender should be at the next higher level, or such level as may be prescribed.

.

Chapter 4: Bid Invitation Process

4.1 Tender Documents

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. All necessary provisions governing the contract should be clearly provided in the tender document. Examples are technical specifications, drawings, commercial terms and conditions including payment terms, obligations of the procuring entity and the contractor, timeframe/milestones for execution of the project, tax implications, compliance framework for statutory and other norms, reporting on progress/quality of the work, dispute resolution. Provisions/ clauses in the tender document should be clear, self-contained and comprehensive without any ambiguity, to avoid differences in interpretation and possible disputes, time overrun, cost overrun and quality compromises. Comprehensive survey & soil investigation report, area grading & mapping of underground facilities, where project is to be executed, may be made available and made part of tender document. 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. While tender document should be complete in themselves and may be slightly different for various categories of procurement, these must necessarily address the essential aspects mentioned below[47].
    a) Description of the subject matter of procurement, its specifications/ drawings including the quality/ nature/ quality assurance, quantity, time and location where the construction is to be effective, any incidental services to be performed;
    b) The facilities and the inputs which will be provided to the contractor by the Ministry/ Department;
    c) Limitation or preference for participation by bidders in terms of the Government policies;
    d) The procedure as well as date, time, and place for obtaining, submitting, and opening of the bids;
    e) The criteria for eligibility and qualification to be met by the bidder (the eligibility criteria should take care of the contractor's eligibility to receive such a government contract). The qualification criteria should take care of the contractor's past performance, experience, technical competence, financial strength to handle the contract successfully, compliance with environmental protection regulations/ Environment Management System and so on;
    f) Requirements as to documentary evidence, which must be submitted by contractors or contractors to demonstrate their qualifications;
    g) Suitable provisions for enabling a bidder to seek clarification/ question the bidding conditions, bidding process and/ or rejection of its bid. These provisions should include a time frame in which the procuring entity will address the bidder's questions;
    h) 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

[47] Rule 173 of GFR, 2017

the contract to the responsive, most advantageous (lowest/ highest[48] as the case may be) bidder should be clearly indicated in the bidding documents;

i) Commercial terms and conditions e.g., payment terms, tax implications, respective obligations of the procuring entity and the contractors, compliance framework for statutory and other norms. Provision of price variation wherever considered appropriate, as well as methodology for calculation of the same shall be clearly stipulated in the tender document;

j) Tender document should include a clause that "if a firm quotes NIL charges/ consideration, the bid shall be treated as unresponsive and will not be considered;"

k) Procedures for redressal of grievances or complaints from aggrieved bidders;

l) If applicable, Integrity Pact clause and format to be signed, shall be included;

m) Suitable provision for settlement of disputes, if any, emanating from the resultant contract, should be kept in the tender document; and

n) Essential terms of the procurement contract including a suitable clause mentioning that the resultant contract will be interpreted under Indian laws.

3. Procuring entities may issue instructions regarding appropriate delegation of authority for approval of the tender documents before these are floated/ uploaded.
4. Eligibility criteria specify the criteria that a bidder should meet to be considered a responsive bid to be evaluated further beyond the preliminary evaluation/ screening of bids. Please refer to para 6.3.6 below.
5. **Qualification Criteria**: 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. Qualification criteria should be clear and fair in 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 execution of works of a similar nature can participate. Appropriate parameters should be prescribed in the qualification criteria for bidders to enable the selection of the right type of bidders in the public interest, balancing considerations of quality, time, and cost. (please refer to para 6.4.1).
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 of workmanship, technical merit, aesthetic and functional characteristics, environmental characteristics, period of completion etc. No criteria shall be used for the evaluation of tenders that cannot be verified.
7. Open online tendering should be the default method to ensure efficiency of procurement.
8. The Procuring Entity should allow enough time to the bidders to prepare their proposals. The time allowed shall depend on the assignment but normally shall not be less than three weeks. In cases where participation of international contractors is contemplated, a period of not less than four weeks should normally be allowed.

[48] Highest, here refers to the selection of the contractor using the Quality and Cost Based Selection (QCBS) methodology, wherein the contractor securing highest marks by combining the technical and financial evaluation scores is identified as the Highest scorer or the H1 bidder, and is eligible for award of contract. Please refer to para 4.9.2 under this Manual for further clarity.

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 Works, or
   d) issue another tender for identical or similar works.

4.2 Preparation of Tender Documents

The bid documents must be based on relevant Standard Bidding Documents for the Type of Contract (Lump Sum, Item Rate etc); Estimated Value range, Bidding System (Single Envelope/ Two Envelope/ PQB) etc. SBD for e-procurement would be slightly different from the traditional SBD. To ensure uniformity, the standard provisions in most sections of the SBD are to be used unaltered. Any modification to suit a unique requirement of the specific procurement in these documents is to be done through variable sections such as Appendix to Instructions to Bidders or Special Conditions of Contract (these variable sections may have different nomenclatures in some organisations). Normally, if the organisation does not have its own SBD, it may follow those of other Public Works Organisation like CPWD. Before floating the tender, the Bid Document should be got approved by the competent authority. The contents of Bid Documents would therefore vary, but will generally comprise the following (some of these sections may be named or organised differently in some organisations):

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
g) Section VII: Drawing, Technical Specifications and Quality Assurance
h) Section VIII: Qualification and Evaluation Criteria
i) Submission forms and formats, including Bid Form (Cover letter), bank guarantees and contract format etc.
j) Financial Bid (BOQ Excel Sheet)

4.2.1 Notice Inviting Tender

1. The Notice Inviting Tender (NIT) has legal importance, since it is this part of tender document, which is soliciting offers from the bidders. The NIT should be used for publishing the tender notice.
2. 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 it decides to participate, how to go about it. To ensure competition, attention of all likely bidders, for example, registered contractors, past contractors, and other known potential contractors, should be invited to the NIT through email/ SMSs/ letters. In e-procurement, the website may be programmed to generate these alerts automatically.
3. In case of procurement through a limited tender, the NIT may be uploaded on GeM- 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 contractors. Unsolicited offers are liable to be ignored. However, contractors 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 may be taken 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.

4.2.2 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 response, 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 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 introduction/ overview of the contents of the tender document. It mentions the type of entities that may participate, specifically if Consortium/ JV are permitted to participate. 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. Instead of modifying ITB every time, any changes warranted by exceptional circumstances may be indicated with the prior approval of CA in 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.

4.2.3 General and Special Conditions of Contract

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 announcement of 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 may be included unchanged in every tender document. Conditions in SCC shall be need based and specific and the circumstances warranting them shall be duly considered, including but not limited to the following:

a) Where the wording in GCC specifically requires that further information is to be included in SCC and the conditions would not be complete without that information;
b) Where the wording in GCC indicates that supplementary information may be included in SCC, but the conditions would still be complete without that information;
c) Where the type, circumstances or locality of the works requires additional clauses or sub-clauses; and
d) Where the laws of the country, or exceptional circumstances, necessitate alterations in GCC. Such alterations are affected by stating in SCC that a particular clause, or

part of a clause in GCC, is deleted and giving the substitute clause or part, as applicable.

4.2.4 Schedule of Requirements

1. For works procurement, this section should detail the scope of work, including the description of the works to be undertaken, quantities, quality standards, site location, and delivery requirements/ milestones. If there are no separate sections on Technical Specifications (TS) and Quality Assurance (QA), these details should be incorporated here, specifying the standards and methodologies to be employed to ensure the works meet the required quality and performance criteria.
2. It should be clarified how the evaluation of eligibility, qualifications, and financial bids will be conducted—whether it will be done item-by-item, by lot, or for the entire scope of work. Additionally, if the procurement involves multiple lots or sections of work, it should be stated whether evaluations will be done on a lot-by-lot basis or based on the total of all lots or sections combined.
3. This ensures transparency and clarity in the procurement process, enabling bidders to understand the scope fully and submit their bids accordingly. It also facilitates the procuring entity in evaluating bids effectively and fairly, ensuring that the works are completed to the required standards and within the specified timeframes.
4. Identification of milestones may be done in an optimal and sequential manner and the same may be stipulated in the tender document along with enabling provisions.

4.2.5 Drawing, Technical Specifications and Quality Assurance Plan

1. Construction drawings, Technical Specifications and Quality Assurance Plan lay down the technical specifications and quality assurance requirements of the Works to be executed. It would also stipulate, if required, any compliance required by Central and State Pollution Control Boards. Also include following clause in the tender document:
2. The Bidder shall ensure that all products, services, platforms, infrastructure, and other deliverables under contract must comply with applicable accessibility standards and guidelines as notified under the Rights of Persons with Disabilities Act, 2016, and the Rights of Persons with Disabilities Rules, 2017 as amended, including but not limited to:
   a) Harmonised Guidelines and Standards for Universal Accessibility in India, issued by Ministry of Housing and Urban Affairs.
   b) IS 17802 (Part 1):2021 -Accessibility for ICT Products and Services Part I: Requirements; and IS 17802 (Part 2): 2022 -Accessibility for ICT Products and Services Part 2: Determination of Conformance issued by the Bureau of Indian Standards; and
   c) Any other relevant guidelines, notifications, or instructions time to time by Department of Empowerment of Persons with Ministry of Social Justice and Empowerment, Government of India.

4.2.6 Qualification Criteria

1. If it is intended to use qualification criteria to evaluate a tender and determine whether a bidder has the required qualifications to successfully perform the contract, this point may be clearly specified in ITB/AITB or as a separate section of the tender document. The bidder must ensure that he provides convincing proof of having fulfilled these criteria. Any *criteria not specified in the tender cannot be used for evaluation or qualification*.

2. Qualification of bidders is done on Pre-qualification Bidding basis (refer Para 3.9.1, PQB) or on post-qualification basis (refer Para 3.9.2, single stage multiple envelope system). In both cases Qualification criteria needs to be laid down in the Bid Document (refer para 3.9.1-4). Technical and Financial qualification Criteria for the bidders are important in the public procurement process. They shall be clear and fair, having regard to the specific circumstances of the procurement. Appropriate parameters should be prescribed in the qualification criteria for bidders, to enable selection of the right type of bidders in public interest, balancing considerations of quality, time and cost. Please refer to para 3.9.1-4 for details of qualification criteria as described in the context of pre-qualification, but the same is applicable to post-qualification also. In case of JVs, additional parameters are applicable in qualification criteria as mentioned in para 3.9.1-4-g.
3. **Entry Window for Sub-contractors in smaller contracts:** It is of utmost importance to develop new contractors and also to provide avenues to Sub-contractors, since they may not get opportunities to accumulate the required credentials to compete in normal tenders. To enable a window of entry for such sub-contractors, in small value contracts (e.g. repair contracts upto Rs. 60 lakh) the requirements regarding General Construction Experience, Particular Construction Experience and Available Bid Capacity may not be insisted upon provided the bidders fulfil other criteria regarding Financial/ Personnel/ Equipment capabilities. However, to avoid overstretching of their resources, no such contractors may be allowed to hold more than 2 contracts under relaxed credentials, at any given time.
4. **Relaxation for Start-ups:**
   a) The condition of prior turnover and prior experience may be relaxed[49] for Startups (only to startups recognized by Department of Industry & Internal Trade (DPIIT)) subject to meeting of quality & technical specifications and making suitable provisions in the tender document[50]. Startups may be MSMEs or otherwise
   b) 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 equipments, etc) where adequate justification exists for the Procuring Entity to not to relax such criteria. Please also refer to para 1.11-4, 3.9.1-6 and 6.4.1-1b).
5. **Demerged entities** (by virtue of a corporate restructuring exercise etc.) may be permitted to participate in the tender by using the credentials of original/ parent entity to satisfy the eligibility criteria in the tenders, at least, for initial five years from the incorporation of the demerged entities. Procuring entities may in suitable cases 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. Tender documents must clearly mention if the credentials of the demerged entity will be considered or not in the specific tender and may give the conditions under which demerged entities may become eligible[51].

4.2.7 Evaluation Criteria

1. These criteria can include the quality of work, cost considerations, technical excellence, as well as aesthetic and functional attributes of the proposed construction, aligning with the project's overall goals. Environmental considerations are also critical, reflecting the

[49] OM No.F.20/2/2014-PPD (Pt.) dated 20.09.2016.
[50] Rule 173 (i) of GFR, 2017
[51] Notified vide OM No. F.8/78/2023-PPD dated 12.10.2023

commitment to sustainability. Moreover, running costs, cost-effectiveness, and factors such as defect liability period (DLP), warranty period post-installation and commissioning, and long-term service agreements, are critical in safeguarding the procuring entity's interests, ensuring that any defects identified within a specified period post-completion are rectified at the contractor's expense, and that the project's integrity is maintained over time through warranty and service agreements. It's crucial that the evaluation criteria, including those for the defect liability and warranty periods as well as long-term service commitments, are tangible and verifiable. This ensures a transparent, equitable, and objective assessment process, enabling a holistic evaluation that considers not only the initial project execution but also its long-term sustainability, operational efficiency, and maintenance, thereby aligning with the project's objectives and the procuring entity's overarching requirements. The inclusion of the projected delivery date and completion timeline ensures the project adheres to strategic planning and timelines.

2. Conditional discounts, or discounts offered post tender opening, if any, shall not be considered during evaluation. However, such discounts shall be availed if the bidder becomes otherwise eligible for award of contract.

4.2.8 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.

4.2.9 Financial Bid (BOQ Excel Sheet):

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/ schedule of rates[52] to enable the system to automatically calculate all-inclusive price of a bid to generate a comparative tabulation of all bids. 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 Works to be performed, location of the bidder, location of the procuring entity, terms of delivery, applicable taxes, duties, permits, transportation, environment, and labour costs in accordance with the prevailing market rates and relevant regulations of India.

4.3 Uploading of Tender Documents: Mandatory e-Publishing

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 thereon and details of bid awards on the GeM- Central Public Procurement Portal (CPPP)[53]. If the department has its own website/ e-Procurement Portal, it should also publish all its advertised tender enquiries on such website/ Portal also. These instructions apply to all Tender Enquiries, Requests for Proposals, Requests for Expressions of Interest, Notice for pre-Qualification/ Registration or any other notice inviting bids or proposals in any form whether they are advertised, issued to limited number

[52] For reference CPWD **Schedule of Rates (SOR)** can be referred which serves as a comprehensive reference for construction projects. This schedule includes both basic rates and finished rates for various items of work and can be accessed from https://cpwd.gov.in/Documents/cpwd_publication.aspx
[53]Rule 159, GFR 2017

of parties or to a single party. These instructions would not apply to Works procurement through quotation.

2. Individual cases where confidentiality is required, for reasons of national security, would be exempted from the mandatory e-publishing requirement. The decision to exempt any case on the said grounds should be approved by the Secretary of the Ministry/ Department with the concurrence of the concerned Financial Advisor. In the case of Autonomous Bodies and Statutory Bodies' approval of the head of the body with the concurrence of the head of the finance should be obtained in each such case. Statistical information on the number of cases in which exemption was granted and the value of the concerned contract should be intimated on a Quarterly basis to the Ministry of Finance, Department of Expenditure.
3. In order to increase certainty in the procurement process, all Ministries/Departments shall fix days in every month for issuance of Notice Inviting Tender (NIT), and Tender Opening across various locations, divisions or levels. For example, the tenders may be released by the Ministries/Departments three times a month, i.e., on 10th, 20thand 30th of every month and the bid submission dates are so determined that bids are opened only on fixed scheduled dates, viz, 7th, 17thand 27th of every month. In case there are practical difficulties due to large volume of tenders in having fixed days across the whole organisation, the Ministries/Departments/CPSUs may decide to have region-wise, zone-wise, or division-wise fixed days for issuance of NIT and Opening of Tenders. For procurement of highly technological and complex works, tender submission dates may be extended by the Ministries/Departments/CPSUs in order to reply to queries in the pre-bid meetings or any other justifiable reason. For example, CPWD, which is a large procurer of works have region-wise fixed days for issuance of NITs and opening of tenders as per the following table:

Example 1: Fixation of Days by CPWD

Region	Days for Issuance of NITs	Days for Tender Opening
Delhi	Monday	Monday
Northern	Tuesday	Tuesday
Southern	Wednesday	Wednesday
Eastern	Thursday	Thursday
Western	Friday	Friday

Note:

1. One week in the case of works with estimated cost put to tender up to Rs.2 crore and two weeks in the case of works with estimated cost more than Rs.2 crore. If there is holiday on a particular day, the day of inviting/uploading NIT may be proposed to earlier day and opening of tender may be postponed to next day.

2. However, in case of exigencies of work, the Chief Engineer/Chief Project Manager or equivalent can allow to call and open tenders on another day instead of specific fixed days.

4.4 Amendment of Tender Documents[54]

1. 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 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

[54] Rule 173 (iii) of GFR 2017

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 4.5 below.

2. When the proposed amendment/ modification, substantially changes the procurement requirements, originally envisaged, significantly and/ or when insufficient time remains for the tenderers to respond to such amendments, the time and date of submission of tenders should also be extended suitably. Normally, the extended time duration shall be 21 days or consistent with original bid submission duration Depending on the circumstances, such an amendment may also need fresh publication of revised tender document following the same procedure as the original tender publication. This is crucial as the amendment may enable new bidder to meet the qualifying criteria and to ensure a level playing field.

4.5 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 justifiable request of bidder(s) or due to significant modification of tender documents (as per para 4.4 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 should not provide anybody, including the Procuring Entity, with the bid count before the tender opening time, even at their request. The e-Procurement portal may facilitate Procuring Entity to input minimum number of bids considered sufficient and the pre-specified number of days for automatic extension of bid opening (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 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 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). 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, tender is automatically extended, otherwise, it is not. E-Procurement portals shall update their systems accordingly.

4.6 Obtaining Tender Documents and Submitting Bids

4.6.1 Availability and Cost of Tender Documents[55]

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 date of opening of tenders) and this should be clearly indicated in the documents. The organization should also post the complete tender document in its web site and on GeM- CPPP to enable prospective tenderers to make use of the document downloaded from the web site. The advertisement for invitation of tenders should give complete web-address from where bid documents can be downloaded.
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 Procuring Entity's registered units (for relevant grades of work and monetary limit), have to submit/ upload scanned copies of documents in support of this exemption.

4.6.2 Participation of Bidders – Eligibility Criteria

1. 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 an Open/ Global Tender Enquiries. In the case of the Second Stage (of two Stage Bidding or PQB) or Limited Tenders, participation shall be open only to such bidders who have been previously shortlisted or specifically invited. All eligible bidders meeting the eligibility criteria as defined in ITB can participate in the tender.
2. **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).
3. For package size exceeding certain values [say - Rs. 10 (ten) crores], JV/C may be permitted to participate in the procurement of Works in specific situations where the credentials required are not likely to be available with an individual bidder. Joint Ventures may be allowed. Maximum number of partners in JV shall be limited (say – three). In case of JV, all the partners shall be jointly and severally liable for the successful completion of the work. Participation of JV/C is specifically discouraged in the case of Quality Oriented Procurement (QOP) with QCBS evaluation (Please refer to para 3.3.2-12, 3.9.1-4-g) and Annexure 13).
4. 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.
5. Submission of requisite Bid Security (or Bid Security Declaration, if allowed) or proof of exemption therefrom

[55] Rule 161 (v) of GFR 2017

6. free from Financial insolvency, Debarment, or Convictions;
7. A consistent history of litigation or arbitration by the bidder may result in disqualification;
8. **Restriction on participation as per Government Policies**:
   a) For Class-II Local Suppliers and Non-Local bidders as per the Make-in-India policy.
   b) Any bidder from a country sharing a land border with India (but not in development partnership with India), or any bidder (including Indian) having a Specified Transfer of Technology (ToT) arrangement with such a country, shall be eligible subject to certain conditions.
9. **Conflict of Interest among Bidders/ Agents**: 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 8.2.2-e). Such conflict of interest can lead to anti-competitive practices to the detriment of Procuring Entity's interests. The bidder shall be considered to have a conflict of interest in the tender process and execution of the resultant contract in the following situations:
   a) If its personnel have a close personal, financial, or business relationship[56] with 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.
   b) The bidder (or his allied firm[57]) provided services for the need assessment/ procurement planning[58] 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.

4.7 Pre-NIT and Pre-bid Conference[59]

1. **Pre-Notice Inviting Tender (NIT) Conference (Market Consultation)**: In complex and innovative procurement cases or where the procuring entity may not have the required knowledge to formulate tender provisions, a Pre-NIT conference (before finalising/ publishing NIT) may help the procuring entity in obtaining inputs from the industry. Such conferences should be widely publicised so that different potential contractors can attend[60]. All inputs received from the probable bidders in such conference shall be compiled/ minuted, and requirements finalised (with the approval of the Technical committee, if formed, by the competent authority). In a more complex, large, and green-field/ blue-sky project, Two-Stage Tendering (with EoI) would be more appropriate and transparent. (Please refer to para 3.4 above).

[56] Please refer to para 8.5 for clarification
[57] Please see definition in 'Procurement Glossary" section
[58] 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.
[59] Rule 173 (x) of GFR 2017
[60] Notified under para 9.2 vide OM No.F.1/1/2021-PPD issued by Department of Expenditure dated 29.10.2021

2. **Pre-bid Conference:** In case of turnkey contract(s) or contract(s) of special nature for procurement of sophisticated and costly work/ services/ equipment or wherever felt necessary, a suitable provision is to be kept in the tender documents for one or more pre-bid conference (after the NIT and Tender Documents have been published) , for clarifying issues and clearing doubts, if any, about the specifications and other allied technical/ commercial details.
   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 15 to 21 (fifteen to twenty-one) days of the 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 (7 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.
   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 authorization letter as per the specified format from their Company/ principals; otherwise, 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 of the conference. If required, a clarification letter and corrigendum to Tender Document (as per para 4.4) shall be issued, containing amendments of various provisions of the Tender Document, 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 (as per para 4.5)
3. **Site Visit:** The Bidder, at its own cost, responsibility and risk, may visit and examine the Site of Work and its surroundings and obtain all information that may be necessary for preparing the Bid and entering into a contract for the Works.

4.8 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 at least 5 days 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 4.5 above.

4.9 Withdraw/ Amendments / Modifications to Bids by Bidders

The bidder, after submitting its bid is permitted to substitute/ alter/modify it, superseding earlier bid, so long such revised bid is uploaded/ received duly sealed and marked like original bid, up to the deadline of submission of bids. Resubmission of a bid shall require uploading of all documents, including financial bid afresh. The system shall consider only the last bid submitted as the 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 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 6.2.6-3) below.

4.10 Sealing/ Marking of Bids in off-line Tenders

The tender document should indicate the manner of submission/ uploading of bids. In case of off-line tenders, total number of bid copies (for example, in duplicate or in triplicate, and so on) required to be submitted should also be indicated. 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.

4.11 Uploading/ Submission of Bids by Bidders

1. **Uploading Bids on the e-Procurement portal:** Different e-Procurement portals[61] 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 in the Portal. Bidder must comply with the conditions of the e-Procurement 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.

[61] 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).

d) Bids must be uploaded by the submission deadline 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, 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/ BOQ (excel format, Cover-2), 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, 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."

g) The date and time of the e-Procurement server clock, which is also displayed on the dashboard of the bidders, 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 e-Procurement Process.

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

i) Bidder must upload scanned copies of originals (or self-attested copies of originals – as specified). Bidder should ensure the clarity/ legibility of the scanned documents uploaded by him. The Procuring Entity reserves its right to call for verification 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 – 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 be obtained before the bid submission deadline at mentioned venue. Failure to do so is likely to result in the bid being rejected. If the office is closed on the deadline for 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 e-Procurement (except for originals of scanned copies as per sub-para above).

2. **Receipt and custody 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 and 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. 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.
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:** A self-attested scan of the original Bid Security/ Bid Securing Declaration (BSD) should be uploaded along with the bids. Bids not complying with these provisions shall be rejected. In off-line tenders, Bid Security or, if permitted, BSD must accompany the bid as per instructions in the Tender Document. Please refer para 5.1.1 below.

4.12 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 6.2.6 below for extension of Bid Validity Period)

4.13 Opening of Bids

1. The tender received by the procuring entity after the deadline for the submission of tender, shall not be opened and shall be returned to the contractors or contractors that submitted it. No submission is allowed in e-Procurement after the submission deadline.
2. Immediately after the deadline for bid submission, 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 Bid Opening Committee (BOC) shall comprise one officer each from the procuring entity and associated/ integrated finance.
3. In e-procurement, all tenders uploaded by tenderers are received, safeguarded and opened online on the portal. *(Please refer to Appendix 3 on e-Procurement of Manual for Procurement of Goods, 2024)*.
4. 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 are given at Annexure 3.

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 un-tampered. Late bids should be separately counted but kept aside and not opened. In the case of an advertised tender enquiry or limited tender enquiry, late bids (that is, bids received after the specified date and time for receipt of bids) should not be considered (Rule 165 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 in due course of time only for those firms that have technically qualified.

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. Blank pages, if any, should be crossed out across and 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 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, quoted price, terms of delivery, delivery period, discount, if any, whether EMD furnished or not, and any other special feature of the tender for the information of the representatives attending the tender opening. No clarifications by tenderers should be entertained or allowed to be recorded during the bid opening.

It should be understood that BOC has no authority to reject any tender at the tender opening stage.

g) Proper sealing and codification need to be done on reference samples as well for samples that accompany the bid[62]. 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.

i) A bid opening report containing the names of the tenderers (serial number wise), salient features of the tenders, as read out during the public opening of tenders, will be prepared by the tender opening officers, and duly signed by them along with the date and time. The tenders that have been opened, list of the representatives attending the tender opening, and bid opening report are to be handed over to the nominated procuring officer, and an acknowledgement obtained for him.

4.14 Transparency and Protecting Third-Party Rights of Bidders

1. Objectives of transparency in e-Procurement 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, a 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 if permissible under the RTI act.
3. Bidders may have genuine concern about their 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 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 e-Procurement 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.

4.15 Bidding Invitation Process- Risks and Mitigations

Risk	Mitigation
a) **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**.**
b) **When short lists are used**, the process of preparation of short lists may be non-	**Registration of bidders/contractors:** All major procuring Departments must keep a list of registered bidders for use in restricted

[62] Please note that as detailed in para 2.2.1-9 calling for a sample along with the bid for evaluation is strictly discouraged.

Risk	Mitigation
transparent and all eligible firms may not be included, and some ineligible firms may get included.	tendering. Publicise even restricted bids on your website. Bidders for LTE/ SLTE may be transparently selected with the approval of CA.
c) **Pre-qualification criteria:** PQB has the potential of getting misused or being applied without considering the restrictive nature of competition. PQC should be relevant to the quality requirements, and neither be very stringent nor very lax to restrict/facilitate the entry of bidders. These criteria should be clear, unambiguous, exhaustive, and yet specific. Also, there should be fair competition.	**Lay down** criteria when two stage tendering is warranted. Also lay down model PQC criteria for diverse types of procurements.
d) **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.
e) **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 5: Forms of Securities, Prices, Payment Terms and Price Variations

5.1 Forms of Security

5.1.1 Bid Security/ Earnest Money Deposit (EMD)[63]

1. To safeguard against a bidder's withdrawing 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[64].
2. The amount of bid security should ordinarily range between two (2) to five (5) per cent of the estimated value of the works 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. Bid security may be obtained in the form of insurance surety bonds[65], account payee demand draft, banker's cheque, or bank guarantee (including e-bank guarantee) [66] issued/ confirmed[67] by any of the Scheduled Banks (as defined in section 2(e) of the RBI Act 1934) or payment online in an acceptable form. In case the bid security is more than a threshold (Rupees five lakh) and in case of foreign bidders in GTE tenders, it may be in the form of a bank guarantee (in equivalent Foreign Exchange amount, in case of GTE) issued/ confirmed from any of the scheduled banks 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 from the competent authority, may consider asking Bidders to submit 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 performance security, or to sign the contract, before the deadline defined in the tender documents, it shall be considered as a violation of Code on Integrity and they shall be debarred for the time period 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, bidders that are currently registered, and will also continue to remain registered during the bid validity period with the concerned Ministry/ Department/ Procuring Entity. Registered Startups as recognized by the Department for Promotion of Industry and Internal Trade (DPIIT) (please refer to para 1.11 -4) are exempt from payment of EMD. In case the bidder falls into these categories, the bidder should furnish a certified

[63] Rule 170 of GFR 2017
[64]Notified vide OM No F.20/2/2014-PPD(Pt.) issued by Department of Expenditure dated 25.07.2017.
[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.1/1/2022-PPD issued by Department of Expenditure dated 02.02.2022.
[67] A bank guarantee merely advised by a scheduled bank is not acceptable, in lieu of being confirmed.

copy of its valid registration details. This exemption is valid for the monetary value of registration only.

6. A bidder's bid security shall be forfeited if the bidder withdraws or amends its bid 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 as soon as possible after the expiry of the final bid validity period and, at the latest, by the 30th day after the award of the contract. Bid security should be refunded to the successful bidder upon receipt of performance security. However, 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 the result of the first stage, i.e., technical evaluation, etc.[68]

5.1.2 Performance Guarantee[69]

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 ten (10) per cent of the value of the contract for works[70], as specified in the tender documents. . To ensure competition, in higher value tenders (say > Rs 50 Cr), performance security amount may be based on appropriate lower percentage from the band of 3% to 10%. The procuring Entity may, if considered justified, stipulate an upper ceiling on the performance security amount, in very large tenders. Procuring Entities are free to decide their own quantum for Performance Security, with the approval of Competent Authority and finance concurrence, based on their perception of performance risks vis- vis need for competition.
2. **Forms of Security**: Performance security may be furnished in the form of Insurance Surety Bond[71], account payee demand draft, bank guarantee (including e-bank guarantee[72] issued/ confirmed[73] from any of the scheduled banks in India, or online payment in an acceptable form, safeguarding the Procuring Entity'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 case of GTE tenders, the performance security should be in the same currency as the contract and must conform to Uniform Rules for Demand Guarantees (URDG 758) – an international convention regulating international securities[74].
4. Securities in the existing contracts in the 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 requiring prior submission of new forms of security before releasing the original forms of security should be ensured. *(For further*

[68]Notified vide OM No. F.1/2/2022-PPD issued by Department of Expenditure dated 01.04.2022.
[69] Rule 171 of GFR 2017
[70] Notified vide OM No. F/1/2/2023-PPD issued by Department of Expenditure dated 01.01.2024
[71]Notified vide OM No. F.1/1/2022-PPD issued by Department of Expenditure dated 02.02.2022
[72] Notified vide OM No. F.1/4/2022-PPD issued by Department of Expenditure dated 05.08.2022.
[73] A bank guarantee merely advised by a scheduled bank is not acceptable in lieu of being confirmed.
[74] 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.

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. Procuring Entity may exempt the following entities (on their specific requests or otherwise) from submission of Performance Security:
   a) [75] Government Ministries, Departments, Attached and Subordinate Offices, Autonomous bodies.
6. Performance Security is to be furnished by a specified date (generally 14 (fourteen) to 28 (twenty-eight) days after notification of the award) and it should remain valid for a period of 60 (sixty) days (or any other period mentioned in the tender document) beyond the date of completion of all contractual obligations of the contractor, including Defect Liability Period (DLP)/ Warranty period.
7. The performance security will be forfeited and credited to the procuring entity's account in the event of a breach of contract by the contractor. It should be refunded to the contractor without interest, after he duly performs and completes all obligations under the contract but not later than 60 (sixty, or any other period mentioned in the tender documents) days of completion of the Defect Liability Period (DLP)/ warranty period under the contract. The senior officers should monitor the return of Bid/ Performance Securities, 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.

5.1.3 Security Deposit/ Retention Money

In addition to Performance Security, Contracts for works usually provide for a percentage (usually five percent) of each running bill (periodic/ interim payment) to be withheld as Security Deposit/ retention money until final acceptance. The earnest money instead of being released may form part of the security deposit. The contractor may, at his option, replace the retention amount with an unconditional BG/ Insurance Surety Bonds from a bank acceptable to the Procuring Entity at the following stages:

a) After the amount reaches half the value of the limit of retention money; and
b) After the amount reaches the maximum limit of retention money. One-half of the retention money (or BG, which replaced retention money) shall be released on the issue of the taking-over certificate; if the Taking Over Certificates (TOCs) are issued in parts, then in such proportions as the engineer may determine, having regard to the value of such part or section. The other half of the retention money (or BG, which replaced the retention money) shall be released upon expiration of 60 (sixty, or any other period mentioned in the tender document) days after the DLP/ warranty period of the works or final payment, whichever is earlier, on certification by the engineer. In the event of different defect liability periods/ warranty period being applicable to different sections or parts or equipment incidental to works, the expiration of defect liability period/ warranty period shall be the latest of such periods.

5.1.4 Verification of Bank Guarantees

1. Bank Guarantees submitted by the bidders/ contractors as EMD/ Performance Securities need to be immediately verified from the issuing bank before acceptance. There may not be any need to get the Bank Guarantee vetted by legal/ finance authority if it is in the specified format. Guidelines for verification of BGs submitted by the bidders/ contractors

[75] There is no bar from taking Performance Security from CPSEs.

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 though 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-BG can be verified. (For further details on e-bank guarantee, please refer to para 6.1.4 of Manual for Procurement of Goods, 2024).

5.1.5 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 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 contractor for the purpose of extending the validity. Such a system of monitoring of securities and other instruments may be considered to be computerised with automatic alerts about lapse of validity etc.

5.1.6 Insurances and Indemnities

1. **Insurances**: In Works and Services Contracts, the Contractor must take insurances against vicarious liabilities that may arise for the procuring entity i.e. under labour laws and workmen compensation.
2. **Indemnity/ Indenture Bonds:**
   a) Procuring entity is potentially liable for injury, damage, or loss relating to third party due to actions by the contractor during execution of contract. Violation of laws and regulations (e.g. environmental issues) also may result in liabilities for the procuring entity. Procuring entity also needs to be protected against damage to its assets during contract execution. For such potential liabilities instead of insurance Indemnity Bond may suffice.
   b) Indemnity bonds are defined under Section 124 of the Indian Contracts Act. A Contract by which one party promises to indemnify the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person, is called a Contract of indemnity. It is also called Indenture Bond, especially in the context of secured advance payments in Works Contracts. An Indemnity Bond is a bond that is intended to provide financial reimbursement to the holder for any actual or claimed harm/ loss caused by the issuer's conduct or another person's conduct. In many cases this could be an alternative to a BG, especially where financial implication of default cannot be estimated. Some government departments (Forest, Mines, Geology, Environment, Traffic) may also ask for such bonds to allow a Contractor to carry out work related to their jurisdiction.
   c) The bond represents a Contract between the following:
      i) Issuer is legally required to obtain a bond.
      ii) Holder is the party that imposes the bonding. In some cases, as an added confidence, a third party ‘surety provider' (usually a bank) is added.
      iii) Surety (say a bank or the holding company of the issuer) guarantees the financial compensation if the issuer dithers or fails to guarantee.
   d) When getting indemnity bonds, the issuer signs an indemnity agreement with the surety provider, naming the holder as the beneficiary and submits it to the holder. It states that the full financial responsibility in case of bond claims belongs to the issuer rather than the surety. In case the issuer does not perform his obligations and dithers or fails to compensate the holder as per the indemnity bond, the only recourse is a civil case in the courts. Since this a long-drawn and expensive proposition, a BG is considered a safer option than an indemnity bond.

5.2 Payment Terms

1. **Variations in Works Contract:** Variations can include changes in the quantity, character, quality, or kind of work, changes in levels, lines, positions, and dimensions, additional work necessary for completion, and changes in the sequence or timing of construction. A written procedure must be part of the contract for issuing variation instructions. The Engineer needs prior approval from the Procuring Entity before instructing a variation, except in certain situations specified in the SCC. Variations are tracked using variations register. The register is updated monthly and summarised to keep all involved agencies informed. The Engineer must balance the risks of quick finalisation against the costs of delays. Variations involving extra costs are valued as per the contract's relevant clauses. The Engineer consults with the Procuring Entity and contractor to agree on suitable rates for

items beyond the SOR. The financial implications of variations are kept up to date, and any significant cost and time overruns due to deviations must be reported to the Procuring Entity.

2. **Measurement and Payment**: All items with financial value shall be recorded in Measurement Books (MB) or level field books to maintain a complete record of the work performed under the contract. Measurements and levels are taken and signed jointly by the designated official and the contractor. The contractor shall, without extra charge, provide all assistance with every appliance, labour and other things necessary for measurements and recording levels. The contractor shall not cover (or place it beyond reach) the work without written consent from the Procuring Entity, otherwise the contractor shall have to uncover it at their own expense, or they will not be paid for that work. Organisations are encouraged to implement Electronic Management Books (e-MBs) and integrate them with IT-based project monitoring systems.
3. **Interim Payments**: Payment provisions, including amounts to be paid, schedule of payments, and payment procedures, shall be indicated in Tender Document and also in the contract. Payment terms prescribed in the tender document should be such that the payment made to contractors at every stage is commensurate to quantum of work done, subject to any requirements for initial mobilisation. Each month, the contractor submits a statement showing the amounts they consider themselves entitled to. The engineer issues an Interim Payment Certificate (IPC) after verifying the quantity of work completed, reconciling field measurements, reviewing claims for extra work, checking retention amounts, and making price adjustments. Interim monthly payments are made based on the IPC, net of retentions, recovery of advances, and statutory deductions. Recording of measurements of any item of work in the measurement book and/ or its payment in the interim, on account or final bill shall not relieve the Contractor from liabilities from any over measurement or defects noticed till completion of the defects liability period, and IPC or final completion certificates issued are subject to modification this regard.
4. **Delay in Payments to Contractors**: Delays in eligible payments to contractors can lead to project delays, cost overruns, and disputes. Ad-hoc payments of at least 75% of the eligible running account bill must be made within 10 working days of bill submission. The remaining payment should be made within 28 working days. If payments are delayed beyond 10 working days, a written explanation must be submitted to the next higher authority within three working days. Public authorities may include a provision for interest payments (at the rate of interest in General Provident Fund) if bills are delayed by more than 30 working days.
5. **Final Bills**: The final bill must be submitted by the contractor in the same manner as interim bills within a specified time after the physical completion of work and the issuance of the Final Certificate of Completion (FCC) by the Department/Ministry. Payment is made after verifying the bill on the personal certificate of the officer-in-charge, who confirms that the work has been executed as per the contract specifications and industry standards. Final payment should be paid to the contractor within three months after completion of work.
6. **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 contractors' 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.

5.3 Advance Payments

5.3.1 Mobilisation Advance

1. If considered justified in certain specialized and capital-intensive works, Contract may provide for an interest-bearing mobilisation advance to be paid to the contractor exclusively for the costs of mobilisation at 10 (ten) per cent of the contract price on the provision by the contractor of an unconditional BG. Such BGs shall remain effective until the advance payment has been fully repaid, but the amount thereof shall be progressively reduced by the amount repaid by the contractor, as indicated in the interim payment certificates.
2. The aforesaid advance of 10 (ten) per cent may be paid in two instalments, each of five per cent. The first one may be paid on commencement of the work and provision by the contractor of the unconditional BG in respect of the advance. The second instalment may be paid on certification by the engineer of the contractor's having achieved a financial progress of 10 (ten) per cent of the contract price, as also provision of a BG by the contractor for this part of the advance. Mobilisation expenditure mentioned herein shall not include the margin money and bank commission, and so on, paid by the contractor for procurement of BGs against performance security and mobilisation advance.
3. Provision of mobilization advance should essentially be need-based. Suitable delegation of authority may be done in the Organisation to take decision for grant of the mobilisation advance, whether interest free or interest bearing.
4. Interest free mobilization advance may also be given wherever the situation warrants in specific cases, but it should be clearly stipulated in the tender document, and its recovery should be time based not linked with progress of work. This would ensure that even if the contractor is not executing the work or executing it at a slow pace, recovery of advance could commence and scope for misuse of such advance could be reduced.
5. Part 'Bank Guarantees' (BGs) against the mobilization advance should be taken in as many numbers as the proposed recovery instalments and should be equivalent to the amount of each instalment. This would ensure that at any point of time even if the contractor's money on account of work done is not available with the organization, recovery of such advance could be ensured by encashing the BG for the work supposed to be completed within a particular period of time.

6. There should be a clear stipulation of interest to be charged on delayed recoveries either due to the late submission of bill by the contractor or any other reason besides the reason giving rise to the encashment of BG, as stated above.
7. The amount of mobilization advance, interest to be charged, if any; its recovery schedule and any other relevant detail should be explicitly stipulated in the tendered document upfront.
8. Relevant format for BG should be provided in the tender document, which should be enforced strictly, and authenticity of such BGs should also be invariably verified from the issuing bank, confidentially and independently by the organization.
9. In case of 'Machinery and Equipment advance', insurance and hypothecation to the employer should be ensured.
10. Utilization certificate from the contractor for the mobilization advance should be obtained. Preferably, mobilization advance should be given in instalments, and subsequent instalments should be released after getting satisfactory utilization certificate from the contractor for the earlier instalment.

5.3.2 Plant, Machinery and shuttering Material Advance

1. Another interest-bearing advance of five per cent of the contract price, depending on the merits of the case, may be paid against the new key construction equipment purchased for the work and brought to the site, if so, provided in the Bid Documents and so requested by the contractor. The advance should normally not be more than 50 (fifty) percent of the depreciated cost of such plants and machinery should be hypothecated to the Govt., before the payment of advance is released. This advance shall be subject to the following conditions: (i) the contractor shall produce satisfactory proof of payment; (ii) such equipment is considered necessary by the engineer for the works; (iii) the equipment has been verified to have been brought to site; (iv) the contractor gives an undertaking on stamp paper that the equipment will work only on that job and will not be removed from the site without obtaining written approval from the engineer; and (v) the contractor furnishes a BG to cover the advance. No advance shall be admissible on equipment purchased under a hire purchase scheme/ financing arrangement or on hired equipment.
2. The rate of interest shall be stipulated in the bid documents (say 10 (ten) per cent per annum) or as may be notified by the Procuring Agency from time to time.
3. The repayment of advances shall be done through proportionate percentage deductions from running bill (periodic/ interim payment). The time of commencement of repayment, rate of deductions from interim payments, and time by which the advance should be fully repaid will be as specified in the contract.
4. All advances shall be used by the contractor exclusively for mobilisation expenditure, including the acquisition of construction-related plant and equipment. Should the contractor misappropriate any portion of the advance, it shall become due and payable immediately, and no further advance will be made to the contractor thereafter. In such cases, the contractor shall also be liable for appropriate action under the contract.

5.3.3 Secured Advance against Material brought to Site

1. Secured advance on the security of materials (which are not combustible, fragile or perishable in nature) brought to the site but not yet incorporated in the works will be made up to 75 (seventy-five) per cent of invoice value, or the 75 (seventy-five) per cent of the corresponding value of the materials determined on the basis of BOQ rates, whichever is

less, subject to the condition that their quantities are not excessive and shall be used within a period of 90 (ninety) days and subject to other stipulations in the contract. The contractor will be required to sign an indenture bond, hypothecating the goods to the procuring entity, and also be responsible for their safe custody. Before the advance is released, the procuring entity may inspect the site to ensure that the Contractor has safeguarded the materials against pilferage and deterioration. It may be ensured that the contractor has not taken any loan/ limit from banks against hypothecation of the materials against which the secured advance is claimed. An undertaking in this regard may also be taken from the contractor.

2. Generally, as per the provisions of the contracts, the contractors are required to submit proof of cost of materials and the delivery of material at site while claiming such advances. The stock register should be maintained from the commencement of the contract and, unless otherwise prescribed in the contracts, the stock, so considered for advance, should generally be only paid stock (and not brought on credit). Where the materials are supplied from a captive source of the contractor, the reasonableness of the valuation of such materials may be ensured.
3. The advance will be repaid from each succeeding running bill (periodic/ interim payment) to the extent materials for which advance has been previously paid have been incorporated into the works. In all cases, the repayment of the advance will be affected after expiry of a period of 120 days since payment of advance, whether the material is consumed in the work or not.

5.4 Price Variation

1. To the extent that full compensation for any rise or fall in costs to the contractor is not covered by the provisions of the contract, the unit rates and prices included in the contract shall be deemed to include amounts to cover the contingencies of such uncovered portion of rise or fall of costs.
2. If any statutory regulations or bye-laws come into force after submission of the bids, which cause additional or reduced cost to the contractor in the execution of the contract, such statutory additional or reduced cost (except which are covered in cost indices) shall be added or deducted from the contract price.
3. Provision of price variation wherever considered appropriate, as well as methodology for calculation of the same shall be clearly stipulated in the tender document. This will deal with rise and fall of the prices in construction materials, labour and other key inputs. However, this shall not be applicable in the contracts where period of completion is eighteen months or less. The provision of price variation clauses enables contractors to factor this reduced risk and quote more competitive prices.
4. Short-term contracts where the delivery/ completion period does not extend beyond 18 (eighteen) months should normally be concluded with a firm and price fixed by inviting tenders accordingly. However, even for shorter deliveries, the price adjustment [or Price Variation Clause (PVC)] may be stipulated for items with inputs (raw material, manpower, etc.), prone to short-term price volatility - especially for critical or high value works – otherwise there is a possibility of the contract failing or the purchaser having to pay a higher price if prices fall.
5. The price variation formulae may be based on weightages of the material/ labour/ Petroleum, Oils and Lubricants (POL) and cost indices/ base prices. Indices shall be

appropriate for their purpose and shall relate to the contractor's proposed source of supply of inputs on the basis of which his contract price shall have been computed.

6. Where it is decided to conclude the contract with a variable price, an appropriate clause incorporating, inter-alia, a suitable price variation formula should also be provided in the tender documents, to calculate the price variation between the base level and scheduled delivery date. It is best to proactively provide our own PVC in the tender document to discourage different bidders quoting different formulae and different base dates, which may lead to problems on bringing their prices on a common comparable footing.
7. The variations are to be calculated periodically by using indices published by Governments/ chambers of commerce/London Metal Exchange / any other neutral and fair source of indices. Suitable weights are to be assigned to the applicable elements, that is, fixed overheads and profits, material and labour in the price variation formula. If the delivery of works needs more than one raw material, the input cost of material may be further sub-divided for different categories of material, for which cost indices are published.
8. **The following are important elements of PVC**:
    a) The price agreed upon should specify the base date, that is, the month and year to which the price is linked to enable variations being calculated with reference to the price indices prevailing in that month and year. This base date should be a few weeks/ months (periods is called time-lag) prior to the last date of submission of bids when the last published price indices would be available. Time lag applies both for base date and date of supply, and must be specified in the Tender Documents;
    b) The price variation formula must also stipulate a minimum percentage of variation of the contract price, only above which the price variation will be admissible (for example, where the resultant increase is lower than, say, two per cent of the contract price, no price adjustment will be made in favour of the supplier);
    c) 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, price variation clause should provide for a ceiling (a percentage per annum or an overall ceiling or both, say 20%/ 25%) 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 Supplier 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;
    d) Where advance or stage payments are made there should be a further stipulation that no price variations will be admissible on such portions of the price, after the dates of such payment;
    e) Where deliveries are accepted beyond the scheduled delivery date subject to levy of liquidated damages as provided in the contract. The LD (if a percentage of the price) will be recoverable on the price as varied by the operation of the PVC;
    f) No upward price variation will be admissible beyond the original scheduled delivery date for defaults on the part of the supplier. However, a downward price variation would be availed by the purchaser as per the denial clause in the letter of extension of the delivery period;
    g) Price variation may be allowed beyond the original scheduled delivery date, by specific alteration of that date through an amendment to the contract in cases of force majeure or defaults by Government;

h) Where contract execution depends on imported (subject to customs duty and foreign exchange fluctuations) and/or locally sourced goods/ works/ services (subject to customs duty and foreign exchange fluctuations) and/or locally manufactured (subject to excise duty and other duties and taxes), the percentage and element of duties and taxes included in the price should be specifically stated, along with the selling rate of foreign exchange element taken into account in the calculation of the price of the imported item;

i) The clause should also contain the mode and terms of payment of the price variation admissible; and

j) The buyer should ensure a provision in the contract for the benefit of any reduction in the price in terms of the PVC being passed on to him;

k) An illustrative PVC clause is available in Annexure 5;

l) Care should be exercised in contracts providing for price variation to finalise the price before final payment is made, after obtaining data and documents in support of claims for escalation, if any. Where no such claims are submitted by the suppliers, an examination of whether there has been a downward trend in the cost, which the contractor may not bring out, is required. At any rate, an undertaking should be obtained from the contractor to the following effect in case it becomes necessary to make the final payment before he has submitted the required data/documents related to the PVC:

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

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

5.5 Statutory Taxes/ Duties/ Levies

Please note that Works is treated as Service, and GST rate would vary depending on type of work

5.5.1 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 works 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 Contractor:** Sometimes, the contractor, 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 contractor). The tender enquiry document and the contract are to contain suitable provisions for obtaining such refunds from the contractor.

a) Alternatively, a certificate may be taken from the contractor that the contractor 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 the delivery of the contracted Works taking place during the pendency of the contract unless such liability is expressly agreed to in terms of the contract.

5.5.2 Deduction of Income Tax, etc., from Payments

Deduction of applicable taxes at source from payments to contractors 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.

5.5.3 Statutory Variation:

Contracts may be affected by changes in statutory variations in taxes and duties, particularly GST. The Procuring Entity will allow relief or recovery, as the case may be, in accordance with the Statutory Variation Clause as detailed in Para 7.5.5, which governs the treatment of statutory variations in GST rates during the contract execution.

5.6 Recovery of Public Money from Contractor's Bill

Sometimes, requests are received from a different Ministry/ Department for withholding some payment of a contractor 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.

5.7 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 6: Evaluation of Bids and Award of Work

6.1 Bid Evaluation Process

6.1.1 Evaluation of Bids

The evaluation of bids is one of the most significant processes of procurement and must be transparent. All tenders are to be evaluated strictly on the basis of the terms and conditions incorporated in the tender document and those stipulated by the tenderers in their tenders. The Contracting Authority may include quality, price, technical merit, aesthetic and functional characteristics, environmental characteristics, running costs, cost- effectiveness, after-sales service and technical assistance, delivery date and delivery period or period of completion etc. No criteria shall be used for evaluation of tenders that cannot be verified or not stated in the contract, with the exception of provisions of laws in force. No hearsay information or hitherto undeclared condition should be brought in while evaluating the tenders. Similarly, no tender enquiry condition (especially the significant/ essential ones) should be overlooked/ relaxed while evaluating the tenders. The aim should be to ensure that no tenderer gets undue advantage at the cost of other tenderers and/ or at the cost of Procuring Entity.

6.1.2 Evaluation of 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.

6.1.3 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.

6.1.4 The Stages of Evaluation

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

6.1.5 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.

6.2 Composition and Role of Tender Committee (TC)

6.2.1 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 tenders 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. 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).

6.2.2 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 have been delegated.

6.2.3 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.

6.2.4 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.

6.2.5 Timely Processing of Tenders[76]

1. Delays in finalising procurement deprive the public of the intended benefits and results in lost revenues and cost over-run. Currently, the Ministries/Departments are generally awarding the contracts in 90 days from the date of tender opening for which the Ministries/Departments are asking for a validity of offer by the contractors for 90 days. In order to further shorten the period for award of contract, the Ministries/Departments should try to shorten the procurement decision period to 60 days from the date of opening of the tenders in most of the cases. Only in exceptional cases, like two packet/ two stage bidding the period may be extended. *However, in no case this time period should exceed 75 days.* The Ministries/ Departments may draw guidance from the arrangements made by CPWD, where the validity of tenders has been fixed in the following manner: -

Example 2: Maximum days for award of contract by CPWD

Procuring Officer	**Limit of procurement (in Rs. crore)**	**Maximum days for decision for award of contract**
Assistant Engineer	0.06	10 days
Executive Engineer	1.00	15 days
Superintending Engineer	10.00	30 days
Chief Engineer	30.00	45 days
Additional Director General and above	More than 30.00	60 days

2. Complete Time schedule of finalising the Tender process from the date of issuing the tender to date of issuing the contract, should be published in the Bid Documents. Every official in the chain of the procurement operation is accountable for 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 (Appendix 4 and 5). As a check, the proposed schedule of tender process may be printed on the inside cover of the Procurement File, where actual date of completion of various stages may be recorded.
3. It has been also noted that delay in decision making after opening of certain tenders is taking place because the Tender Committee (TC), wherever in place, are not meeting frequently. In order to ensure that most of the tenders are decided as per the new timelines as indicated in para above, (to be formally fixed individually by the concerned Ministries/Departments), it has been decided that the Ministries/Departments may notify at least one day of every week for the meeting of TC. Instructions may be issued by concerned organisation that on such pre-fixed days, no member of the TC shall normally take leave or proceed on tour etc.

6.2.6 Extension of Tender 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 tender validity period[77].
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

[76] Rule 174 (i) of GFR 2017
[77] Rule 174 (iii) of GFR 2017

may preferably request, before expiry of the original validity period, all the responsive tenderers to extend their tenders up to a specified period. While asking for such extension, the tenderers are also to be asked to extend their offers as it is, without any changes therein. They may also be requested to extend the validity of the EMD for the corresponding additional period (which is to be specified in the request). A tenderer may not agree to such a request, and this will not lead to forfeiture of its EMD. But the tenderers, who agree to extend the validity, are to do so without changing any terms, conditions, and so on, of their original tenders. Reasons for seeking extension of bid validity should be recorded by the procuring officers.

3. In case such refusal by tenderer(s) to extend validity (hereinafter called not-extended bids) or withdrawal of offer within validity as per para 4.9 above (hereinafter referred as withdrawn bids) if 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 Techno-commercial evaluation but before completion of financial bid evaluation, financial bid evaluation (including not-extended and withdrawn bids) shall be completed.
      i) If a withdrawn bid happens to be L-1 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), 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.
   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 6.4.5 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.

6.2.7 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 a sufficient number of bids and/ or after analysing the bids, ends up with only one responsive bid – a situation referred to as ‘Single Offer’. As per Rule 173 (xxi) of GFR, 2017 [explanation sub-para as per Rule 173 (xxi) of GFR, 2017], such situation of ‘Single Offer’ is to be treated as Single Tender. The contract may be placed on the ‘Single Offer’ bidder provided the quoted price is reasonable. However restricted powers of Single

tender mode of procurement would apply. Before retendering, the procuring entity is first to check whether, while floating/ issuing the enquiry, all necessary requirements and formalities such as standard conditions, industry friendly specification, wide publicity, sufficient time for bidding, and so on, were fulfilled. If not, a fresh enquiry is to be issued after rectifying the deficiencies. It has become a practice among some procuring entities to routinely assume that open tenders which result in single bids are not acceptable and to go for retender as a safe course of action. This is not correct. Re-bidding has costs: firstly, the actual costs of retendering; secondly the delay in execution of the work with consequent delay in the attainment of the purpose for which the procurement is being done; and thirdly the possibility that the re-bid may result in a higher bid. Lack of competition shall not be determined solely on the basis of the number of bidders. Even when only one bid is submitted, the process may be considered valid provided following conditions are satisfied:

   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

3. However, as far as delegation/ schedule of procurement powers (SoPP, refer to 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 enlist and bid in next round of tendering. However, under the following exceptional circumstances, these may be considered for acceptance at the next higher level of competency:
   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.

6.2.8 Tender Committee Recommendations/ Report

1. The TC has to make formal recommendations (Annexure 4) 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 that TC should spell out salient terms and conditions of the offer(s) recommended for acceptance. It should also be ensured by the TC that any deviation/ variation quoted by the contractor in his bid are not left un-deliberated and ruled upon in the TC; otherwise, there may be delay in acceptance of the contract by the contractor. These recommendations are submitted for approval to the tender accepting authority.
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 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.

6.3 Preliminary Examination

(Rule 189 GFR, 2017)

6.3.1 Unresponsive Tenders

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 initial scrutiny are:

a) The tender is not in the prescribed format or is unsigned or not signed as per the stipulations in the bid 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 laid down eligibility criteria (including compliance to Local Content, restrictions on land border countries, conflict of interest and other provisions of CIPP). In case procurement is on a limited tender basis or where procurement is restricted to enlisted/ 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 bidding document (for example, the tenderer has not agreed to give the required performance security). or
e) Against a schedule in the list of requirements in the tender enquiry, the tenderer has not quoted for the entire requirement as specified in that schedule (example: in a schedule, it has been stipulated that the tenderer will supply the equipment, install and commission it and also train the Procuring Entity's operators for operating the equipment. The tenderer has, however, quoted only for supply of the equipment).
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, is so stipulated in the Tender Document.
i) The bid has unresolved substantive deviations (please refer to para 6.3.4 below).

6.3.2 Non-conformities between Figures and Words

Sometimes, non-conformities/errors are also observed in responsive tenders between the quoted prices in figures and in words. This situation normally does not arise in case of e-Procurement. This should be taken care of in the manner indicated below:

a) If, 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;
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, as per para 6.3.5 below. If the bidder does not agree to Procuring Entity's observation, the tender is liable to be rejected.

6.3.3 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 *4.6.1* 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 between the original copy and other copies of the responsive bids. 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, this issue is also to be addressed with the bidder in the same manner as above, and subsequent actions shall be 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.

6.3.4 Deviations/ Reservations/ Omissions-Substantive or Minor

1. During the evaluation of Bids, the following definitions apply:
   a) "Deviation" is a departure from the requirements specified in the Tender Document;
   b) "Reservation" is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the Tender Document; and
   c) "Omission" is the failure to submit part, or all the information or documentation required in the Tender Document.
2. **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 a Minor deviation:
   a) which affects in any substantive way the scope or quality of the work;
   b) 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
   c) Whose rectification would unfairly affect the competitive position of other Bidders presenting substantively responsive Bids.
3. The decision of the Procuring Entity shall be final in this regard. Bids with substantive deviations shall be rejected as nonresponsive. However, bids with deviations may be accepted in the case of STE procurement with approval of Competent Financial Authority, with reasons recorded for accepting such deviations.
4. Variations and deviations and other offered benefits (techno-commercial or financial) above the scope of works specified in the Tender Document shall not influence evaluation

of Bids. If the bid is otherwise successful, such benefits shall be availed by the Procuring Entity, and these would become part of the contract.

5. 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 or non-submission of requisite number of copies of a document.
6. **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 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 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 6.3.5 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 non-responsive.

6.3.5 Clarification of Bids/ Shortfall Documents

1. During evaluation and comparison of bids, the Procuring Entity may, at its discretion, ask the bidder for clarifications to remove minor ambiguities or to confirm the authenticity of documents already submitted. The request for clarification shall be given in writing by registered/ speed post/ courier/ email, asking the bidder to respond by a specified date, mentioning therein that, if the tenderer does not comply or respond by the date, his tender will be liable to be rejected. Depending on the outcome, such tenders are to be ignored or considered further. No change in prices or substance of the bid including specifications, 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, to seek any shortfall information/ documents only in case of historical documents which pre-existed at the time of the tender opening, and which have not undergone change since then and does not grant any undue advantage to any bidder. Provision may be made by e-Procurement portals for requesting Short-fall documents from the bidders. The system may further allow shortfall documents to be taken from any bidders only once after the technical bid opening. (Example: if the Permanent Account Number, registration with GST has been asked to be submitted and the tenderer has not provided them, these documents may be asked for with a target date as above). As far as the submission of documents is concerned regarding qualification criteria, after submission of the tender, only related shortfall documents should be asked for and considered. For example, if the bidder has submitted a contract without its completion/ performance certificate, the evaluation team may request the bidder to furnish such certificate. However, only documents that were already in existence prior to the bid submission deadline shall be considered for this purpose. And no new certificate or contract should be asked for so as to qualify the bidder.
3. Certificates or supporting documents created, signed, or issued after the date of bid opening shall not be accepted, even if they purport to certify historical facts. This restriction is necessary to prevent post-facto manipulation of records and to ensure a fair, transparent, and auditable evaluation process. Bidders are, therefore, advised to ensure

that all required certificates and supporting documents are collected in advance and enclosed with their bids.

6.3.6 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.

6.4 Evaluation of Responsive Bids

1. Only substantively responsive bids shall be evaluated further.
2. All responsive bids are evaluated by the TC with a view to select the lowest (L1) bidder or the highest (H1) scorer bidder (when the evaluation is done using the QCBS methodology, please refer to para below), who meets the qualification criteria and techno-commercial aspects.
3. In case of single stage, single envelope tendering, the evaluation of qualification of bidders, as well as technical, commercial and financial aspect is done simultaneously.
4. In single stage multiple envelopes, initially only the techno-commercial bids would be opened and evaluated for bids that successfully meet the qualification criteria and techno-commercial aspects. Financial bids of such successful bidders would only be opened for selecting the L1 bidder among these, and in the case of off-line tenders, financial bids of unsuccessful bidders would be returned unopened to them. In the case of QCBS system of evaluation (refer to para below), financial bids of only those bidders are opened for evaluation that have scored the minimum technical cut-off marks, as specified in the tender documents. It is of utmost importance that the authenticity, integrity, and sanctity of unopened Financial Bids must be ensured before their opening. In off-line tenders, all the financial bids may preferably be put in a large envelope, which may be dated, sealed, and signed (including by some of the bidders present) to show that none of the bids were accessed during the custody.
5. In two stage bids, the PQB/ EOI stage would have already been evaluated as detailed in Chapter 3 and this second stage is for evaluation of responses from the shortlisted qualified bidders. Evaluation of techno-commercial and financial aspects are, however, discussed separately below.

6.4.1 Evaluation of Eligible Techno-commercial Bids

1. **Evaluation of qualification Criteria**:
   a) In evaluation of the techno-commercial bid, conformity of the qualification, technical and commercial conditions to those in the bid document is ascertained. Additional factors, if any, incorporated in the tender documents may also be considered in the manner indicated therein. This determination will, inter-alia, consider the bidder's financial, technical capability to satisfy all Procuring Entity's requirements as incorporated in the tender document. Such determination of qualification criteria shall be based upon scrutiny and examination of all relevant data and details submitted by the bidder in its bid, as well as such other allied information as deemed appropriate by the Procuring Entity. The determination shall not consider the qualifications of other firms such as the Bidder's subsidiaries, parent entities, allied firms, subcontractors (other than specialized subcontractors if permitted in the bidding document), or any other firm(s) different from the Bidder.

b) As per paras 1.11-4, 3.9.1-6 and 4.2.6-4, Procuring Entity reserves its right to relax the condition of prior turnover and prior experience for start-up enterprises[78] (MSME or otherwise) recognized by the Department for Industry & Internal Trade (DPIIT), subject to meeting quality & technical specifications (only to startups recognized by the Department of Industry & Internal Trade (DPIIT)), subject to meeting quality & technical specifications. 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.

2. **Evaluation of Technical Suitability:** The description, specifications, drawings and other technical terms and conditions are examined by TC in general and technical member(s) of the TC in particular. Nobody outside the TC should be allowed to determine this evaluation. Even if an external expert's advice and report is obtained, it is still the responsibility of the technical member(s) in particular and the TC in general to accept/ reject or modify the evaluation contained in such a report/ evaluation. The tender document should clearly state whether alternative offers/ makes/ models would be considered or not and, in the absence of an express statement to the effect, these should not be allowed. An important document is the exceptions/ deviation form submitted by the bidder. It is important to judge whether an exception/ deviation is minor or major. Minor exceptions/ deviations may be waived following the criteria laid down in para 6.3.4-6 above.
3. **Evaluation of Commercial Conditions:** 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 the Bidder to confirm that all terms and conditions specified in the Tender Document have been accepted without substantive omissions/ reservations/ exceptions/ 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 it 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 6.3.4-2 above.
4. **Declaration of Techno-commercially Suitable Bidders:** In a single envelop/ cover tender, TC proceeds to evaluate the price aspects without a reference to CA at this stage. However, in case of a multiple envelope tender, the TC prepares a recommendation of techno-commercial bid (Annexure 4) to declare successful bidders. 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 acceptability. The CA may ask the TC to explain the report but should not request that evaluation 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 shall be retained until completion of the project and its audit. In such cases, after the approval of CA, the results

[78] Notified vide OM No.F.20/2/2014-PPD (Pt.) issued by Department of Expenditure dated 20.09.2016.

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 5.1.1. 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.

6.4.2 Evaluation of Financial Bids and Ranking of Tenders in General

1. The financial proposals shall be opened publicly (as per para 4.13 mutatis mutandis) witnessed by representatives of the technically qualified contractors 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. **Unresponsive Tenders:** Unresponsive tenders may again be identified after Financial Bid opening, as in case of Technical Bid opening. Unless otherwise stipulated, evaluation of the financial bids shall be on the price criteria only. If the price bid is ambiguous so that it may very well lead to two equally valid total price amounts, then the bid should be treated as unresponsive.
3. **Ranking of Bids:** Financial Bids of all Techno-commercially suitable bids are evaluated and ranked to determine the lowest priced bidder (except in case of QCBS selection – para 6.4.5 below), based on the total outgo from the buyer's pocket (including GST, transportation, agency commission, insurance, price of incidental goods/ services etc. as applicable. For CPSE availing Input Tax Credit, the price shall be "Net of GST", considering the Input Tax Credit on the GST portion to be availed by the CPSE.
4. **Correction of Bids:** Tender document should indicate that the evaluated bid prices will be adjusted after considering: (a) correction for errors; (b) adjustments for any acceptable variations, deviations; and (c) adjustments to reflect any discounts or other modifications offered. Unless announced beforehand explicitly in the tender documents, the quoted price should not be loaded on the basis of deviations in the commercial conditions. If it is decided to incorporate such clauses, these should be unambiguous and clear – and thereafter, there should be no relaxation during evaluation. Variations, deviations, or alternative offers and other factors which are in excess of the bidding documents or otherwise result in unsolicited benefits for the contractor should not be considered in bid evaluation. All duties, taxes and other levies payable by the bidder under the contract or for any other cause shall be included in the rates, prices and total bid prices, and considered in evaluation of bids. Bids should be checked for any arithmetical errors. These corrections shall be done in accordance with the provisions of the bidding document. In cases other than e-Procurement, the quoted rates in the bids shall be protected with lamination by the committee, if not done by the bidders. In accordance with the corrections as approved by the TC, the amount stated in the bid will be adjusted with the concurrence of the bidder and shall be binding on him. If the bidder does not accept the corrected amount, the bid will be rejected and the bid security forfeited. The arithmetical corrections will be done by the representatives of the Finance Division and the concerned (technical) division in the committee.
5. As per the policies of the Government from time to time, the purchaser reserves his option to give price/ purchase preferences as indicated in the tender document.

6. **Price Variation:** If the tenders have been invited on a variable price basis, the tenders will be evaluated, compared, and ranked based on the positions prevailing on the deadline of bid submission and not on any future date. The components that may lead to variable price includes fuel, steel, raw material etc. If a tenderer submits a firm price quotation against the requirement of variable price quotation, that bid shall be prima-facie acceptable and considered further, taking price variation asked for by Bidder as nil.
7. **Financial Evaluation:** All responsive bids are evaluated by the TC with a view to select the lowest (L1) bidder - the lowest evaluated, substantially responsive, bid which meets the eligibility/ qualification criteria and techno-commercial aspects. Where QCBS system of evaluation has been selected in works procurement, all responsive bids are evaluated by the TC with a view to select the highest (H1) scoring bidder (combined technical and financial scores) who is substantially responsive, meets the eligibility/ qualification criteria/ techno-commercial aspects for placement of contract.
8. **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. 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, in such cases 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 for Promotion of Industry and Internal Trade (DPIIT).
9. Sometimes, certain bidders offer suo motu discounts/ rebates after the opening of the tender (techno-commercial or financial). Such discounts/ rebates should not be considered for ranking the offer, but if such a firm does become L1 at its original offer, such suo motu discounts/ rebates must be incorporated in the contracts. This also applies to conditional rebates, for example, rebates for faster payments, and so on;

6.4.3 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 Contractors to the competent finance authority along with the recommendation that the least cost proposal (L-1) can be approved/ invited for negotiation and for final award of contract.

6.4.4 Single Source Selection (SSS)

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

6.4.5 Evaluation using Quality-cum-cost based Selection (QCBS) in Works Procurement

1. Please refer to para 3.3.2, for the conditions permitted, for the use of QCBS selection in procurement of Works. The 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 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 QCBS system in procurement of Works. (Please refer to para 3.3.2 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 in Works.

c) **Weightages:** As mentioned in para 3.3.2 above, the proposed weightages for quality and cost shall be specified in the Tender. Under QCB 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 3.3.2, 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 Works 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 mark 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 contractor 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 (rounded up to two decimal points):

Normalized Technical Score $Ts = (T * 100)/Thigh$

Normalized Financial Score $Fs = (Clow * 100)/C$

Evaluated Combined Bid Score $B = Fs * (1 - W) + Ts * W$

where

C= Evaluated Bid Price

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

T= the total Technical Marks awarded to the Bid

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

Ts= *Normalized Technical Score*

Fs= *Normalized Financial Score*

W= weightage for the Technical as specified in the AITB/BDS

B= *Evaluated Combined Bid Score*

i) The Bid with the best evaluated combined 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 contractor, 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: 80 Marks

B: 75 Marks

C: 90 Marks

ii) The minimum qualifying marks were 75 (Seventy-five) thus, all the three proposals were found technically suitable. The following normalized technical score are awarded by the evaluation committee:

A: 80*100/90 = 88.89 points

B: 75*100/90 = 83.33 points

C: 90*100/90 = 100.00 points

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

A: Rs.120.

B: Rs.100.

C: Rs.105.

iv) The committee gave them the following normalized financial score to the Bids:

A: 100*100/120 = 83.33 points

B: 100*100/100 = 100.00 points

C: 100*100/105 = 95.24 points

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

A: 88.89x0.30 + 83.33x0.70 = 85.00 points.

B: 83.33x0.30 + 100.00x0.70 = 95.00 points

C: 100.00x0.30 + 95.24x0.70 = 96.67 points.

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

Bid A: 85.00 points: H-3

Bid B: 95.00 points: H-2

Bid C: 96.67 points: H-1

vii) Bid C at the evaluated cost of Rs.105 (Rupees One hundred and Five, second lowest bid) was, therefore, declared as winner and recommended for approval, to the competent authority.

6.4.6 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:

a) **Currency of Tender**: In GTE tenders, foreign bidders have the flexibility to quote prices and receive payments in either Indian Rupees or freely convertible currencies such as US Dollar, Euros, Pound Sterling, Yen, other relevant currencies[79], or a combination thereof. However, prices for incidental goods/ services (including Agency Commission) performed or sourced in India must be quoted and pad 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.

b) **Evaluation of Offers:** Import of Goods or services or both, for execution of works or those that are incidental to the works execution, attracts integrated tax (IGST). The IGST rate and GST cess shall be applicable on the 'Custom Assessable Value' plus the 'Basic Customs duty applicable thereon.' The offers would be compared based on the principle of the total outgo from Procuring Entity's pockets, including all applicable taxes and duties (Customs duty, IGST, and GST Cess).

c) **Agency Commission to the contractor:** Provisions contained in para 4.3.1-9 of the Manual for Procurement of Goods, 2024 maybe followed.

6.4.7 Reasonableness of Prices

1. In every recommendation of the TC for award of contract, it must be declared that the rates recommended are reasonable. The comparison maybe made with the similar contracts awarded elsewhere. If the rates received are considered abnormally ow or unreasonably high, action may be taken as per para 6.4.8 and 6.4.10 respectively, reject any or all Bids, abandon/ cancel the tender process and issue another tender for the works. In case cartel is suspected action as per para 6.4.9 may be taken.
2. 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. Where there is no estimated cost, a comparison with Last Purchase Price (LPP-the price paid in the latest successful contract) is the basis for judging reasonableness of rates. The following points may be kept in mind before LPP is relied upon as a basis for justifying rate reasonableness:
   a) The basic price, taxes, etc. should be indicated separately;

[79] 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.).

b) Where the firm holding the LPP contract has defaulted, the fact should be highlighted and the price paid against the latest contract placed prior to the defaulting LPP contract, where works have been executed and completed, should be used;

c) Where the work is yet to start against the LPP contract, it should be taken as LPP with caution, especially if the contractor is new, the price paid against the previous contract may also be kept in view;

d) Where the price indicated in the LPP is subject to variation or if it is more than a year old, the updated price or as computed in case of the Price Variation Clause (PVC) may also be indicated;

e) It is natural to have marginal differences in prices obtained at different cities/offices for the same work, due to their different circumstances. The prices obtained are greatly influenced by geographical conditions, available labour, completion period, terms of the contract, these may be kept in view; and

f) Prices paid in emergencies or prices offered in a distress work completion are not accurate guidelines for future use. Such contracts and TC proceedings should indicate that "these prices are not valid LPP for comparison in future procurement.

6.4.8 Consideration of Abnormally Low Bids

1. An Abnormally Low Bid is one in which the Bid price, in combination with other elements of the Bid, appears so low that it raises material concerns as to the capability of the Bidder to perform the contract at the offered price. Procuring Entity may in such cases seek written clarifications from the Bidder, including detailed price analyses of its Bid price in relation to scope, schedule, resource mobilization, allocation of risks and responsibilities, and any other requirements of the tender 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 the 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 preparing the drawings, formulating specifications at the time tender preparation 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[80].
3. No provisions should be kept in the tender document regarding the 'Additional Security Deposit/ Bank Guarantee (BG)' in the 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 to the Ministry/ Department, whichever is lower[81].

6.4.9 Cartel Formation/ Pool Rates

1. Sometimes a cartel of tenderers quotes the equal/ marginally different rates (pool rates) against a works tender whereas possibly:

[80] In reference to OM No.F.12/17/2019-PPD issued by Department of Expenditure dated 06.02.2020
[81] Notified vide OM No. F.9/4/2020-PPD issued by Department of Expenditure dated 12.11.2020.

a) **Quoted Prices and Scope of Works:** Prices quoted (and their detailed breakdowns) are suspiciously similar, despite significant differences in the proposed approach to completing the works. This could indicate a lack of competition or potential collusion among bidders. Look for variations in methodologies, materials, or timelines that could justify price differences.
b) The rates quoted by two or more bidders 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 as L1, L2, L3 etc.
d) **Unexplained Similarities in Bids:** Bids from different contractors exhibit unusual similarities beyond pricing. This might include identical typos, grammatical errors, formatting, or even the use of uncommon terminology. These similarities could indicate collusion or a lack of independent effort in preparing bids.

2. In case this rate is unreasonably high, this may be an attempt to force acceptance of higher rates by undermining negotiating power of the purchaser as per rules.
3. Such pool/ cartel formation is against the basic principle of transparency and competitive bidding in public procurement and is a violation of the code of Integrity in Public Procurement. Such and similar tactics to avoid/ control true competition in a tender leading to "appreciable adverse effect on competition" have been declared as an offence under the Competition Act, 2002, as amended by the Competition (Amendment) Act, 2007.
4. Such practices needs to be severely discouraged with strong measures. In case of evidence of cartel formation, detailed cost analysis may be done by associating experts if necessary. Besides, suitable administrative actions can be resorted to, such as rejecting the offers, reporting the matter to trade associations, the Competition Commission etc., and requesting them, inter-alia, to take suitable strong actions against such firms. New firms may also be encouraged to get themselves enlisted for the subject works to break the monopolistic attitude of the firms forming a cartel. Changes in the mode of procurement (post qualification instead of pre-qualification) and packaging/ slicing of the work may also be tried.
5. Procuring entity may add the following conditions posing as a warning to discourage the bidders from indulging in such practices:
    a) For those works procurements, where schedules or division of work is possible, the bidders must bid for at least a quantity that is more than a minimum specified percentage (say 20% or 30%) of the tendered quantity, otherwise their offer shall be rejected.
    b) Warn that Procuring Entity may take any/ all punitive actions available under the CIPP against such bidders, including removal from the list/ panel of enlisted/ registered contractors or debarment, besides reporting the transgression to Competition Commission, and concerned industrial bodies and trade bodies for suitable punitive action.
6. Procuring Entity may decide the tender as per one or more of following provisions:
    a) Reject all bids from the suspected cartel formation and decide the tender accordingly.
    b) 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 (in case of divisible works).

Note: The selection of firms for this may be based on a transparent logistics parameter i.e., nearer location of source, relatively better past performance, etc.

c) 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.

7. 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-a) or b) above.

6.4.10 Negotiations for Reduction of Prices[82]

1. Negotiations with bidders after bid opening must be severely discouraged. Negotiations should be a rare exception rather than the rule and may be resorted to only in exceptional circumstances. If it is decided to negotiate for reduction of prices, they should be held only with the lowest acceptable bidder (L1), who is techno-commercially responsive for the supply of a bulk quantity and on whom the contract would have been placed but for the decision to negotiate. In no case, including where a cartel/ pool rates are suspected, should negotiations be extended to those who had either not tendered originally or whose tender was rejected because of unresponsiveness of bid, unsatisfactory credentials, inadequacy of capacity or unworkable rates. The circumstances where negotiations may be considered could be:
   a) Where L1 price is not considered to be reasonable, and
   b) Where the procurement is done on nomination basis; or
   c) Procurement is from single or limited sources;
   d) Procurements where there is suspicion of cartel formation which should be recorded following provisions of para 6.4.9 above; and
2. Where the requirements are urgent and the delay in re-tendering for the entire requirement due to the unreasonableness of the quoted rates would jeopardise essential operations, maintenance and safety, negotiations with L1 bidder(s) may be done for bare minimum quantum of requirements. The balance bulk requirement should, however, be procured through a re-tender, following the normal tendering process.
3. The decision whether to invite fresh tenders or to negotiate and with whom, should be made by the tender accepting authority based on the recommendations of the TC. Convincing reasons must be recorded by the authority recommending negotiations. The CA should exercise due diligence while accepting a tender or ordering negotiations or calling for a re-tender and a definite timeframe should be indicated.
4. Normally all counter -offers are considered negotiations by other means and the principles of negotiations should apply to such counter offers. For example, a counter -offer to L1, in order to arrive at an acceptable rate, shall amount to a negotiation. However, any counter -offer to L2, L3, and so on (at the rates accepted by L1) in case of splitting of quantities shall not be deemed to be a negotiation.

[82] Rule 173 (xiv) of GFR 2017

5. After the CA or TC has decided to call a specific bidder for negotiation, the following procedure should be adopted:
   a) Negotiations must be carried out by the CA or TC only;
   b) It must be understood that, if the period of validity of the original offer expires before the close of negotiations, the original offer will not be available for acceptance. The period of validity of the original offer must, therefore, be extended, wherever necessary, before negotiations;
   c) The tenderer to be called in for negotiations should be addressed as per the format of letter laid down in Annexure 6, so that the rates originally quoted by him shall remain open for acceptance in the event of failure of the contemplated negotiation;
   d) A negotiations meeting should be started only after obtaining a signed declaration from the negotiating contractor as per Annexure 6; and
   e) Revised bids should be obtained in writing from the selected tenderers at the end of the negotiations in the format of letter laid down in Annexure 7. The revised bids so obtained should be read out to the tenderers or their representatives present, immediately after completing the negotiations. If necessary, the negotiating party may be given some time to submit its revised offer. In case, however, the selected bidder prefers to send a revised bid instead of being present at the negotiation, the offer should be considered. In case a bidder does not submit the revised bid, its original bid shall be considered.

6.4.11 Cancellation of Procurement Process/ Rejection of All Bids/ Re-tender[83]

1. The Procuring Entity may cancel the process of procurement or rejecting all bids at any time before intimating acceptance of successful bid under circumstances mentioned below:
   a) If the scope of work including related quantity and quality of requirements have changed substantially or there is an un-rectifiable infirmity in the bidding process;
   b) when none of the tenders is substantially responsive to the requirements of the Procurement Documents;
   c) none of the technical Proposals meets the minimum technical qualifying score;
   d) If effective competition is lacking. However, lack of competition shall not be determined solely on the basis of the number of Bidders. (Please refer to para 6.2.7 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) In case, the bidder, whose bid has been found to be the lowest evaluated bid (L1) or in case of QCBS evaluation highest scorer (H-1) withdraws (para 6.2.6-3) 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 6.5.3) or otherwise withdraws from the procurement process, the Procuring Entity shall re-tender the case[84].
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 above. If it is decided to rebid the tender, the justification should balance the perceived risks in finalisation of tender

[83] Rule 173 (xix) of GFR 2017
[84] Notified vide OM No. F.1/1/2021-PPD issued by Department of Expenditure dated 21.04.2022.

(marginally higher rates) against the certainty of resultant delays, cost escalations, loss of transparency in re-invited tender.

3. In the cases of re-tender because of the receipt of the unreasonably high bids, the offers received against the re-tendered bid are even higher than those received in the original tender. Hence, it may be opined by the procurers that in such scenarios, if the offers from the original tender are still valid, they may be reconsidered. This is not to be done. As per the principles outlined in the Indian Contract Act of 1872, once an offer is rejected—either explicitly or implicitly—it cannot be revived for acceptance later. This means that by proceeding to a re-tender, the initial offers are considered rejected, rendering their validity moot for future consideration. Thus, even if the re-tender results in higher rates, returning to accept a previously rejected offer is not to be resorted.
4. Approval for re-tendering should be accorded by the CA after recording the reasons/ proper justification in writing. The decision of the procuring entity to cancel the procurement and reasons for such a decision shall be immediately communicated to all bidders that participated and bids if not opened would not be opened and in case of manual tenders be returned unopened.
5. Before retendering, the procuring entity is first to check whether, while floating/ issuing the enquiry, all necessary requirements and formalities such as standard conditions, industry friendly qualification criteria, and technical and commercial terms, wide publicity, sufficient time for bidding, and so on, were fulfilled. If not, a fresh enquiry is to be issued after rectifying the deficiencies.

6.5 Award of Work

6.5.1 LoA to Successful Bidder

1. Before a final award is announced, the technical and financial credentials of the selected bidders 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, specification, prices, and so on) in writing by a registered letter or any other acknowledgeable and foolproof method that his bid has been accepted. Legally communication of acceptance of offer is considered complete as soon as it is submitted to Postal authorities *(please refer to Para 2.9-1 of 'Appendix – 2: Legal Aspects of Public Procurement of 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 8. In the same communication, the successful tenderer is to be instructed to furnish the required performance security within a specified period [generally 14 (fourteen) to 28 (twenty-eight) days, depending upon the amount]. Letter of Award (LoA) shall constitute the legal formation of the contract, subject only to the furnishing of performance security. 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. In respect of contracts upto Rupees ten lakhs, where tender documents include the General Conditions of Contract (GCC), Special Conditions of Contract (SCC) and scope of work, the letter of acceptance will result in a binding contract.
4. In respect of contracts with estimated value more than Rupees ten lakh, a contract document should be executed, with all necessary clauses to make it a self -contained contract. If, however, these are preceded by Invitation to Tender, accompanied by GCC and SCC, with full details of scope and specifications a simple one -page contract can be entered into by attaching copies of the GCC and SCC, and details of scope and specifications, offer of the tenderer and letter of acceptance.
5. The value of Contract should include Taxes/ duties/ levies, if any.
6. Contract document should be invariably executed in cases of turnkey works or agreements for maintenance of equipment, provision of services etc.

6.5.2 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 and in the notice board/ bulletin/ website of the concerned Ministry or Department/ e-Procurement Portal.
2. **Exception 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, sub-vendors, suppliers, technology providers and other associates, and activity schedule of Central Public Sector Enterprises (CPSEs) contractors as per extant instructions adversely impacts ability of CPSEs to compete in highly competitive market, thereby denying the CPSEs a level playing field. At the time of tender formulation, commercial organisations like CPSEs will disclose whether any component of the subject procurement is for commercial re-sale. Contract award details of such case may be shared on CPPP etc., after six (06) months of realization 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 5.1.1 above. The successful contractor’s bid security shall be adjusted against the Security Deposit or returned as per the terms of the tender documents.

6.5.3 Performance Security

The contractor receiving the LoA is required to furnish the required performance security, if it is part of tender conditions, in the prescribed form within period prescribed in the tender document [generally 14 (fourteen) to 28 (twenty-eight), depending on the amount], as per para 5.1.2 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 contract, it may be treated as withdrawal of offer by L1 bidder, and the tender may be

reinvited (refer para 6.4.11*)*, besides taking necessary punitive actions including forfeiture of EMD against such bidders.

6.5.4 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 contractor should acknowledge and unconditionally accept, sign, date and return the agreement within 14 (fourteen) days from the date of issue of the contract in case of OTE and 28 (twenty-eight) days in case of GTE. Such acknowledgements may not be required in low value contracts, below Rs two and a half lakh or when the bidders offer has been accepted in entirety, without any modifications. While acknowledging the contract, the contractor may raise issues and/ or ask for modifications against some entries in the contract. Such aspects shall immediately be investigated for necessary action, and thereafter, the supplier's unconditional acceptance of the contract obtained. If both parties (Procuring Entity and the contractor) simultaneously sign the contract across the table, further acknowledgement from the contractor is not required. It should also be made known to the successful tenderer that in case he does not furnish the required performance security or does not accept the contract within the stipulated target dates, such non-compliance will constitute sufficient ground for forfeiture of its EMD and processing the case for further action against it (as per para 6.4.11). 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" 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). No contract on behalf of an organisation of Procuring Entity should be entered into by any authority which has not been empowered to do so under the orders of the state Government.

6.5.5 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 complete, precise, definite and without any ambiguities. The terms should not involve an uncertain or indefinite liability, except in the case of a cost -plus contract or where there is price variation (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. All contracts shall contain a provision for
   a) Recovery of liquidated damages (LD) for delay in performance of the contract on the part of the contractor;
   b) A warranty clause/ defect liability clause should be incorporated in contracts for plant and machinery and works, above a threshold value, requiring the contractor to, without charge, replace, repair or rectify defective goods/ works/ services;

c) Payment of all applicable taxes by the contractor; and
d) When a contract is likely to endure for a period of more than two years, it should, wherever feasible, include a provision for an unconditional power of revocation or cancellation by the government at any time on the expiry of six months' notice to that effect;
e) How the appointed day or day of starting of the work shall be determined.

3. 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 upto Rupees Two and a half (2.5) lakhs 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 (Fifty) lakh and above, and of all rate and running contracts entered into by civil departments of the government should be sent to the Accountant General;
   e) Copies of the LoA/Purchase Order should also be sent to the Jurisdictional Assessing Officer for GST, mentioned in the bidder's bid.

6.5.6 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 e-Procurement 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, consultants, banks.

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

6.6 Evaluation of Bids and Award of Contract – Risks and Mitigation

Risk	Mitigation
a) **Evaluation of bids** is subjective or leaves room for manipulation and biased assessments. Some TC members may not be independent or neutral or may have conflict of interest.	TC should give an undertaking at the appropriate time that none of the members has any personal interest in the companies/ agencies participating in the tender process. Any member having an interest in any company should refrain from participating in the TC. Some members of a TC may be subordinate to or related others in a strictly hierarchical organisation, so that they are not free to express independent views – such a situation must be avoided when constituting the TC.
b) **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.
c) **Unwarranted rebidding:** Rejecting all bids and calling for rebidding on the pretext of prices being high, change of specifications, budget not being available, and so on.	**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.
d) **Sudden quantity reduction/ increase or splitting of quantity work at the time of award:** Many organisations have provisions for change/ splitting in the bid quantity at the time of award. Some organisations vary quantity even without such provisions	**Bid conditions must specify a limit** beyond which originally announced quantity/ scope cannot be reduced/ increased. If parallel contracts are envisaged, clear criteria for the splitting may be specified in the bid documents beforehand.
e) **Unwarranted negotiations:** negotiations are called without justification. Sometimes a	Normally, there should be no post-tender negotiations. In certain exceptional situations,

Risk	Mitigation
counter-offer is made to discourage lowest acceptable bidder.	for example, procurement of proprietary items, items with limited sources of supply, and items where there is suspicion of a cartel formation, negotiations may be held with L-1. In case of L-1 backing out, there should be re-tendering.
f) **Unwarranted delays in finalizing or varying the terms of preannounce contract agreement:** even after the TC recommendations are accepted, signing of the contract is delayed on one pretext or the other. Although there is a standard contract form in the bid documents, the contract may be drafted in a fashion to favour or discourage the successful bidder.	**A target timeline of** finalisation of procurement should be laid down. Delays and reasons thereof should be brought out before the CA on the file at the time of TC's acceptance or contract signing. The contract should be strictly as per the bid conditions and accepted offer.
g) **Anti-competitive practices:** Bidders, that would otherwise be expected to compete, secretly conspire to frustrate the Procuring Entity's attempts to get VfM in a bidding process. Anti-competitive conspiracies can take many forms. Sometimes the officers involved in procurement may be part of such collusion. h) **Bid coordination:** The bidders collude to the quote same or similar rates that are much higher than the reasonable price to force the Procuring Entity to settle the procurement at exorbitant prices. i) **Cover bidding:** Cover bidding is designed to give the appearance of genuine competition by way of supporting bids for the leading bid-rigger. j) **Bid suppression:** Bid suppression means that a company does not submit a bid for final consideration in support of the leading bid-rigger. k) **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. l) **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 7: Execution and Monitoring of Works and Quality Assurance

7.1 Contract Management

1. Poor management of public funded projects costs the nation in terms of the following, be it in the owner organization or in construction firms contracted to build a project:
   a) Additional expenditure burden due to increased costs, crowding out more deserving schemes and projects
   b) Affect viability of projects due to increase in construction, causing losses to CPSE or agency concerned
   c) Economic burden, due to delayed return in investments
   d) Imposes unnecessary economic burden on affected stakeholders
   e) Creates a culture of acceptance of delay and avoidable costs – breeding more cases
   f) Increased costs of procurement due to monetization of higher risks, perceived by contractors, of delays and scope creep associated with public funded projects.
2. 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 Contractor'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.".
3. Normally, the following issues are handled in management of Works Contracts, which are detailed in subsequent paras:
   a) Contract Administration
   b) Monitoring Scope of Work and Quality Assurance:
   c) Time Monitoring
   d) Financial Monitoring
   e) Closure of Contract
   f) Resolving Disputes and Conflicts
   g) Breach and Termination of Contract

7.2 Contract Administration

7.2.1 Aligning the interest of the stakeholders

1. The incentive structure for all the key stakeholders of public procurement ought to be such that the system itself will ensure timely delivery of the projects / works in a qualitative manner within approved cost. A balanced framework and work culture, where risk and rewards are properly shared amongst stakeholders and timely completion of quality projects is the common goal, can be the bedrock of efficient project management. An incentive structure, which may include pecuniary as well as non-pecuniary aspects (Including public recognition), linked with measurable parameters of outcome / output, can

help align the interests of stakeholders. An ethics-based regime, where integrity of all the stakeholders is nurtured, can help increase efficiency in all aspects of project management.

2. Public authorities may devise strategies to provide incentives to contractors /concessionaires/ consultants/ architects/ other stakeholders by various means, including bonus, better rating and recognition for early/ timely / quality completion of the projects. Similar strategies may be devised for recognition of engineers/ officers/ other team members for early / timely and quality completion of the projects. The practice of mentioning the names of the contractor and the project in charge publicly at work sites may be implemented. Such recognition may be in a form which has long shelf life so as to associate the contractor and project In-charge with the life of the project.
3. “Coming together is a beginning; keeping together is progress; working together is success”. It is an accepted fact that the success of any project is dependent on a well-coordinated team working towards a common goal. For successful execution of any project within specified time, cost and quality, the interest of all the stakeholders need to be aligned. Coordinated efforts of all stakeholders such as contractors, consultants, public authority and project executing authority and public representatives will bring about the best possible outcome.

7.2.2 Monitoring Team and System:

1. **Principle of Proportionality for Contract Management**: The time and resources applied to manage a Contract should be proportional to its size, scope, complexity, duration, risk, and strategic importance. One size does not fit all. For example, low-value, too many checks and balances can delay decision-making, impede the Contractor's payments, and stifle innovation. Too little control can result in an undisciplined crisis management culture. Getting the balance exactly right ensures ‘fit-for-purpose' Contract Management.
2. **Role of Apex and Management Levels**: Procurement and Contract Management require various levels of authorisation or approvals for technical, administrative, and financial decisions. Many of these approvals are at apex/ managerial levels, which are responsible for macro management of the Contract but may not be involved in day-to-day Contract Management. However, their roles are important for efficiency of the Contract Management process.
3. **Contract Manager**: Best practice requires that a nodal person be appointed for management of each specific contract. Such a nodal person may be called differently (Engineer, Project Manager, Contract Manager, Supply Manager, Service Manager, Employer's representative, and so on) in different organisations and in different categories of Contract. This manual generically refers to him as 'Contract Manager'. For small, routine Contracts, 'Contract Manager' may be a single person, who has a portfolio of Contracts to manage. For large, complex, high-value Contracts, this is normally a team or entity. A competent Project Management Team should be set up including training on Project Management to the team, if required. A system of project monitoring for each work shall be prepared before start of the work and same shall be available at site of work. 'Deadlines' or 'contractual milestones' should be set up and tabulated to facilitate monitoring of the progress of work. The work shall be monitored quarterly/ monthly basis by the Works Committee, and a status report should be submitted to the Secretary in charge of the concerned Ministry/ Department. Execution of the work shall primarily be the responsibility of the nominated Contract Manager. However, for large contracts senior officers shall also

review the progress and quality of the work at various stages of construction. To this effect, presentations on the project performance may be made periodically before the senior officers depending upon the value of the project and progress of the project vis-à-vis schedule. Project executing authorities should put in place detailed instructions in this regard. It may also be useful to stipulate organizational standards and/or certifications for project managers/staff, in complex projects, as tender conditions to minimize risk of cost and time overruns.

4. **Progress Reporting & Review:**

a) **Review of Progress:**

i) The quality of project works significantly depends on supervision and monitoring. For completion of the projects within the stipulated time and cost and with specified quality standards, periodical review should be done by various levels of the officers.

ii) Execution of the work shall primarily be the responsibility of the officials designated with such responsibility. However, for large contracts senior officers shall also review the progress and quality of the work at various stages of construction. To this effect, presentations on the project performance may be made periodically before the senior officers depending upon the value of the project and progress of the project vis-a-vis schedule. Project executing authorities should put in place detailed instructions in this regard.

b) **Reports**: There should be a stipulation in the contract for large value works (magnitude to be specified), for the contractor to submit project specific monthly progress report of the work in a computerized form (Management Information System Reports– MIS reports). The progress report shall contain the following apart from whatever else may be required to be specified:

i) Project information, giving the broad features of the contract.

ii) Introduction, giving a brief scope of the work under the contract and the broad structural or other details.

iii) Construction schedule of the various components of the work, through a bar chart for the next three quarters for as may be specified, showing the milestones, targeted tasks and up to date progress.

iv) Progress chart of the various components of the work that are planned and achieved, for the month as well as cumulative up to the month, with reasons for deviations, if any, in a tabular format.

v) Plant and machinery statement, indicating those deployed in the work, and their working status.

vi) Man-power statement, indicating individually the names of all the staff deployed in the work along with their designations.

vii) Financial statement, indicating the broad details of all the running account payments received up to date, such as gross value of work done, advances taken, recoveries effected, amounts withheld, net payments, details of cheque payments received, etc.

viii) A statement showing the extra and substituted items submitted by the contractor, and the payments received against them, broad details of the bank Guarantees, indicating clearly their validity periods, broad details of the insurance policies

taken by the contractor, if any, the advances received and adjusted from the department, etc.

ix) Progress photographs, in colour, of the various items/ components of the work done up to date, to indicate visually the actual progress of the work.

x) Quality assurance and quality control tests conducted during the month, with the results thereof.

xi) Any hold-up shall be specified.

xii) Dispute, if any, shall also be highlighted.

xiii) Monthly or fortnightly progress review by contract manager and Procuring Entity with contractor may be necessary to ensure that contractor deploys sufficient resources to meet the deadlines.

xiv) Project executing authorities should put in place a system for capturing the photographs and videos of important and critical activities of construction. This may be implemented in projects above a threshold value or, if possible, in all projects. Such photos/ videos may be uploaded in IT based project monitoring system to facilitate monitoring the progress and quality of work as well as assessment of delay in execution of work by stakeholders and senior management. Apart from this photographs and videos may serve as permanent record of the project for posterity in case needed for any eventuality including litigation or enquiry/ investigation.

c) **Project Management Software**: All complex assignments require the use of proper project management tools that enable the contract management team (procuring entity, contract manager, project manager, etc.) to collaboratively monitor the actual; physical and financial progress of the contract against the planned physical and financial schedule. The contract may also specify that the contractor engage certified project management professionals to train and monitor project progress (e.g.: PMI certified contract managers). There are many project management tools and software programmes that are extremely useful for the contract management team. Some of the common software programmes are (no endorsements are intended; there are many more such software available): Microsoft Project and Portfolio Management (MS PPM) and Oracle Primavera P6 Professional Project Management (P6 PPM).

d) **Information Technology (IT)** enabled project management systems can help in improving efficiency, transparency and aid faster decision making in execution of projects. These systems may be used for maintenance of records for the progress of work (including hindrance register), variations, etc., wherein reasons for delays are also to be captured on real time basis. Such systems may be used for capturing progress and quality of work, site records/ photographs/ videos etc. including geo tagging.

e) **Project Management Consultant**: If requisite skills and expertise for project management are not adequate within the organisation, the work may be outsourced partially or fully to a consultant/ consulting firm called 'Project Management Consultant'. The Contracting Entity should ensure sufficient oversight, checks, and balances over such outsourcing arrangements. Wherever applicable, the role of the Project Management Consultant (PMC) should be clearly defined in the contracts. Deployment of the PMC does not absolve the project executing authority of the responsibility to supervise the quality and timelines of the project. The credentials and deployment schedule of key and other technical personnel to be engaged by PMC on the work should be taken along with the bid. During

execution, adherence to deployment of key and other technical personnel as per the schedule of deployment should be ensured.

f) **Delays in Taking Timely Decisions**

a) Delay in decision making by the officials of the project executing authority on various changes in the project scheme arising out of emerging situations during execution of the work is also one of the contributors to the delay in completion of projects. Sometimes timely decisions on these changes are so crucial that the next step could only be taken after addressing the change. Delay in decisions by the project executing authority can also lead to litigation due to inadequate utilization/ idling of resources of the contractor. There is frequently a feeling among officials that indecision is safe while a decision may lead to adverse consequences for the decision maker. Therefore, there is a need for project executing authorities to put in place a system of resolution of the issues coupled with timelines for various levels to take decisions.

b) Project executing authorities may review the flow chart of decision making and remove redundancies for faster decision making. They may also fix timelines for taking decisions on variations, extra items and changes in scope and specifications, etc. to avoid delay and litigation arising out of delayed decisions.

7.2.3 Ensuring Prerequisites to Commencement of Work

1. **Land Acquisition:** The process of land acquisition shall be started by the Procuring Entity, well ahead and completed entirely, or at least substantially, by the time the contract is awarded.
2. **Permits/ Approvals:** The Procuring Entity shall also seek requisite Statutory Approvals/ Permission/ Clearances/ Certificates from the concerned Local Bodies & Statutory Authorities like District Authorities, Municipal Corporation, Panchayati Raj Institutions, Town Planning Board, Electricity Board/ Fire Department, State/ Central Pollution Control Boards, Stale/ Central Environmental Authorities, Forrest and Wild-life authorities etc(for e.g. removal of trees, re-locating utilities; conversion of railway level crossings, laying of railway sidings needed by the project; rehabilitation and resettlement of persons affected by the project; traffic control; mining of earth and stone; interfering protected monuments; blasting permission, environmental/ forest/ wild-life clearances; and shifting of religious shrines etc), so that the progress of work is not impeded and incidence of delay claims by the contractor avoided. The Procuring Entity has to be aware that any delay in fulfilling the pre-requisites stipulated in the contract will attract delay claims form the contractor, besides causing time and cost overruns. Hence, all or most pre-requisites shall be fulfilled before award of the LoA. The contractor shall give all notices and obtain all other necessary permits and approvals as may be required for the construction of the contract works and shall pay for all such permits and approvals.
3. **Approval of Quarries and Borrow Areas and Materials**: The contractor will obtain approval of the contract manager for each quarry and borrow area to be used in the project, prior to commencement of quarrying and/ or borrow area excavation activities. All materials (whether natural, processed, manufactured, or designed) proposed by the contractor to be used on the works shall be first approved by the contract manager to comply with the requirements of specifications. Contractor may seek Procuring Entity's permission for equivalent brands, if some brands are mentioned for certain materials in the contract documents.

4. **Safety at Work Site**: The Contractor must ensure safety of workmen as well as safety for the general public during construction in and around work-site. He must follow the laws, codes and standards laid down in this regard. The work-men must be trained and provided protective gear, life-saving equipment and appropriate tools for their jobs. Special precautions must be used if hazardous chemicals are used or stored at workplace (lead, silica, asbestos and wood/stone that will be cut and generate dust, construction materials containing zinc, cadmium, beryllium and mercury).Besides protection from noise and environmental pollution, public must also be safeguarded from falling through dug-up area, electrocution, flooding, falling objects, bridge-span dropping/ failures, crane falling/ overturning and damage to building from vibrations/ cave-ins from construction activities. Contract manager must ensure that contractor does not adopt any short-cut in this regard. Most large contracts have a well-defined Safety Health & Environment (SHE, also called Environmental, Social, Health and Safety (ESHS, with addition of social factor) in some context – refer para 7.2.10) guideline embedded in the agreement. Appointment of site safety engineer by the contractor is a mandatory requirement in such cases. The contract manager shall engage safety experts to carry out frequent SHE audits and mandate correct measures.
5. **Advance Payments**: To enable mobilisation, advance payment(s) are to be given after the signing of the Contract, if provided in the Contract, on the Contractor's submission of an unconditional BG in an acceptable form
6. **Insurances**: Insurance provisions are valuable risk management tools. The Contracting Entity must ensure the following:
    a) The insurance policies are in place in accordance with the Contract.
    b) The coverages are adequate and within the thresholds specified in the Contract.
    c) The insurance policies contain the essential information such as coverage, duration, applicability, and so on.
    d) Due diligence is applied to checking the authenticity of the insurance document and payment of insurance premiums.

7.2.4 Commencement of Work

After the Contract has been signed between the parties and Performance Security is deposited by the Contractor, he should visit the site along with Contract Manager to identify any potential problem in relation to site. After reviewing the status of prerequisites, the Contract Manager issues a ‘Work Order' to the Contractor to 'commence the works'. Work order should be issued within a reasonable period (say 2 weeks but not later than 6 weeks from the date of the LoA). Within the stipulated time the Contractor should submit to the Contract Manager for his consent (a) the Work Program including the measures proposed by him for work zone safety and mitigation of environmental impact, (b) Methods Statement which the Contractor proposes to adopt for execution of the works, and (c) the quality assurance plan. The Contract Manager should, on being satisfied with the Contractor's submission, provide to the Contractor total or partial possession of the site. The Contractor will update the Work Program at intervals stipulated (usually every month) and submit it to the Contract Manager for approval. The updated program should include all variations ordered by the Contract Manager and their effect, if any, on the program. No work shall be commenced unless the conditions precedent as laid down in Para 1.14-13 have been fulfilled.

7.2.5 Mobilisation

1. The commencement of Works normally begins with a mobilisation or pre-construction phase during which the site is prepared for construction. The mobilisation period should be carefully managed by the Contracting parties and given its significance to the successful execution of a Contract. The mobilisation or pre-construction phase can include major activities such as land clearance, excavation, building of access roads to the site, work site establishment, and construction of accommodation for the Contractor's personnel.
2. **Mobilisation of Key Resources**: The Contract Manager must ensure that the technical personnel and key equipment machines as per the Contract are mobilised by the Contractor and are available on the site in line with the Work Program. This would include construction of labour huts; establishment of a quality control laboratory; and mobilisation of labour, project manager, surveyors, and equipment and machinery. If the Contractor has more than one Contract with the Contracting Entity, it may be ensured that such deployment is not at the cost of other contracts. If there are delays due to deployment of such resources to other contracts, this may be treated as an inexcusable delay liable for imposition of Liquidated Damages (LD).
3. **Materials Management**: The Contractor also initiates the procurement of materials required for various stages of the project. All materials (whether natural, processed, manufactured, or designed) proposed by the Contractor to be used on the works should be first approved by the Contract Manager, to comply with the requirements of Specifications.

7.2.6 Monitoring Resources Deployed by Contractor

Contracts are awarded based on qualification criteria, where the Contractor has committed to deploy required resources for the Contract execution. The Contract document must include the commitments made by the Contractor in winning the award. The required capabilities are the following:

1. **Technical and performance capabilities**: Contractors get awarded several contracts from different organisations, which require technical and performance capabilities in parallel. The Contractor may not deploy resources committed by him in his bid or substitute these with resources unsuitable for execution in a Contract. Hence, its important during initial mobilisation and execution to ensure that he deploys the capabilities he has committed to in the Contract. Wherever it is noticed that the Contractor is failing this regard, a notice of breach should be issued to him mentioning the corrective action and its time frame.
2. **Machinery and Plant:** The Contractor should deploy on the Contract, on a day-to-day basis, adequate Machinery, Plant, equipment, and implements of required specifications and in good working condition. This is especially important if he has received advance payment against such Machinery and Plant.
3. **Materials Management**: The Contractor should ensure timely availability of materials required for various stages of the project. All materials (whether natural, processed, manufactured, or designed) proposed by the Contractor to be used on the works should be first approved by the Contract Manager to comply with the specifications, if such approval is required under the Contract. All incoming materials should undergo agreed quality assurance. This can be on-site or off-site lab tests or manufacturer's test certificate as per the agreed quality assurance plan. The Contractor should proactively monitor the

materials management plan so that there is no material shortage during execution of the Contract.

4. **Financial capabilities**: Inadequacy of financial resources would become evident from inadequate deployment of Machinery and Plant, materials, human resources, and Sub-contractors on site consonant with the Work Program. In such cases, notice should be issued to the Contractor to show his finance mobilisation. The Contract Manager should also ensure that the Contractor is always paid on time, and any financial bottleneck is not due to delays in payments to the Contractor.
5. **Human resource capabilities**: The Contractor should ensure day-to-day deployment of sufficient technical, skilled, and unskilled manpower on the project, commensurate with the current Work Program. Any key technical personnel named in the Contract should be productively working on their area of expertise. The Contract Manager should verify this during various site inspections and keep a record of inspection diary. Any replacement of key personnel will be as per the provisions of the Contract.
6. **Sub-contracting:**
   a) The works contract may provide for the contractor to get specified works executed from sub-contractors included in the pre-qualification application or later agreed to by the Procuring Entity, with a caveat that the responsibility for all sub-contract work rests with the prime contractor. However, the prime contractor will be required to submit to the procuring entity, the experience certificate issued to the sub-contractor by a previous employer. Sub-contracting shall generally be for specialized items of work, such as reinforced earth retaining walls, pre-stressing works, and so on. Procurement of material, hire of equipment or engagement of labour will not mean sub-contracting. The total value of sub-contracting work will not exceed the per cent of the contract price as specified in the contract (say 25 (twenty-five) percent). Sub-contracting by the contractor without the approval of the Procuring Entity shall be a breach of contract, unless explicitly permitted in the contract.
   b) The Contractor should promptly inform the Contract Manager about the Sub-contractor moving to the site. Any Sub-contractor other than those mentioned in the Contract must be approved by the procuring entity before being allowed to enter the site. All proposals for sub-contracting should be approved by the Contracting Entity. Intimation of approval for the Sub-contractor should make it clear that the payments to and monitoring of the Sub-contractor's performance and adherence to applicable laws is the responsibility of the main Contractor and the approval granted does not dilute such responsibility.
   c) Sub-contracting by the Contractor without the approval of the Contracting Entity would be a Breach of Contract. If the Contract Manager discovers an unapproved Sub-contractor working at the site, he should notify the Contractor, in writing, of the Breach of Contract. A copy of this correspondence should be forwarded to the Contracting Entity. Upon receipt of this notice from the Contract Manager, the Contractor is to take immediate steps to remove the Sub-contractor from the site. Failure by the Contractor to do so will constitute a Breach of Contract on his part.

7.2.7 Enforcing Contractor's Obligations:

1. **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.

d) 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.

2. **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).

3. **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;

4. 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;
5. 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.
   a) 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.
6. **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.
7. **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.
8. **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.
9. **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.

7.2.8 Issuing Contract Amendments

1. There are few contracts of any type that do not require a change at one time or another. The formal method of making and documenting a change in the Works contract is through a contract amendment. Contract amendments 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 amendment. 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. An amendment has legal implications as it amounts to 'novation' of Contract, that is, it is treated as a 'substitution of a new Contract for old one' to the extent of these amendments superseding the corresponding original terms and conditions. Amendment 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 amendment is prepared by the Contractor 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 Contractor 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 Contract Manager (both technical as well as financial) should be considered as final. Wherever amendment 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.

7.2.9 Safeguarding Assets Handed Over 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.

7.2.10 Environmental, Social, Health, and Safety (ESHS) Concerns

1. In Works Contracts attention must be paid to Environmental, Social, Health, and Safety (ESHS) considerations (also termed Safety, Health, and Environmental [SHE] in certain contracts). Such considerations must be indicated from the beginning as mandatory skills or experience in the Bid Documents. The Contractor must ensure that he and his Sub-contractors comply with legal and regulatory obligations relating to ESHS. It requires professionals with appropriate skills to be part of the Contract's Team. Such professionals may be required on part-time or full-time basis, depending on the nature of the ESHS risks and impacts and the role they are performing. During Contract implementation, the primary focus is to ensure that the contractual ESHS provisions are continuously adhered to. This will involve the timely preparation and/or review of documentation such as the Contractor's plans and procedures; undertaking of inspection, supervision, and/ or audit; attending of progress meetings; reporting; and resolving issues that may occur.
2. The safety of all activities (including traffic safety) in and around the site and safety of the public and labour should be ensured by the Contractor as per prevalent labour laws/regulations and the conditions of Contract. The workmen must be trained and provided protective gear, life-saving equipment, and appropriate tools for their jobs.
3. Special precautions must be used if hazardous chemicals are used or stored at the workplace (lead, silica, asbestos, and wood/stone that will be cut and generate dust and construction materials containing zinc, cadmium, beryllium, and mercury).

4. Besides protecting the public from noise and environmental pollution, they must be safeguarded from falls in dug-up areas, electrocution, flooding, falling objects, bridge-span dropping/failures, crane falling/overturning, and damage to building from vibrations/cave-ins from construction activities. The Contract Manager must ensure that the Contractor does not adopt any shortcut in this regard.

7.3 Monitoring Scope of Work and Quality Assurance

7.3.1 Monitoring Scope of Work

1. **Monitoring Topology and Geological Conditions**: Topographical survey, soil investigation, and such other activities are the basis of Contract design and documentation. The topographical survey determines the design and the levels of various buildings and landscaping. The presence of water, including its depth, quality, and quantity, is also part of the site topology. If actual site topology is different from the topological survey in the Contract, this would lead to variation in the scope of work and BOQ. Unexpected discoveries at site could be soil/rock issues or some old infrastructure or works of religious or archaeological importance. In all these cases, scope and BOQ would undergo changes and cause variation order to be initiated.
2. **Bill of Quantities**: The BOQ forms an important part of any Contract. Quantities in a BOQ are only best estimates and payment is made for actual quantities measured during Contract implementation. Major errors in items or quantities in the BOQ may result in large variations, leading to vitiation of the basis on which the Contract is awarded to the Contractor. Contractors may take advantage of such errors and build their quotation in such a way that they would be adjudged lowest for quantities in the BOQ but would gain undue windfall profit when the quantities are corrected. Therefore, Contracting Entities have special procedures for approving quantity variations above 10 percent.
3. **EPC Designs**: In case of EPC contracts approval of the designs should be taken from the appropriate authority, as defined in the tender document, to ensure that the performance levels are met by the design.
4. **Measurements:**
    a) Measurements of all items having financial value shall be recorded in Measurement books (MB) and/ or level field books so that a complete record is obtained of all works performed under the contract. Measurements and levels shall be taken jointly by the official designated for the purpose and the contractor. The contractor shall, without extra charge, provide all assistance with every appliance, labour and other things necessary for measurements and recording levels.
    b) The contractor shall not cover (or place it beyond reach) the work without written consent from the Procuring Entity, otherwise the contractor shall have to uncover it at their own expense, or they will not be paid for that work.
    c) Recording of measurements of any item of work in the measurement book shall not relieve the Contractor from liabilities from any over measurement or defects noticed till completion of the defects liability period.
    d) **Electronic Measurement Books (e-MBs)**. Organisations as early as possible implement e- MBs and same should be integrated with IT based project monitoring system.
5. **Quality Assurance**: In order to control the quality of work, a Quality Assurance Cell shall be formed in every work centre comprising of multi- disciplinary professionals/ engineers

to cover all types of works, such as civil, mechanical, electrical etc. In case of non-availability of qualified professionals/ engineers in house for the purpose of quality assurance cell, then the approval of competent authority shall have to be taken for deploying professionals from outside agencies. The provision for third party quality check may also be considered for a work beyond a specified amount.

7.3.2 Monitoring Variations/ Extra/ Substituted Items

1. **Variation:** It is rare that a construction project proceeds exactly as foreseen in the original proposals and drawings. In practice, marginal variations of the quantities provided for the project have a huge potential to vitiate viability of a project if this issue is not diligently regulated in the Contract.
2. A variation may arise on account of –
   a) increase or decrease in the quantity of any work included in the BOQ of the contract;
   b) omission of any such work (but not if the omitted work is to be carried out by the procuring entity by another contractor);
   c) change in the character or quality or kind of any such work;
   d) change in the levels, lines, position and dimensions of any part of the works;
   e) additional work of any kind necessary for the completion of the works; and
   f) change of the specified sequence or timing of construction of any part of the works.
   g) changes in legislation may relate to taxes, royalties, environmental, mines, social, and labour requirements.
3. The variation or additional work must be a necessary part within the scope of the original works and should not completely change the scope/ character and purpose of the original contract. The variation may result in additional or reduced payments to the contractor or there may be no price change at all. It is important to have a written procedure as part of the contract, for the issuing of a variation instruction. Once it is decided that a variation is required, the instruction should be issued promptly to minimise any adverse effect on the overall works.
4. Before a variation can be instructed by the Contract manager to the contractor, prior approval from the Procuring Entity is needed, except for certain situations as may be specified in SCC. The rate/ price/ valuation do not have to be agreed with the contractor, although this is preferable. Any change in 'approval for construction' drawings should be evaluated properly and their full financial implications worked out at that very stage for submission to the appropriate authority for approval. In case there are changes in ground levels from those shown in the approved drawings, they shall be agreed in writing, jointly by the contractor and contract manager and reported to the Procuring Entity for considering whether any action lies against the design consultant for non-conformity of the levels as shown by him in the drawings and those actually obtaining.
5. **Keeping Track of Variations/ Extra/ Substituted Items**: The variations register shall be used to administer and keep track of the status of a variation. Normally, the contractor tends to report and claim positive variations (variations causing higher payments) and may not report negative variations. However, the contract manager and Procuring Entity must keep track of such negative variations and issue timely letters. This shall cover the following important steps:
   a) The Procuring Entity's prior approval of the issue of the variation instruction;

b) The contract manager's instruction to the contractor (this letter creates the variation). Particular details of a variation are not entered into the variations register until the day the instruction is issued. Prior to that it is only a 'proposed variation' and is tracked/ administered in a separate register;
c) The variation instruction letter must be given a unique variation number and details entered into the variation register;
d) The register is updated at the end of each month and summarised on one sheet as 'variation status', so that the involved agencies are aware as to what work needing action is held up with each of them; and
e) The financial implications are kept up to date.

6. **Valuation of Variations**: While taking decision with regards to variations a balance should be maintained between the perceived risks in quick finalisation of variations against the opportunity costs of delayed decision making e.g. project delays, cost escalations, loss of transparency etc. Variation instructions for modified new or additional work involving extra cost shall be valued as per the procedure set out in the relevant clauses of the contract. The following are the steps to be taken by the Contract manager:
   a) To form an opinion as to the applicability of the rates in BOQ and if considered applicable, to use BOQ rates;
   b) If not considered applicable, to use BOQ rates as the basis for valuation;
   c) In the event of a disagreement, to consult with procuring entity and contractor to try and agree on suitable rates; this means developing new rates from first principles;
   d) If there is disagreement, to fix the appropriate rate; and
   e) To determine provisional rates to allow monthly certification.
7. In making his recommendations, the contract manager should give the contractor the opportunity to state his case and, if he considers the BOQ rate to be inappropriate, to present his proposals as to how the rate should be adjusted or what basis should be used to assess a new price. For his part, the contractor must support his submission with full particulars including, where applicable, a detailed cost breakdown of any rate in BOQ. The Procuring Entity must also be consulted with. The Procuring Entity should ensure that the above procedure has been duly followed and appropriately explained by the contract manager in his recommendations, before he approves the variation. Where it is reasonable to value at the BOQ rate or some modification of it, any stance by the contractor that the tendered price may be 'wrong' or deliberately set low is irrelevant. The threshold level of the value/ quantity of a varied item below which a variation will not merit re-fixation of rate or price should be specified in the SBD. Procuring entities may issue instructions regarding appropriate delegation of authority for approval of deviations, variations and changes in the scope of the contract.
8. In case the contract manager, while doing valuation of variations, notices significant cost and time over-runs due to deviations between actual ground situation and the situation recorded in DPR, he must bring to Procuring Entity’s notice the reach-wise differences and the Ministry/ Department may consider stringent action against the consultant who has prepared such DPRs as per para 2.4.2.

7.3.3 Preparation of Revised DPR/ Estimates

1. As per Rule 141 of GFR, 2017, for project costing Rs. 100 crore or above the Administrative Ministry or Department will set up a Review Committee consisting of a

representative each from the Administrative Ministry, Finance (Internal Finance Wing) and the Executing Agency to review the progress of the work. The Review Committee shall have the powers to accept variation within 10% of the approved estimates. For works costing less than Rs. 100 crores, it will be at the discretion of the Administrative Ministry/Department to set up a suitable mechanism for review and acceptance of variation within 10% of the approved estimates.

2. On the lines of provisions in Ministry of Finance (DoE)'s instructions vide OM No. 24(35)/PF-II/2012 dated 05/08/2016 regarding appraisal and approval of Public Funded projects/ schemes, any increase in costs due to statutory levies, exchange rate variation, price escalation within the approved time cycle and/ or increase in costs upto 20 percent due to any other reason, are covered by the approval of the original cost estimates. Any increase in this regard would be approved by the Secretary of the Administrative Department concerned with the concurrence of the Financial Adviser.
3. Any increase in costs beyond 20 percent of the firmed-up cost estimates due to time overrun, change in scope, under-estimation, etc. (excluding increase in costs due to statutory levies, exchange rate variation and price escalation within the approved time cycle) should first be placed before a Revised Cost Committee chaired by the Financial Adviser (consisting of the Joint Secretary in-charge of the program division and representative of the Chief Adviser Cost as members) to identify the specific reasons behind such increase, identify lapses, if any, and suggest remedial measures for the same. The recommendations of the Revised Cost Committee should be placed for fresh appraisal and approval before the authority as per the extant delegation of powers (It may be noted that a firmed-up cost estimate here means a cost estimate which has been through the full appraisal and approval procedure as per the extant delegation of powers).
4. When the variation/ excess occurs at such an advanced period in the construction of a work[85] as to render the submission of a revised estimate purposeless, the completion report may explain the excess and an Officer of status not lower than that of Superintending Engineer (of PWO/ PSU) may pass the completion report, if the total expenditure in question is not greater than that which he is empowered to sanction in the case of a revised estimate.

7.3.4 Quality Assurance (QA)

Quality assurance (QA) in Works contracts is a systematic process to ensure that Works are completed to the highest quality standards, minimizing defects and ensuring user satisfaction.

1. **Quality Standards and Quality Assurance Plan (QAP)**: The quality standards, methods, workmanship, material specifications that the Works work must meet should be clearly outlined in the contract indicating relevant industry standards and regulations. Quality Assurance Plan (QAP) may be incorporated in the tender document/ contract. Schedule of visit by various levels of officials should also form part of the QAP. Develop a comprehensive quality control plan (QAP) before commencement of work that outlines the procedures and processes for monitoring and verifying the quality of work. This plan should include details on inspection and testing methods, frequency of inspections at different levels of Contractor's team and contract management team.
2. **Quality Assurance - Inputs: Raw Material, Aggregates:** To control the quality of work, a Quality Assurance Cell should be formed in every work centre comprising multi-

[85] Rule 78, 104 & 106 of CPWD Departmental Code

disciplinary professionals/engineers to cover all types of works such as civil, mechanical, and electrical. The provision for third-party quality check may also be considered for a work beyond a specified monetary amount. The Contract may provide that the Contractor has to set up a lab with specified qualified personnel and instruments to test the quality of raw material or work in progress. This aspect is to be monitored during the mobilisation phase. In case of nonavailability of qualified professionals/engineers in-house for the Quality Assurance Cell, professionals from outside agencies may be deployed. The Contract Manager should ensure scheduled and surprise inspection of records, processes, tools, and instruments at the lab to ensure quality control of inputs.

3. **Quality Assurance - Methods/Processes/Methodology/ Workmanship:** Besides quality assurance of inputs, the Contract Manager should ensure that the agreed methods, processes, and methodologies are adhered to on a day-to-day basis. Methods Statement outlines the detailed procedures and methodologies that will be employed to carry out the works activities, ensuring that they meet the specified standards and requirements. This statement includes a step-by-step description of the tasks to be performed, the materials and equipment to be used, and the sequence of operations. It also addresses safety measures, environmental considerations, and compliance with relevant regulations. By ensuring a clear and comprehensive methods statement, the contract manager can ensure that all parties involved in the construction project understand the expectations and adhere to the established quality standards. This helps in minimizing errors, reducing risks, and achieving the desired outcomes efficiently and effectively. The Contractor should submit Methods Statement which the Contractor proposes to adopt for execution of the works and the quality assurance plan. Record of these measurements, samples, and test parameters should be maintained at the site for inspection. The Contract Manager should carry out scheduled and surprise inspections of work in progress and compare with the site records and Methods Statement to ensure that quality is being maintained. The level of competence of workmen, workmanship, machinery, plants, tools, and instruments being used at site should also be checked for compliance.
4. **Inspection and Testing**: Regular inspections and testing are crucial to ensure that the work meets the specified quality standards. This includes checking materials, workmanship, and compliance with methods and design specifications. No material and concrete/ bitumen mix should be allowed to be used unless it is tested as per sampling plan and recorded. In large projects a testing lab with adequate equipments/ instruments must be set-up at site during mobilisation phase. Inspections should be documented, and any deviations from the standards should be addressed promptly.
5. **Documentation and Reporting**: Maintain detailed records of all QA activities, including inspection reports, test results, and any corrective actions taken. This documentation provides a traceable history of the project's quality and can be used for future reference or audits.
6. **Corrective Actions**: When deviations from the quality standards are identified, implement corrective actions to address the issues. This may involve rework, additional inspections, or changes to the Works process. Ensure that corrective actions are documented and verified for effectiveness.
7. **Continuous Improvement**: QA is an ongoing process that involves continuous monitoring and improvement. Regularly review the QA processes and procedures to identify areas for improvement and implement changes as necessary to enhance the overall quality of the work.

7.4 Time Monitoring

7.4.1 Contract Effective Date

The date of commencement of the obligations under the Contract is referred to as the Contract Effective Date. Effective Date is either the date (or period after the LoA date) mentioned in the Special Conditions of Contract or is the date mentioned in the Work Order (say 7 days from its date) issued by the Contract Manager ‘to commence works'. The Contracting Entities are advised to set the effective date to be a date after the following:

a) Date of signing of the Contract
b) Furnishing of performance bond in terms of Performance Security
c) Receipt of Bank Guarantee (BG) for advance payment, if applicable.

7.4.2 Work Program

Work Program is the document against which project progress is monitored, and the extent and cause of delay (and any related extension of time entitlement) is assessed. The Contractor submits a detailed Work Program for approval to the Contract Manager, including the measures proposed by him for work zone safety and mitigation of environmental impact as per the agreed Environmental Management Plan (EMP) that forms part of the Contract, based on any Project Management System for completion of work. This is to be done within the time stipulated in the Contract (or four weeks from the issue of the LoA). The Work Program should be in accordance with the Contract conditions. 'Deadlines' or 'contractual milestones' should be jointly set up and tabulated by the Contract Manager and Contractor to facilitate monitoring of the progress of work. The Contractor will update the program at intervals stipulated (usually every month) in the Contract and submit it to the Contract Manager for approval. The updated program should include all variations ordered by the Contract Manager and their effect, if any, on the program.

7.4.3 Site Management:

1. **Site Inspections:** One of the key responsibilities of the Contracting Entity throughout the execution of an infrastructure Contract is to maintain a good understanding of what is happening on site. This cannot effectively be done without inspecting the site. The Contracting Entity's technical experts should be actively involved in the site inspections, and it is recommended that the Contractor’s Site Manager undertakes joint site inspections with the Contract Manager. This will ensure that any issues identified during the site inspections can be discussed with the Contract Manager and appropriate action agreed. The Contract Manager should undertake regular site inspections to ensure activities are progressing in accordance with the Contract requirements. The Contract Manager should ensure that he has the right skills to inspect the activities being undertaken and that inspections are regularly carried out jointly with the Contractor. During these inspections, he must ensure
   a) Follow-up of previously agreed action(s);
   b) Actual progress of Works against planned/scheduled;
   c) Quality of Works (do the Works comply with the quality requirements in the technical specifications?);
   d) Deployment of staff and labour in accordance with the Contract;

e) Contractor's materials and equipment (does the Contractor have all necessary equipment and construction materials to complete the Works as per the specifications and on time?);
f) Health and safety with regard not only to the Contractor's personnel but also to public safety (have all necessary health and safety measures been implemented?);
g) Environmental issues (is the Contractor's Environment Management Plan being enforced appropriately?);
h) Availability of required insurances, indemnities and permits and up-to-date documentation.

2. **Site Documents:** The Contract Manager would need to have a set of control documents available for inspection. At a minimum, these may include the following:
   a) Measurement Books.
   b) Activity reports: daily, weekly, monthly showing in tabular format quantities of work done, number of staff and equipment involved, consumption of materials, testing and samples, and so on. The reports are expected to mention any pending contractual disputes, specific events, incidents, weather conditions, and so on.
   c) Issue log: records of all issues that have occurred during the execution of Works, with appropriate descriptions and the date, cause, remedial measures taken, responsible party, status of remediation, and so on.
   d) Variation orders: all variation orders showing the justification for the changes in quantities, prices, and times of completion.
   e) Communications: records of all relevant communications with the Contractor and any third party.
   f) **Inspection and control logbook**: records of technical inspections, lab tests, and so on which are either conducted by or witnessed by the contract manager; inspections, audits, and controls performed by any other relevant party (for example, procuring entity, environmental agency, financial control, local authorities, and so on).

7.4.4 Force Majeure (FM) Clause

Conditions beyond control of either parties like war, hostility, acts of public enemy, civil commotion, sabotage, serious loss or damage by fire, explosions, epidemics, strikes, lockouts or acts of God come under the legal concept of Force Majeure (FM). Delays in performance of contractual obligations under influence of FM conditions are condonable by the other party without any right to termination or damages, provided, notice of the happening of any such event is given by the affected party to the other within 30 (thirty) days from the date of occurrence. Works under the contract shall be resumed as soon as practicable after such event has come to an end or ceased to exist. However, if such event continue for a period exceeding 120 days, either party may at its option terminate the contract by giving notice to the other party.

7.4.5 Delays in Execution

1. A work may be completed ahead of schedule or delayed due to unforeseen fortuitous circumstances, extra effort or developments beyond the control of the procuring entity, or the tenderer and it is sometimes difficult to apportion credit or responsibility. The contractor may experience delay or disruption due to his own actions or inaction, those of his sub-contractor or other contractors, those of the procuring entity or the contract manager, or other causes. Such delays expose the non-performing party to various sanctions under

the contract. These sanctions include extension of time, damages or default termination of the contract. While examining the request of the contractor for extension of time, the contract manager shall consider all circumstances and categorise the delays as follows:

a) **Excusable delays** - Force Majeure (FM), that is, acts of God, abnormal weather, floods, and so on, applies;
b) **Compensable delays** – or Compensation Events, which put full burden of responsibility on the Procuring Entity as covered in the GCC; and
c) **Inexcusable delay (contractor's own faults)**, which puts the full burden of responsibility on the contractor.
d) **Concurrent delays -** when two or more events responsible for delay overlap each other. The delays may be attributable to the Procuring Entity or the contractor or none and fall in above categories. The eligibility for extension of time (EOT) should be determined by plotting each contributing concurrent delay on the critical path. The Procuring Entity should see that the concurrent delays do not result in unnecessary extra extension of time.

2. Once the delay is categorised, it should then be determined not only whether the contractor is eligible for time extension and/ or monetary relief but also whether sanctions, such as Liquidated Damage (LD) or default termination, can be imposed on the contractor.
3. **Inordinate Delays**: Inexcusable delays beyond one-fourth of the completion period (beyond 3 months in a 12-month Contract) may be treated as inordinate delays, as confirmed record of poor performance. A show cause notice may be issued to the Contractor before issuing the final letter of poor performance. Such poor performance may be considered during qualification assessment while the Contractor bids in future tenders of the Contracting Authority. 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 7.4.7-3 below.

7.4.6 Extension of Time (EOT)

1. If at any time during the currency of the contract, the contractor encounters conditions hindering timely completion or any stage of works, 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 7.4.5 above). Extension of Time (EOT) must not be left to the end; it should be dealt with promptly during the progress of the contract and for ongoing critical delay interim EOT may be awarded. The contract manager shall, after due consultation with the procuring entity and the contractor, determine the length of such extension and notify the contractor accordingly, with a copy to the procuring entity. After the final stage of completion is reached (final taking-over certificate issued), EOT and LD may be reviewed, if required.
2. If a compensation event occurs during the execution of the contract, the same shall be dealt with in terms of the GCC. The Contract manager will assess whether and by how much the intended completion date shall be extended.
3. **Refixation of Delivery**: In case the delay is not attributable to the contractor (or in case of Force Majeure) the completion period may be re-fixed with the approval of competent authority (i.e. a fresh completion period, treated like original completion period), which is arrived at by recasting the original contractual completion period after taking care of the

lost period for which the contractor was not responsible, without LD and without the denial clause (as defined in Para 7.4.8 below), for completion of the contractor's contractual obligations.

4. **Extension of Time**: In case the delay is attributable (fully or partly) to the contractor, the completion schedule may be extended, with LD and with the denial clause (as defined in Para 7.4.7 and 7.4.8 below), for completion of the contractor's contractual obligations.
5. **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.
6. **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 contractor). 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.
7. No correspondence should be entered into with the contractor after expiry of the contract completion 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 portion of work, 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."
8. When it is decided to extend the completion period subject to recovery of LD for delay in work, 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 a legally vetted format.
9. 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.

7.4.7 Liquidated Damages (LD) and Incentives/ Bonus

1. 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. Provision of incentives for completion of work before schedule should be after careful assessment of tangible benefits there from and disclosed in the tender documents in clear monetary terms.
2. Incentives/ Bonus (e.g. one percent of the contract value per month subject to a maximum of five percent of contract value) for early completion and penalties for delay should, therefore, be built into the contract very judiciously. To avail of the incentive clause, it shall be mandatory on the part of the contractor to report the actual date of completion to the concerned Contract manager (Contract manager herein refers to PWO/ PSU/ Organisation to which work has been entrusted under Rule 133 of GFR 2017). The Contract manager shall report the actual date of completion of the works as soon as possible through fax or email so that the report is received within seven days of such completion by the concerned CA.
3. In case of delay in completion of the contract, liquidated damages (LD) (for repair works costing up to Rs. Twenty lakh - one percent (1%) of the contract value (that includes variations, taxes and duties) per week and for all other works half percent (0.5%) of the contract value per week of delay subject to a maximum of five percent (5%) of contract value) should be levied. In case of inordinate delays as per para 7.4.5-3, maximum limit on LD shall be 10% (instead of 5%) of the total contract value. The penalties proposed for identified lapses of omission or commission must be disclosed in the tender documents in clear monetary terms. For purpose of GST, liquidated damages should be shown as deductions on the invoice value by the contractor. For purpose of GST, LD should be shown as deduction on the invoice value by the contractor.
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. In case of delays for which both procuring entity 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.
5. LDs accrue only in case of delayed work. Where or as far as no work 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.

7.4.8 Denial Clause

If delay in works 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 time. 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 work.

7.4.9 Performance Notice

A situation may arise where the work has not been completed within the stipulated period due to negligence/ fault of the contractor; however, the contractor has not made any request for extension of the delivery period, 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 time and by imposing LD with denial clauses, and so on, along identical lines as in para 7.4.6 above. The contractor's acceptance of the performance notice and further action thereof should also be processed in the same manner as mentioned above.

7.4.10 Compensation Events

1. Compensation events are those which cause delays in completion of work (beyond a threshold specified in Contract) and hence financial loss to the Contractor due to defaults of the Contracting Entity. These can be due to delays or default by the Contracting Entity in:
   a) Providing of encumbrance-free possession or access to site;
   b) Discharging of obligations by the Contracting Entity - drawings, specifications, instruction, encumbrance-free site, approving of Sub-contractor, payment, and completion certificates;
   c) Infructuous additional or tests, works, delays due to the Contracting Entity's orders, default, or risks; or
   d) Unforeseen adverse conditions than could reasonably have been assumed after due diligence.
2. If a compensation event occurs during the execution of the Contract, the Contractor must give an 'early warning' to the Contracting Entity, failing which no compensation would be granted. If the Contractor proves that a compensation event would delay the completion of work, the Contract Manager will assess whether and by how much the intended completion date should be extended without LD. Proposals for grant of EOT should be considered and approved by the competent authority. The Contracting Entity may finalise the grant of EOT within a maximum period of two months on receipt of such a proposal from the Contract Manager.
3. The payment against actual work done and claimed in the monthly bills by the Contractor and recommended for payment by the Contract Manager may continue to be made to the Contractor, without recovery of LD where a proposal has been received from the Contract Manager for grant of EOT. If the EOT proposal is finally rejected, LD must be recovered. Besides EOT, the Contractor is entitled to claim compensation for any financial loss due to such events. In each Contract, there are specific provisions defining compensation events, how to determine the EOT, and/or compensation.

7.4.11 Time At Large

When the Procuring Entity does not explicitly express and reserve its rights and remedies under the contract for delays in execution, it legally forfeits his right to such remedies. Under such circumstances Time is said to become at large and the contractor gets freed from his obligation to complete within the specified time. To avoid such a situation, before the expiry of originally stipulated date of completion, the Procuring Entity should extend the currency of the agreement and set a new time limit for completion and make the extended time as essence of the contract, stipulating that this is being done without prejudice to his right to recover damages and other remedies as per the contract.

7.5 Financial Monitoring

7.5.1 Financial Monitoring

Besides administering the contract with regard to its quality and completion, the contract manager will regularly assess the financial position and exercise financial control. He will update, on a quarterly basis, cash flow projections, cost estimates and yearly/ quarterly milestones, and submit them to the Procuring Entity. Variations should take place with a view to achieving economical completion of the work, and not to result in avoidable higher rates or costs. In case of a significant number of variation orders or unexpectedly rapid cost escalation, updation may be done more frequently. The financial statements should bring out comparisons of the initial estimated/ tendered cost with the actual cost -- component- and activity --wise -- both with respect of quantities and value. The Procuring Entity should examine these statements critically. If costs are likely to be exceeded, this should be anticipated, and a revised estimate of cost prepared, with complete explanations, for approval by the CA.

7.5.2 Payments to Contractors

1. **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 contractor (Please refer to para 5.3). 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 contractor liquidates the previous advance. The advance payment security is then released.
2. **Interim Payments**: At a prearranged date each month, the contractor will submit a statement in such a form as the contract manager from time to time prescribes showing the amounts to which the contractor considers himself entitled up to the end of the month. The contract manager's would issue an Interim Payment Certificate (IPC) after following checks:
   a) Quantity of work actually completed as of an agreed 'cut-off' date;
   b) Reconciliation with Field measurements of quantities of work completed or claimed;
   c) Inventory of equipment and materials delivered to the site but not yet used in the work (materials on site);
   d) Review of claims for extra work;
   e) Checking of retention amount and other recoveries;
   f) Review of variations - whether these have been approved by Procuring Entity. If not, provisional rates are to be used until final valuation sanctioned by Procuring Entity; and
   g) Price adjustments;
   h) Following the bills filed by the contractor, Interim monthly payments (net of: (i) retentions and recovery of advances; and (ii) statutory deductions (works tax, income tax, others) would be made based on IPC. The contract manager will not be bound to certify any payment if the net amount thereof, after all retentions and deductions, is less than the minimum amount of IPC, if any, specified in the contract.
3. **Caveat regarding Measurements and Payments**: Recording of measurements of any item of work in the measurement book and/ or its payment in the interim, on account or final bill shall not relieve the Contractor from liabilities from any over measurement or

defects noticed till completion of the defects liability period, and IPC or final completion certificates issued are subject to modification this regard.

4. **Final Bills**: [86]Final bill shall be submitted by the contractor in same manner as that in interim bills within a specified time of physical completion of work and of Final Certificate of Completion (FCC) furnished by the Department/ Ministry. Payment shall then be made after verification of the bill on the personal certificate of the officer-in-charge of execution of the work in the format given below:

   "I ….. Executing Officer of (Name of the Work), am personally satisfied that the work has been executed as per the specifications laid down in the Contract Agreement and the workmanship is up to the standards followed in the Industry."

5. **Deductions of Taxes**: Deduction of applicable taxes at source from payments to contractors 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.

6. **Delay in payment to the contractors**

   a) As cash flow is a critical requirement in a project, payments delays impact the speed of construction and also the future bid value as this is factored into the bid by way of an increase in interest carrying cost. Hence, ad-hoc payments of not less than 75% of eligible running account bill/ due stage payment, shall be made within 10 working days of the submission of the bill. This period of 10 days is for completion of all processes including prima facie scrutiny and certification by the contract manager in-charge (as declared by procuring entities). The remaining payment is also to be made after final checking of the bill within 28 working days of submission of bill by the contractor. In case the payment has not been released within 10 working days as prescribed above, it shall be made as soon as possible, and after payment a written explanation for the delay shall be submitted to the next higher authority within three working days.

   b) Public authorities may put in place a provision for payment of interest in case of delayed payment of bills by more than 30 working days after submission of bill by the contractor. Where interest is to be paid, the rate of interest should be the rate of interest of General Provident Fund.

   c) In case of unwarranted discretionary delays in payments, including failure to authorise/ make ad hoc payment as prescribed in sub- para 2 above, responsibility shall be fixed on the concerned officers. Project executing authorities should have a system to monitor delays in payments and to identify such unwarranted delays.

   d) The final bill should also be paid to the contractor within three months after completion of work.

   e) All project executing authorities implementing works contracts involving aggregate payments of more than Rs.100 crore per annum shall have an online system for monitoring of the bills submitted by contractors. Such system shall have the facility for contractors to track the status of their bills. It shall be mandatory for all contractors

[86] Rule 139(vii), GFR, 2017

bills to be entered into the system with date of submission and date of payment. Such system shall be put in place within one year of issue of these instructions.)

Note: In this sub-para instructions containing "shall" are mandatory; any deviation from these instructions shall require relaxation from Ministry of Finance (for Ministries/ Departments etc.) or from the Board of Directors (for Central Public Sector Enterprises).

7.5.3 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 Completion 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 5.4 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 work 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 bill, 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 variation 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.

7.5.4 Payment of Taxes and Duties

1. The contractor shall be entirely responsible for all taxes, duties, fees, levies etc., incurred until delivery of the works 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 work 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 7.4.7 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/ extra work 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.

7.5.5 Statutory Variation Clause:

Unless otherwise stated in the contract, statutory increase in applicable GST rate only during the original completion period (or refixed completion period – para 7.4.6-3 above) shall be to Procuring Entity's account. Any increase in the rates of GST beyond the original completion date during the extended completion period (for delays attributable to the contractor) 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 completion 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 work taking place during the pendency of the contract unless such liability is expressly agreed to in terms of the contract.

7.5.6 Claims by Contractor - Compensation Events

1. As mentioned earlier, a compensation event is said to have occurred if due to neglect of obligations by the Contracting Entity, there is a delay in completion of the work (beyond a specified threshold), and the Contractor suffers financial losses. He is entitled to not only claim for financial compensation (including interest, financing charges, overheads, lost profits, and so on) as well as extension of time without the LD and denial clause. The

Contractor must give an 'early warning' to the Contracting Entity before making claims about such events.

2. A claim is a request or assertion by contractor for an entitlement or relief under any clause of the conditions of Contract or otherwise in connection with, or arising out of, the Contract or the execution of the Works. Through good Contract Management practices, the Contracting Entity and Contract Manager are expected to take measures to avoid situations that lead to the Contractor's claims. Some of these measures include
   a) Understanding the Contract document and its implementation.
   b) Ensuring timely payment for successful delivery.
   c) Properly defining the scope of works, specifications, and timely provision of design and drawings.
   d) Providing timely possession of the site.
   e) Responding promptly to the Contractor's notices.
3. The Contractor's claim should include statements of the contractual or legal basis, timely notice and submission, and proof of entitlement and damages. The Contract Manager should ensure the claim is substantiated with an analysis of costs and supporting documents, such as invoices and reports. The claim must demonstrate contractual entitlement, incurred additional costs/time, and a cause-and-effect relationship between the Contracting Entity's default and the Contractor's damages.
4. The Contract Manager should carefully check the determination of any time or associated costs claimed. Granting a time extension to a Contractor has implications both for the implementation schedule and Contract price. The following are some examples:
   a) Sufficient details, including an updated Contract schedule and impact schedule.
   b) Reasonable demonstration of additional labour or equipment costs.
   c) Justification for unabsorbed overhead costs.
   d) Verification of profit claims based on the Contract.
   e) Claims are based on contractual unit rates or actual historical costs.
   f) Extra work claims are not improperly characterized as within scope.

7.5.7 Handling Securities

Proper procedures for safe custody, monitoring and return of bank guarantees and other instruments may be followed. Chapter 5 has more details in this regard. Before making a final payment or before releasing the performance bank guarantee, a ‘No Claim Certificate’ (Annexure 9) 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.

7.5.8 Electronic Bill (e-Bill) Processing System

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.

7.6 Closure of Contract

7.6.1 Completion of Construction

1. When the work has been executed and the assets created commissioned, the Contractor should request the Contract Manager to issue a 'completion certificate'. The Contractor may, if so specified, submit the following documents along with his request for completion certificate: (a) completion drawings of the entire project and (b) videography/photographs of the works covering various phases of the project. Reasonable advance information of completion of work should be given to the concerned Ministry/ Department to enable them to plan for taking over.
2. The Ministry/ Department may carry out detailed joint inspection of the commissioned project with the contractor to ensure that no deficiencies are there before taking over. “As built” drawings of the work shall be got prepared through the contractor or otherwise to facilitate proper maintenance of the assets, additions to the assets at subsequent dates etc. and to form part of the records of the Ministry/ Department.
3. The Contractor/ PWO/ PSU would be responsible for obtaining Completion/ Occupancy Certificates/ Clearances and No-Objection-Certificates (NOCs), if applicable, from the local civic authorities. For completed Work and Facilities before handing over the same to ‘Procuring Entity’ for putting them to functional use.
4. Before the completed work is taken over by the Ministry/ Department, it must ensure that the Contractor restores to original status - the auxiliary services/ facilities (Roads, Sewerage, utilities, including removal of garbage and debris) affected during the construction process.
5. The Contractor/ PWO/ PSU shall hand over to Ministry/ Department concerned or its Authorized Representative completed Work including all Services and Facilities constructed in accordance with the Approved Plans, Specifications fulfilling all agreed techno-functional requirements along with Inventory, As built - Drawings, Maintenance Manual/ Standard Operating Procedure (SOP) for Equipments and Plants, all clearances /Certificates from Statutory Authorities, Local Bodies etc.
6. On completion of the work, a Project Completion Report (PCR) shall be submitted by The Contractor/ PWO/ PSU duly bringing out the Final Project Completion Cost, Total Time period taken to complete the work and also completed Project Components as against the approved Cost, Time and Project Components. The PCR shall be submitted along with Final Project Accounts including return of unspent balance amount to the Ministry/ Department within one month of settlement of final bills of the contractors/ other agencies deployed on the work.
7. Record keeping should be created at every work centre to facilitate proper stacking of records pertaining to the completed works. The records should be preserved in such a manner that the same can be retrieved whenever required.

7.6.2 Completion of Contract

The contract is not to be treated as completed until a Defects Liability Certificate (DLC) has been issued. There will be only one DLC. It will be issued when the contractor has completed all his obligations under the contract. While making the final payment to the contractor and before releasing the PBG, it should be ensured that there is nothing outstanding from the

contractor, because it would be difficult to retrieve such amounts after releasing the bank guarantee/ final payment. Before the bank guarantee is released a “no claim certificate” (Annexure 9) may be taken from the contractor. At least in large contracts (above Rs. 25 (twenty-five) lakh), it should be ensured that before the release of the bank guarantee (final payment, if there is no bank guarantee), the following reconciliations should be done across departments involved in the execution of the contract:

7.6.3 Material and Works Reconciliation

The Ministry/ Department should confirm that all Works ordered in the contract and paid for have been taken over in good condition and there is no shortcoming. Full reconciliation of all materials, machinery and assets provided to the contractor should be done including wastages and return of scrap/ off-cuts.

7.6.4 Reconciliation with the User Department

Besides Works reconciliation, the user department should certify in writing that the following activities (wherever applicable) have been completed by the contractor, to the department’s satisfaction, as per the contract:

a) Achievement of performance standards of Work;
b) Installation and commissioning, if any;
a) Support service during the Defect Liability Period which has ended on _____;
b) As Made Drawings;
c) Return of all ID cards, gate passes, documents, drawings, protective gear, material, equipment, facilities and assets loaned to contractor.

7.6.5 Payment Reconciliation

1. The Ministries/ Departments may reconcile payments made to the contractor to ensure that there is no liability outstanding against the contractor on account of:
   a) LD;
   b) Price reduction enforced on account of shortfall in standards of Work;
   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, and so on;
   g) Works reconciliation;
   h) Price variations;
   i) Statutory duties paid on behalf of the contractor by Procuring Entity; and
2. On satisfactory reconciliation and against a “no claim certificate” (Annexure 9) from the contractor, the bank guarantee may be released and its acknowledgement taken from the contractor.

7.7 Resolving Disputes and Conflicts

7.7.1 Disputes

1. Normally, there should not be any scope for dispute between the Procuring Entity and contractor after entering into a mutually agreed valid contract. However, due to various unforeseen reasons, problems may arise during the progress of the contract leading to a

disagreement between the procuring entity and contractor. Therefore, the conditions governing the contract should contain suitable provisions for settlement of such disputes or differences binding on both parties.

2. **Avoidance and Minimisation of Disputes**: Contractual disputes could be time-consuming, expensive, and difficult. It is therefore in the interest of contracting parties to work in a coordinated manner and collaboratively to avoid disputes in the first place. This can be achieved, among other things, through developing good communications and working relationship management with the Contractor. To minimise contractual disputes and complication, all parties would need to effectively carry out their duties in accordance with the Contract and brainstorm together to manage perceived and actual bottlenecks to Contract implementation. When they do arise, every attempt should be made to find an efficient and cost-effective resolution, including through amicable settlement. The dispute should be managed actively and positively and at the right level/s. A quick resolution saves time, money, and effort at later stages if the dispute remains unresolved. On the other hand, delays in resolution can lead to rapid escalation of costs and further damage to relationships and ultimately termination of the Contract. Sometimes the cost of litigation exceeds the Contract price.
3. 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-term public interest, keeping legal and practical realities in view, without shirking or avoiding responsibility or denying genuine claims of the other party."
4. 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".
5. 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

[87] OM issued by PPD, DoE, MoF: No. F. 1/2/2024-PPD dated 03.06.2024
[88] The conciliation part of the Arbitration and Conciliation Act, 1996 has been replaced by mediation by the recent Mediation Act, 2023.

7.7.2 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:

a) 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.
b) Issues related to the pre-award tender process or conditions.
c) 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.
d) 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.
e) Issues that are already under investigation by CBI, Vigilance, or any other investigating agency or government.
f) 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
g) Provisions of restrictions regarding local content and Purchase Preference to Local suppliers in terms of Make in India policy of the Government.
h) Provisions regarding restrictions on Entities from Countries having land-borders with India in terms of the Government's policies in this regard.
i) Purchase preference policies regarding MSEs and Start-ups

7.7.3 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 7.7.4-3-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.

7.7.4 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):
      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.

[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. 1/2/2024-PPD dated 03.06.2024

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 14, 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/ counterclaims 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.

7.7.5 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 contractor, a standard arbitration clause (hereinafter called the 'Agreement') may be included in the 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.
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.
5. Regarding CPSEs/ PSBs/ Financial institutions etc., the Managing Director.

[91] https://lawmin.gov.in/sites/default/files/ArbitrationandConciliation.pdf

[92] https://egazette.nic.in/WriteReadData/2021/225832.pdf

[93] OM issued by PPD, DoE, MoF: No. F. 11212024-PPD dated 03.06.2024

a) 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).

b) 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.

7.7.6 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 contractor, the contractor 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.

7.7.7 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 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 7.7.1 above, if the Adjudicator fails to decide within 60 days (as referred in para 7.7.3 above), or the mediation is terminated (as referred in para 7.7.3-4 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.

7.7.8 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 counterclaims or set off. Other matters shall be beyond the jurisdiction of Arbitrator(s)

7.7.9 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

3. A copy of the relevant contract and any supporting documents

4. A copy of the notice intimating the other party of the initiation of arbitration proceedings, with proof of delivery (if any).

   a) 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.

   b) 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.

5. **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 17. 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.

iii) Disclosure by all arbitrators shall be in format of Annexure 17.

e) An Arbitrator may be appointed notwithstanding the total no. of arbitration cases in which he has been appointed in the past.

f) 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.

6. **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.

7. **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).

8. **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).

9. 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.
   a) 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.
10. 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.

a) 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.

b) **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.

7.7.10 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.

7.7.11 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]

[94]Notified vide OM No. F.1/2/2024-PPD issued by Department of Expenditure dated 03.06.2024
[95]Notified vide OM No. F.1/1/2021-PPD issued by Department of Expenditure dated 29.10.2021.
[96]New rule 227A of GFR, 2017 notified vide OM No. F.1/1/2021-PPD issued by Department of Expenditure dated 29.10.2021.

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.
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].

7.7.12 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:

[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.

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.

7.8 Breach and Termination of Contract

7.8.1 Breach of Contract

1. In case the contractor is unable to honour important stipulations of the contract or gives notice of his intention of not honouring or his inability to honour such a stipulation, a breach of contract is said to have occurred. Mostly, such breaches occur in relation to the performance of the contract in terms of inability to complete the Work within stipulated time or to meet other obligations. It could also be due to breach of ethical standards or any other stipulation that affects Procuring Entity seriously. As soon as a breach of contract is noticed, a show cause notice should be issued to the contractor, giving two weeks' notice, reserving the right to implement contractual remedies. If there is an unsatisfactory resolution, remedial action may be taken immediately.
2. In the event of a breach of contract by the contractor in a works contract, the procuring entity can invoke one or more of following options, some of which ensure that the issue can be resolved, and construction project can proceed smoothly. The procuring entity can:
   a) **Temporary suspension**: order temporary suspension of work at the 'risk and cost' of the contractor if he is proving to be recalcitrant in meeting its obligations under the Contract.
   b) **Withholding Payments**: withhold payments to the contractor until the breach is resolved. This provides leverage to ensure that the contractor addresses the issues and fulfils their contractual obligations.
   c) **Imposing Liquidated Damages**: impose liquidated damages on the contractor for delays. These damages are predetermined and specified in the contract, providing a financial penalty for non-compliance.
   d) **Rectification of Defects**: require the contractor to rectify any defects or issues arising from the breach. This may involve additional work or corrections to ensure that the project meets the required standards.

[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.

e) **Dispute Resolution**: initiate dispute resolution mechanisms, such as mediation or arbitration, to address the breach. These processes can help resolve conflicts and ensure that the project can continue without termination.

f) **Completing the Work Otherwise**: upon such terms and in such manner as he deems appropriate, take over the site to complete the works himself or with another contractor (at the risk and cost of defaulter) and use the Contractor's materials, equipment, and temporary works as deemed proper. In small-value contracts, instead of risk and cost, a prefixed percentage recovery may be provided in the Contract. This may involve subcontracting specific tasks or hiring additional contractors to ensure project completion.

g) **Performance Security**: invoke the performance security provided by the contractor. This security, often in the form of a bank guarantee, ensures that the procuring entity can recover costs associated with the breach.

h) **Partial or full Termination**: terminate contract partially or fully on account of default by the contractor. In partial termination, the Contractor should continue to fulfil the contract to the extent not terminated.

3. If termination takes place because of a fundamental breach/ insolvency on the part of the contractor, the contract manager shall issue a certificate for the value of work done, deducting from the amounts in respect of: (a) advance payments; (b) any recoveries; (c) taxes as due; and (d) percentage to apply to the work not completed as indicated in the contract data. If the total amount due to the procuring entity exceeds that due to the contractor, the difference will be a debt payable to the procuring entity. The CA may terminate a contract in the following cases. The Procuring Entity is then free to take over the site and complete the works himself or with another contractor and use the contractor's materials, equipment, temporary works as he/ they think proper.

7.8.2 Termination of Contract for Default

1. Without prejudice to any other remedy for breach of contract, such as removal from the list of enlisted contractors, by written notice of default sent to the Contractor, the contract may be terminated in whole or in part, if the contractor has:
   a) seriously or repeatedly breached the contract, including;
      i) failure to complete the work within the time period(s) specified in the contract, or any extension thereof granted.
2. failure to obey instructions in relation to his progress or defective work, material or plant.
3. breach of the prohibition against sub-contracting.
4. Failure to supply sufficient and suitable constructional plant, temporary works, labour and material as proposed in the work programme.
5. Substantial suspension of work for more than the specified days without authority from the contract manager and failure to proceed with the work within the specified days of receipt of notice from the contract manager.
6. Failure to comply with the requirements regarding JVs.
   a) committed fraud;
   b) If the contractor fails to perform any other obligation under the contract within the period specified in the contract or any extension thereof granted;
   c) If the contract is terminated in whole or in part, recourse may be taken to any one or more of the following actions:

i) Forfeiture of the performance security.

7. Upon such terms and in such manner as it deems appropriate, taking over the site and to complete the works himself or with another contractor (risk Purchase) and use the contractor's materials, equipment, temporary works as he/ they think proper. In small value contracts, instead of Risk Purchase, a fixed percentage recovery may be provided in the SBD.
8. However, the contractor shall continue to fulfil the contract to the extent not terminated.
9. Before cancelling the contract and taking further action, it may be desirable to obtain legal advice.

7.8.3 Termination of Contract for Insolvency

If the contractor informs the procuring entity of his bankruptcy or insolvency or liquidation , the contract may be terminated, by giving a written notice to the contractor, without compensation to the contractor, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to Procuring Entity.

7.8.4 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 executed Works and incidental Goods/ Services that are complete and ready in terms of the contract for execution/ 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 Works and incidental Goods/ Services, 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 Works and incidental Goods/ Services and compensate the contractor by paying an agreed amount for the cost incurred by the contractor, if any, towards the remaining portion of the Works and incidental Goods/ Services.

7.8.5 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 7.8.4 above, due to its frustration, without repercussions on either side.

7.8.6 Limitation of Liabilities

1. Except in cases of criminal negligence or wilful misconduct, 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 the cost related to defect liabilities, or to any obligation of the contractor to indemnify the Procuring Entity concerning legal/ statutory infringement.
2. 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 the other Party may suffer in connection with the Contract, provided that this exclusion shall not apply to any obligation of the Contractor to pay liquidated damages to the Procuring entity.

7.9 Execution and Monitoring of Works and Quality Assurance – Risks and Mitigation

Risks	Mitigation
a) **Substitution of key experts in implementation:** When the contract progresses, over a period of time, the request for substitution of key staff is made by the firm citing reasons of non-availability, health, and so on.	The Procuring Entity needs to deal with such requests strictly in terms of contract provisions which permit substitution of key experts in exceptional circumstances such as "death or medical incapacity". Substitution of a person "of equivalent or better qualification and experience" should receive utmost scrutiny and compliance, as diluting such a provision leads to loss of quality of work and a serious integrity issue. Such substitution should not give any undue financial benefit to the contractor.
b) **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 contractor and the assignment may get delayed.	This type of contract should include an upper limit of total payments to be made to the contractors 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

Risks	Mitigation
	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 contractor's contracts and also to request contractors 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.
c) **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.
d) **Contract changes and renegotiations**: This is also a risk area, where the procuring entity may not get what it contracted and paid for or may pay for what it has not received. On the other hand, the contractor may not get timely or proper amendments due to changes asked by the procuring entities.	Contract modifications and renegotiations should not substantially alter the nature of the contract. It should not vitiate the basis of the selection of the contractor. It should not give undue or unintended benefits to the contractor. However, for any changes caused by the procuring entity, the contractor should be adequately and timely compensated within the contractual terms.
e) **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 and warranty/defect liability period is completed. This should include the dispute resolution forum for resolving disputes in a
f) **Contractor's claims** are false or inaccurate and are protected by that in-charge of revising them.	
g) **Payment to the contractor** is delayed intentionally or otherwise.	

Risks	Mitigation
h) **Contractor gets final payment**, but contract closure has not been formally done. As a result, material/assets loaned to him are not accounted for.	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.
i) **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.	
j) **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 14, if applicable) in conformity with paras 4.6.2-9, 8.2.3 and 8.8. Sub-contracting should be regulated as per the contract and para 7.2.6-6.

Chapter 8: Registration/ Enlistment of Contractors and Governance Issues

8.1 Contractor Relationship Management

Contractor Relationship Management comprises the following functions:

a) Ensuring compliance of contractors to the Code of Integrity for Public Procurement and Integrity Pact (CIPP) if stipulated in Bid Documents;
b) Removal from the list of registered/ enlisted contracts and debarment of firms;
c) Development of new sources and registration/ enlistment of contractors.

8.2 Code of Integrity for Public Procurement (CIPP)[99]

8.2.1 Introduction

Public procurement is perceived to be prone to corruption and ethical risks. To mitigate this, the officials of Procuring Entities involved in procurement and the bidders/ contractors must abide by the following Code of Integrity for Public Procurement (CIPP). All Procuring officials may be asked to sign declarations to this effect periodically and in various Procurement decisions (including Preparation of Estimates). The bidders/ contractors should be asked to sign a declaration about abiding by a Code of Integrity for Public Procurement (including sub-contractors engaged by them) in enlistment applications and in bid documents, with a warning that, in case of any transgression of this code, its name is not only liable to be removed from the list of enlisted contractors, but it would be liable for other punitive actions such as cancellation of contracts, debarment or action in Competition Commission of India, and so on.

8.2.2 Code of Integrity for Public Procurement

Procuring authorities as well as bidders, contractors and consultants should observe the highest standard of ethics and should **not indulge** in the following prohibited practices, either directly or indirectly, at any stage during the procurement process or during execution of resultant contracts:

a) **"Corrupt practice":** making offers, solicitation or acceptance of bribe, rewards or gifts or any material benefit, either directly or indirectly, in exchange for an unfair advantage in the procurement process or to otherwise influence the procurement process or contract execution;
b) **"Fraudulent practice":** any omission or misrepresentation that may mislead or attempt to mislead so that financial or other benefits may be obtained or an obligation avoided. This includes making false declaration or providing false information for participation in a tender process or to secure a contract or in execution of the contract;
c) **"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;

[99] Rule 175 (1), GFR 2017

d) **"Coercive practice":** any coercion or any threat to impair or harm, directly or indirectly, any party or its property to influence the procurement process or affect the execution of a contract;

e) **"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;

f) **"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[100]) provided services for the need assessment/ procurement planning[101] of the tender process in which he is participating;

g) **"Obstructive practice":** materially impede the procuring entity's investigation of a procurement process either by deliberately destroying, falsifying, altering; or by concealing of evidence material to the investigation; or by making false statements or by threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to such investigation or from pursuing the investigation; or by impeding the procuring entity's rights of audit or access to information;

8.2.3 Obligations for Proactive Disclosures[102]

Whether asked or not, in a tender document:

a) Procuring authorities[103] as well as bidders, contractors and consultants, should suo-moto proactively declares any conflicts of interest as per para 8.2.2 (e) above – pre-existing or as soon as these arise at any stage in any procurement process or execution of contract (Please also refer to para4.6.2-9).

b) Bidders must declare any previous transgressions with respect to the provisions of para 8.2.2 above with any entity in any country during the last three years or of being debarred by any other procuring entity.

c) 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.

8.2.4 Punitive Provisions[104]

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

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

[101] 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.

[102] 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.

[103] Please refer to example in para 7.5-5 for clarification of COI relating to personnel of procuring Entity.

[104] Rule 175(2), GFR, 2017

(prospective) bidder/ contractor, 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 (Rule 175 (2) of GFR, 2017):

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

8.3 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[105] 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 14. The procuring entities may make suitable changes in the format, wherever required based on the specific situation, in which pact is to be used. The pact may also be updated, wherever necessary, to incorporate latest procurement instructions.
3. CVC issued a revised Standard Operating procedure[106] and has further stated[107] that in view of the increasing procurement activities of Public Sector Banks (PSBs), Public Sector

[105]OM No.14(12)/ 2008- E-II(A) dated 19th July 2011
[106]vide CVC Circular No.04/06/23 (015/VGL/091 dated 14.06.2023)
[107] vide CVC Circular No.06/05/21 (015/VGL/091 dated 03.06.2021)

Insurance Companies (PSICs) and Public Sector Financial Institutions (FIs) shall also adopt and implement the suggested format of Integrity Pact. Please refer to Annex-2 of Annexure 14 for details.

8.4 Grievances and its Redressal

1. Procuring Entities shall provide a suitable clause in their Tender Documents for the redressal of grievances of bidders. The following is a suggested mechanism of redressal:
2. Any supplier, contractor, or consultant that claims to have suffered or is likely to suffer loss or injury as a result of a decision/ action/ omission of the Procurement Entity may make an application for its review within a period of Five (5) days from its date, 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 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;
4. 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.
5. This grievance redressal is beside the avenue of complaints to the vigilance department of the procuring organisation.
6. If received during the processing of the tender, the designated officer shall forward the application 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 TC convener shall respond to the aggrieved party.

7. If such grievance is received after the declaration of the award of the contract, the designated officer 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.
8. If the grievance is resolved or if the grievance is found to be unwarranted, the aggrieved party shall be informed by the TC convener of the final decision without disclosing confidential details.
9. 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;
   f) debarment of the bidders, if warranted;
   g) reporting the matter to the Competition Commission of India (CCI) in case of anti-competitive actions by the bidder.
   h) Handing over the case to CVO if there are aspects that require investigations.

8.5 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 suppliers may tend to cross the limits of ethical/ occasional/ routine/ modest/ normal business practice. Officials sent to firm's premises for inspections/ meetings may mistakenly presume entitlement to hospitality from the firm, even if other arrangements are available at the location.	Hospitality must never be solicited, directly or indirectly. The frequency, scale and number of officials availing hospitality should not be allowed to identify the recipient in a public way with any particular contractor, supplier or service provider or raise doubts about its neutrality. It should not involve significant travel, overnight accommodation or trips abroad. Particular care should be taken in relation to offers of hospitality from firms (say participating in current or imminent tenders or

Risk	Mitigation
In the contracts signed with suppliers by some of the Ministries/ Departments have clauses of pre-inspection at the firm's premises, where there is a provision that the suppliers or the vendors will pay for the travel, stay, hospitality and other expenses of the Inspecting officials.	its execution) who stand to derive a personal or commercial benefit from their relationship with the recipient. This is not in keeping with need to safeguard the independence of the inspecting teams. Such provisions in contracts need to be discouraged, so that Inspections are not compromised. Necessary steps maybe taken to strictly avoid such provisions in the contracts with suppliers/ vendors[108].
2. Gifts: Gifts from suppliers may tend to cross the limits of ethical/ occasional/ routine/ modest/ normal business practice, especially on festive season. Since the value of the gift may not be known to the recipient, it may cause inadvertent violation of Conduct rules.	Gifts must never be solicited, directly or indirectly. An official should not accept and retain gifts more valuable than the limit as laid down in the conduct rules. Cash, gift cheques or any vouchers that may be exchanged for cash may not be accepted regardless of the amount. Particular care should be taken in relation to gifts from firms (say participating in current or imminent tenders or its execution) who stand to derive a personal or commercial benefit from their relationship with the recipient. Any gift received inadvertently in violation of above, must immediately either be returned or else reported and deposited in Toshakhana/ Treasury.
3. Private Purchases from Official Suppliers: Procuring Officials may mistakenly consider it innocuous to seek discounts in private procurements from contractors having official dealings or its allied firms.	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.
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 of cultural, social, charitable, religious, or sporting events, in the false belief that since he/ she is personally not benefitted, it would not be a violation of CIPP.	Officials involved in Public Procurement must never indulge in any non-official pecuniary transaction with the contractors, suppliers or service providers with whom they have official dealings; including soliciting of sponsorship for unofficial and private cultural, social, sporting, religious, charitable or similar organisations or events.

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

Risk	Mitigation
5. Conflict of Interest (COI): para 8.2.2-e) 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 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.	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 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[110][109]) have: i) Substantial business interests in the firm[110] (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[109]), 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[109] with the personnel of the firm. iv) close personal friendships or regular (say, more than once in a quarter)

[109] 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.

[110] For purpose of COI, Firm includes its allied firms also. Firm's personnel for this purpose, shall mean – senior executives (or team handling the bidding) at the bidding firm. 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
	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 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.

8.6 Development of New Sources and Registration/ Enlistment of Contractors

1. The terms 'enlistment' and 'registration' may be differentiated as follows: --
   a) **Registration:** Simply registering the contractor, without any verification.
   b) **Enlistment:** Including the name of the contractor in the list of after verification of credentials.
2. **Registration**: All the Ministries/Departments shall register the prospective contractors on their e-procurement portal or in the CPPP (in case they do not have their own e-procurement portal) before submitting their bids. The contractor may be an Individual, Sole proprietorship firm, partnership firm, limited liability partnership, private or public limited company. For registration, the Ministries/Department/CPSUs shall capture at least–
   a) Name of contractor,
   b) Address and Contact details,
   c) Permanent Account Number (PAN),
   d) Details of digital signature certificate (DSC) and
   e) GSTIN.

Depending on the requirement of respective procurement portal, the Ministries/Departments can capture any other information, as may be considered necessary.

3. **Enlistment**: Some Departments such as Central Public Works Department (CPWD) and Military Engineering Services (MES) are enlisting the contractors after verification of their credentials. Public authorities may empanel/ register contractors of those specific types of work which are required by them regularly. Performance of such empanelled contractors

should be reviewed periodically. The list of empanelled/ registered contractors shall be updated on a regular basis. The category/ class of contractors may be upgraded/ downgraded, or contractors may be de-listed based on their performance. Empanelment of contractors shall be done in a fair and equitable manner, preferably online after giving due publicity. The practice of inviting bids for works tenders only from empanelled contractors may be confined to tenders up to certain threshold value (say Rs 20 Cr), as decided by the project executing authorities. It is expected that Ministries/Departments will also develop their own enlistment process, as has been done by CPWD, Ministry of Railways (MoR) and Ministry of Road Transport & Highways (MoRTH) to reduce the time required for verification of credentials of the contractors after opening of the bids. The lists of such enlisted contractors can be used by any Ministry/Department/CPSU.

4. The Ministries/Departments will also share the information of registered and enlisted contractors with each other through the Central Public Procurement (CPPP). The Ministries/Departments will also ensure that whenever a contractor is debarred, the information regarding the same is made available immediately to all the Ministries/Departments through the CPPP. The reasons for the debarment and order of such debarment may also be displayed on the CPPP. The National Informatics Centre (NIC)/ Ministry of Electronics and Information Technology (MeitY) shall make appropriate changes in the CPPP so that each contractor can be uniquely identified by PAN. All the Ministries/ Departments may take cognizance of the information regarding debarment of contractors and use it as an input for the decision -making process as per their own procurement policies.
5. Ministries/ Departments with a significant volume of procurements may follow their own policies and procedures for enlistment of contractors, if already existing. The policies and procedures for enlistment described below is for guidance of Ministries/ Departments, who do not have their own, laid down policies/ procedures for enlistment. The Ministry/ Department shall notify the authorities competent to deal with the applications and grant enlistments, along with their jurisdictions. The appellate authority shall be at least one level above the registering authority or as designated by the Ministry/ Department.
6. All Ministries/ Departments may use such lists prepared by other Ministries/ Departments as and when necessary. Registered suppliers are ordinarily exempted from furnishing earnest money deposit/ bid security with their tenders for items, and Monetary Limits for which they are registered.
7. **Categories for Enlistment**: In case of procurement of works, the Administrative Department shall enlist firms as contractors in different types/ categories of works (Civil, Electrical, Horticulture, Nursery etc). The contractor may be a Private, Partnership, Pvt Ltd, Corporate, PSU or a Joint Venture company.
8. **Class of Enlistment (Tendering Limits)**: Enlistment should be done by Class of the firms (Grade A, B, and so on) on their capability for executing contract orders of different monetary limits in the relevant category of requirements. The monetary limits should be carefully fixed keeping in view the banker’s reports, capacity and capability of the firm and other financial information indicated in the balance sheets, profit and loss statements:

(A sample classification[111])

Class	Tendering Limit	Class	Tendering Limit
Class-I (Super)	Rs 650 crore	Class-II	Rs 15 crore
Class-I (AAA)	Rs 260 crore	Class-III	Rs 4 crore
Class-I (AA)	Rs 130 crore	Class-IV	Rs 1.30 crore
Class-I (A)	Rs 75 crore	Class-V	Rs 40 lakh
Class-I	Rs 50 crore		

9. **Procedure for Enlistment**: Enlistment of contractors should be done by any Ministry/ Department in case it desires to enlist contractors for works which are exclusively needed by it by keeping fundamental principles of public procurement in view (especially the transparency principle - transparency, fairness, equality, competition and appeal rights) with the approval of CA after carefully assessing and verifying credentials, capability, quality control systems, past performance, after-sales service facilities, financial background, and so on, of the contractor/ service provider(s):
   a) Details of the procedure for enlistment of new firms may be uploaded on the website and also published in the form of a booklet for information of the contractors. Timeframes and criteria for enlistment of new contractors may be clearly indicated;
   b) Possible sources for any category/ group of requirements can be identified based on internal and external references. Data of new contractors can be obtained from the response received from contractors, open tender advertisements, pre-qualification bids, Expression of Interest (EoI), against various enquiries on the website, dedicated websites, exhibitions, buyer-seller meets, various publications of BIS, trade journals, and so on. The e-procurement portal does pre-registration of contractors online. Such data can be a source of information on prospective contractors;
   c) New contractor(s) may be considered for enlistment at any time, provided they fulfil all the required conditions. For any larger scale or critical enlistment of contractors, Procuring Entity should call for EOI by publicising its need for development of sources. The stages to be followed together with the applicable guidelines for EOI have been detailed in Chapter 3;
   d) While registering the firms, an undertaking may be obtained from them that they will abide by the CIPP enclosed with the application with a clear warning that, in case of transgression of the code of integrity, their names are likely to be deleted from the list of enlisted contractors, besides any other penalty or more severe action as deemed fit; and
   e) Along with the new/ renewal application for enlistment, the contractors should also be asked to declare that, if awarded a contract in any LTE in which they participate, they bind themselves to abide by the Procuring Entity's General Conditions of Contract (GCC). Such GCC should be part of the application
   f) Enlisted contractors must participate in relevant limited tenders. In case they do not respond to at least three (3) tenders in a year on being invited to do so (if there were at least 6 invitations to them), they may be removed from the list of enlisted contractors.

[111] Source: Rules for Enlistment of Contractors in CPWD, 2024

10. **Eligibility**
    a) Any firm, situated in India or abroad, which is in the business of providing goods/ works/ services of specified categories of interest, shall be eligible for enlistment;
    b) Contractors should possess valid Digital Signature Certificate (DSCs) Class III with the company name at the time of enlistment/ renewal, so as to enable them to participate in e-procurements;
    c) The firm should also have good internal governance, such as whistleblower policy, commitment to ESG (Environmental, Social, and Governance) code of conduct, code of business ethics, etc.
    d) The firm against whom punitive action has been taken, shall not be eligible for re-enlistment while the punitive action is in effect. Enlistment requests may not be entertained from such firms, stakeholders of whom have any interest in de-Enlisted/ banned firms;
11. **Assessment of Capacity and Capability**: The application form, complete in all respects and accompanied with the requisite processing fee and prescribed documents shall be submitted by the firms to the enlisting authority. The enlistment application form, duly filled-in, when received from the firms shall be scrutinised carefully for assessing the capacity and capability of the firms including credentials, capability, quality control system, past performance, financial background, and so on, of the applicant. References shall be made to other firms of standing of whom the applicant firm claims to be a contractor. Likewise, the applicant firm's bankers may also be requested to advice about the financial standing of the firm.
12. In cases where the firm is not considered capable and enlistment cannot be granted; the concerned authority shall communicate the deficiencies and shortcomings direct to the firms under intimation to the appellate authority. Where a request for re-verification and review is made by the firm, along with any fee as prescribed and within the period prescribed by the department (say, within six months), 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.
13. If considered to be capable after carefully assessing and verifying credentials, the firm may be enlisted with the approval of CA. Enlistment should be for specific category of works.
14. It should be mentioned in the letter of enlistment that the enlistment is valid for a specified period (say three years) and would be considered for extension based (on application by the contractor/ service provider) on satisfactory performance of the firm. However, the enlistment would be initially treated as provisional, and it would be treated as confirmed only after the firm has satisfactorily executed one contract of the relevant category and value from Procuring Entity. The extension of validity of enlistment is not a matter of right and Procuring Entity reserves the right not to extend such enlistment without assigning any reason.
15. All Enlisted contractors should be allocated a unique enlistment number. The list of enlisted contractors (indicating the names and addresses of the enlisted contractors with details of the requirements and monetary value they will execute as well as the validity period, and so on, for which they are enlisted) shall be exhibited on the websites of the Procuring Entity.
16. Performance and conduct of every enlisted contractor is to be watched by the concerned department. Procuring Entity should also reserve the right to remove firms who do not

perform satisfactorily, even during the validity of enlistment (after giving due opportunity to the contractor to make a representation) if they fail to abide by the terms and conditions of the enlistment or fail to execute contracts on time or do substandard work or make any false declaration to any government agency or for any ground which, in the opinion of the government, is not in public interest.

17. Procuring Entity shall retain its option to reassess firms already enlisted, at any later date, to satisfy itself about the current financial soundness/ credit worthiness, facilities available, and so on. Thereafter, Procuring Entity may decide to retain them as enlisted contractors for the requirements and monetary limit earlier considered or with necessary changes as deemed fit. In case of adverse reports from the team of Procuring Entity, officers who reassess the firm, Procuring Entity shall delete such firm from the enlisted contractors list.

(Rule 150 of GFR 2017)

8.7 Debarment of Contractors

8.7.1 GFR's Provisions

Registration of Contactors and their eligibility to participate in Procuring Entity's procurements is subject to compliance with Code of Integrity for Public Procurement and satisfactory performance in contracts. Rule 151 of 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 Bharatiya Nyaya Sanhita or any other law for the time being in force, for causing any loss of life or property or causing a threat to public health as part of execution of a public procurement contract.

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 [112]commencing from the date of debarment.

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.

8.7.2 Guidelines on Debarment of firms from Bidding

1. PPD DoE did consultations on the issue of Debarment with major procuring Ministries/ Departments and issued the following 'Debarment Guidelines' in suppression of all earlier instructions on this subject[113]. 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 following two types: -

[112] Now two years is applicable as mentioned below in para 8.7.2-3-a) below.
[113]Notified vide OM No. F.1/20/2018-PPD issued by Department of Expenditure dated 02.11.2021.

i) In cases where debarment is proposed to be limited to a single Ministry, the 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 to all central Ministries/ Departments, the requisite Orders shall be issued by 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".

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

a) A bidder or any of its successors or 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 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 8.2.2 of this Manual for further reading on Code of Integrity).

ii) False declaration of local content by Class I/ Class II local suppliers under Public Procurement (Preference to Make in India, Order 2017, dated 16/09/2020 or later, i.e., the Make in India Order) shall also be treated as a breach of 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) In respect of procuring entities other than the one which has carried out the debarment, the debarment takes effect prospectively from the date of uploading on the website(s) in such a manner that ongoing procurements are not disrupted.

A supplier who has been debarred by any procuring entity as per sub -para ii) above, shall not be eligible for preference under the Make in India Order for procurement any other procuring entity for the duration of the debarment. This shall be effective from the date of uploading of such debarment on the website(s).

iv) for any actions or omissions by the bidder other than violation of code of integrity, which in the opinion of the Ministry/Department, warrants debarment, for the reasons like supply of sub-standard material, non-supply of material, abandonment of works, sub-standard quality of works, failure to abide "Bid Securing Declaration" etc.

b) The debarment order (please refer to Annexure 16 for a format) shall not be circulated to other Ministries/ Departments. It will only be applicable to all the attached/ subordinate offices, Autonomous bodies, Central Public Sector Undertakings (CPSUs) etc. of the Ministry/ Department issuing the debarment Order.

c) The concerned Ministry/ Department before issuing the debarment order against a firm must ensure that reasonable opportunity (Please refer to Annexure15 for a format of Notice) has been given to the concerned firm to represent against such debarment (including personal hearing, if requested by firm).

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

e) Ministry/ Department that issued the order of debarment can also issue an Order for revocation of debarment before the period of debarment is over, if there is adequate justification for the same. Ordinarily, the revocation of the Order before expiry of debarred period should be done with the approval of Secretary concerned of Ministry/Department.

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 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 Vigilance Department.

i) The period of debarment starts from the date of issue of debarment order; therefore, the process of debarment should be conducted on an expeditious manner. Considering the quasi-judicial nature of such proceedings and need to afford a fair hearing to the firm, 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 banning 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 firm – 3 weeks
   vi) Final Order, indicating opportunity to the firm 2 weeks' time to appeal to the Secretary of Ministry/ Department as appellate authority – 2 weeks.
   vii) Total 12 weeks from zero day, after which debarment period starts.

viii) Receipt of Appeal and disposal the same by the appellate authority – 4 weeks

4. **Debarment by CPSEs, Attached Offices/ Autonomous Bodies:** 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 that specified period 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 to debarred firm including its allied firms after the issue of a debarment order by the Ministry/ Department. Bids from only such firms shall be considered for placement of contract, which are neither debarred on the date of opening of tender (first bid, normally called as technical bid, in case of two packet/two stage bidding) nor debarred on the date of contract. Even in the cases of risk purchase, no contract should be placed on such debarred firms.

c) In case, any debar firms has submitted the bid, the same will be ignored. In case such firm is lowest (L-1), next lowest firm shall be considered as L-1. Bid security submitted by such debarred firms shall be returned to them.

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 of joint venture/ consortium is debarred all partners will also stand debarred for the period specified in Debarment Order. The names of partners should be clearly specified in the “Debarment Order”.

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[114]. 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.

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

8.8 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[115]. *(Rule 152 of GFR 2017)*

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

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

ANNEXURES

Annexure 1: Financial Powers to Sanction Expenditure for Purchases and Execution of Contracts

(Refer Para 1.5-1, 3.6-2, 6.2.1-5, 6.5.4-3)

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.
2. 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.
3. 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

4. **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.
5. **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.
6. **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.

7. **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.
8. **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, 3.6-2, 6.2.1-5, 6.2.7-3)

A suggested structure of SoPP [116] 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**
Acceptance of necessity and issue of in-Principle Approval, Administrative Approval and Expenditure Sanction (A/A and E/S), Appropriation of funds					
Acceptance of necessity and issue of in-Principle Approval					
Administrative Approval and Expenditure Sanction (A/A and E/S)					
Appropriation of funds					
Approval for Floating of Tenders of Various Types including					
Approval Selection of System of Selection of contractors – other than LCS – QCBS					
Approval for Selection by nomination of Works					
Preparation and Approval of Bidding Documents and floating of Tenders – EoI/ Tender for Works					
Approval of Retendering of a discharged tender after second attempt					

[116] indicate 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 (TC)/ Consultancy Evaluation Committee (CEC) Composition and CA for Acceptance. 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 contractors					
Initiation and Approval of Enlistment of contractors					
Initiation and Approval of Removal from Enlistment of contractors due to misdemeanours					
Initiation and Approval of Holiday Listing/ Suspension of contractors due to misdemeanours					
Initiation and Approval of Banning of contractors within the Ministry or recommendation to Ministry of Commerce for Country-wide					

Annexure 3: Bid Opening Attendance Sheet cum Report

(Refer Para 4.13-4-a)

[Name of Procuring Entity]

Bid (Techno-commercial/ Financial) Opening Attendance Sheet cum Report

Attendance Record						
Sr No	Bidder's Name	Bidder's Address	Bidder's Authorisation and Date	Represented by	Contact No.	Signature of Representative

Bid Opening Report						
Tender No			Title		Date of Opening	
Offer No.	Bidder's Name	Bidder's Ref and Date	Submission of Requisite EMD (Y/ N)	Submission of other Mandatory Documents (Y/ N)	Rate Quoted and Taxes/ Duties	Signature of Representative
--/ ---						
--/ --						
--/ --						

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

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

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

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

Annexure 4: Tender Committee Minutes Format

(For Techno-Commercial/ Financial Bids)

(Refer Para 6.2.8-1 and 6.4.1-4)

Organisation: _____

Minutes of Tender Committee Meeting

(Techno-commercial/ Financial Bids)

Section I: Top Sheet

File No:		Date:	
Description		Estimated Cost: -	
Tender Published In		Date of Publication	
Bid Validity		Bid Opening Date	

Past Procurements

Sr. No.	Supplier	Order Reference & Date	Quantity	Basic Rate (Rs.)	Remarks

Members of the Tender Committee

Sr. No.	Name	Designation	Sr. No.	Name	Designation
1			2		
3			4		

Section II: Salient Feature of the Tender

Review background of indent; technical and financial approvals; estimated cost; budgetary provisions; urgency of requirement; special technical requirements and other connected procurements which are part of same package/ project

Review mode of bidding; bidding document contents; bid publication; level of competition obtained; issues if any noticed during bid-opening (bids not opened due to lack/ unsatisfactory EMD, etc.) and any other procurement of this requirement in process (at various stages)

Review special conditions, restriction if any, on participation of bidders; purchase preferences, requirements prescribed in bid documents (EMD, document submission, etc.)

Section III: Preliminary Evaluation

Review handling of any complaints received

Review/ confirmation of quantity and period of delivery required

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

Section IV: Evaluation of Responsive Bids

Bid-wise deliberation should be recorded

In case of evaluation of Financial Bids

i). Start with review of techno-commercial evaluation

ii). Insert a summary table of evaluated price in the order of L1, L2, etc.

iii). Deliberations should be in the sequence of L1, L2, etc.

Section V: Summary of Recommendations

Bid-wise recommendation should be recorded

Annexure 4: Tender Committee Minutes Format

<table>
<tr><td colspan="4">In case of evaluation of financial bids,
a) Comment whether level of competition is considered to be adequate or not. If not, mention the mitigating actions.
b) Give a summary of recommended bids, award value, bid expiry date and special conditions, if any.
c) Also, mention that the rates recommended are considered reasonable (and the basis for such determination).
d) Total value of the recommendations for determining level of acceptance authority.
e) Mention that none of the TC members have any conflict of interest with the bidders participating in the tender.
Request acceptance of recommendations by competent authority and that it is within his powers of acceptance as per SoPP/ DFPR.</td></tr>
<tr><td colspan="4">Signature Name and Designation of the Members</td></tr>
<tr><td>1</td><td></td><td>2</td><td></td></tr>
<tr><td></td><td>Date:</td><td></td><td>Date:</td></tr>
<tr><td></td><td>(Name & Designation)</td><td></td><td>(Name & Designation)</td></tr>
<tr><td>3</td><td></td><td>4</td><td></td></tr>
<tr><td></td><td>Date:</td><td></td><td>Date:</td></tr>
<tr><td></td><td>(Name & Designation)</td><td></td><td>(Name & Designation)</td></tr>
<tr><td colspan="4">Remarks by the Accepting Authority:
_____</td></tr>
<tr><td colspan="4">Signature: _____ Date: _____</td></tr>
<tr><td colspan="4">Name & Designation of Accepting Authority_____</td></tr>
</table>

Annexure 5: Example of Formula for Price Variation Clause

[Refer Para 5.4.8-k]

(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 works would initially be made as per the base price mentioned in the contract. Price adjustment bill should be submitted only quarterly for the works 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 6: Invitation and Declaration for Negotiations

(Refer Para 6.4.10-5-c), d))

Invitation for Negotiations

(On letterhead of the procuring entity)

No: _____ Dt: _____

To M/ s_____Registered A/ D

Sub: Tender No ---------- opened on ----------for the execution of ----------

Dear Sir,

The rates quoted in your tender are considered high. You are therefore, requested to come for negotiations of rates, on..... (date) at..... (time) at..... (venue).

You should, however, come for negotiations only in case you are prepared to furnish before such date the declaration appended herewith.

A copy of the form in which you may submit your revised offer after negotiations is enclosed.

Yours faithfully,

Enclosure: (Authorised Officer)

(1) Form of Declaration

(2) Form of Revised Offer

FORM OF DECLARATION

(To be signed and submitted before start of negotiations)

(On company letterhead)

No:_____ Dt:_____

To _____

Sub: Tender No ---------- Opened on ----------for the execution of ----------

Ref: Your invitation for negotiations No: dated:

Dear Sir,

I _____ duly authorised on behalf of M/ s. _____ do declare that in the event of failure of the contemplated negotiations relating to Tender No._____ opened on _____my original tender shall remain open for acceptance on its original terms and conditions.

Yours faithfully,

Place:_____

Date: _____

Signatures of bidder, or officer authorised to sign the bid documents on behalf of the bidder

Annexure 7: Format of Revised Offer in Negotiations

(Refer Para 6.4.10-5-e)

Revised Offer in Negotiations

(On company letterhead)

From……..

Full address……

To .....

Sir,

Sub: **Tender No ---------- opened on ----------for the execution of ----------**

Ref: Your invitation for negotiations no: dated:

1. On further discussions with your representatives on …….in response to your letter no …….. dated ……..

We are not prepared to reduce the rates already quoted in the original tender, which will remain valid up to…….

Or

1. I/ we reduce my/ our rates as shown in the enclosed schedule of items.

2. I/ we am/ are aware that the provisions of the original bidding document remain valid and binding on me.

3. I/ we undertake to execute the contract as per following Schedule.....

4. I/ we agree to abide by this tender on the revised rate quoted by me/ us, it is open for acceptance for a period of 120/ 180 days from this date, *i. e*., up to ……. and in default of my/ our doing so, I/ we will forfeit the earnest money deposited with the original tender/ attached herewith. Eligibility as valid tenderers shall be deemed to be the consideration for the said forfeiture.

Yours faithfully,

Signatures of bidder or

Officer authorised to sign the bid

documents on behalf of the bidder

Annexure 8: Letter (Notification) of Award (LoA) of Contract

(Refer Para 6.5.1-2)

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]

Reference: Your offer no. [insert offer number] against our tender no. [insert tender no] opened on [insert date of opening of tender]

Dear Sir/ Madam

I am directed to inform you that after evaluating the bid documents submitted by you on [*enter date*] Government of India is pleased to inform you that you have been selected as the successful bidder for [*enter description of the work*]. The total contract price shall be [*enter amount*] as indicated in your financial bid submitted on [*enter date*], in accordance with the procedures intimated in the relevant bid documents.

You/ your authorised representative(s) are requested to be personally present at [*insert address*] for the signing of the contract by [*enter date*].

In this respect, we also request you to submit the performance security of [*insert amount of Rupees in words*] by [insert date]. Security deposit being __ % (___ percent) of the total cost = Rs._____.

Please apply for refund of EMD deposited over and above the SD of if any.

You are requested to execute necessary agreement within seven days from the date of issue of this letter in the enclosed agreement form. Special adhesive stamp of Rs.10 (ten) and revenue stamp of Rs. 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 9: No Claim Certificate

(Refer Para 7.5.7, 7.6.2, 7.6.5-2)

(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 [*mention the details]* under the above -mentioned contract agreement, between us and Government of India. We hereby unconditionally, and without any reservation whatsoever, certify that with this payment, we shall have no claim whatsoever, of any description, on any account, against the 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 10: A Sample MoU

(Refer Para 3.1.3-5; The sample is for illustrative purpose only and procuring entity may change the format suiting to their requirement. If felt necessary, procuring entity may also get the MoU document vetted from the Ministry of Law/ or procuring entity's legal cell)

MEMORANDUM OF UNDERSTANDING[117]

between

[Name of Procuring Entity] and

[Name of Project Management Consultant PWO/ PSU]

For Construction of *[Name of Work(s)]* at *[Name of Location(s) of Work]*

This, Memorandum of Understanding (hereinafter called "MoU") signed between *[Name of Procuring Entity]* (hereinafter called "Procuring Entity") represented by its Chief Engineer of one part,

And

[Name of Project Management Consultant PWO/ PSU] (hereinafter called "Project Management Consultant") represented by its Chief Engineer on other part.

'Procuring Entity' and 'Project Management Consultant' are also referred to individually as 'Party' and collectively as 'Parties' wherever the context so requires

Whereas 'Project Management Consultant' have agreed to undertake the work of Construction of abovementioned Work(s) at abovementioned location(s) for 'Procuring Entity' as a 'Deposit Work' on Project Management Consultant (PMC) basis.

Now, therefore it is agreed between the Parties that:

(A) Assigning of Work by 'Procuring Entity' to 'Project Management Consultant'.

1. *{In case of MoU of collection of works or of framework nature 'Procuring Entity' will assign a work to the 'Project Management Consultant' through a letter after due approval of the competent authority. A work specific MoU would be signed along with approval of Preliminary Estimates.}.* 'Procuring Entity' will provide all relevant available documents related to Land, Site Details, functional and space requirements (or Various Facilities, Special Requirements/ Features and Broad Specifications for specialised Equipments and Plants), Layout Plans etc for facilitating Project Execution by 'Project Management Consultant' along with A & E Consultants
2. 'Project Management Consultant' shall appoint, if any, competent Architectural and Engineering (A & E) Consultant commensurate with size and nature of the work after following due process.

(B) Approval of Preliminary Project Report (PPR) & Detailed Project Report (DPR)/ Preliminary Estimate (PE)

3. Preliminary Project Report (PPR) shall be prepared by 'Project Management Consultant' based on functional & space requirements as intimated by 'Procuring Entity' and submitted to 'Procuring Entity' for its approval. *{It would be a joint endeavour on part of*

[117] The present sample is based on MoU with PWO. Work to PSUs is to be assigned on the basis of competitive bidding amongst them and the MoU in such cases would be based on the provisions in the bidding documents. This MoU would normally be for a specific standalone work but could also be for a Project consisting of a collection of related works. In case of MoU with Public work Organisations (PWOs) it could also be as a long-term framework MoU. In case of MoU of collection of works or of framework nature, extra provisions are shown in italics within *{brackets},* which can be omitted in standalone MoUs

both 'Procuring Entity' and 'Project Management Consultant' in consultation with consultants & experts to develop Standard Plans & Specifications for Works & Services including Furniture, Equipments, Plants etc. pertaining to various categories of Works etc.}[118]

4. Based on approved PPR, 'Project Management Consultant' shall prepare Detailed Project Report (DPR)/ Preliminary Estimate (PE) consistent with their norms & standards, containing Milestones and commensurate activities to be accomplished against each Milestone & Baseline Programme in the form of CPM Network depicting clearly Dates of Start and Completion of the work *{along with Work specific draft MoU}*[118] and submit it to 'Procuring Entity' along with all relevant input information, documents and Drawings etc. for approval of 'Procuring Entity', within 8 (eight) weeks of receipt of approval for PPR. 'Project Management Consultant' shall use C.P.W.D. Analysis of Rates[119] for Delhi (DSR) for framing the DPR/ PE. Non - DSR Items shall be incorporated in the Detailed Estimates only when these are not either readily available in DSR. Detailed reasons and justifications for including Non-DSR Items shall have to be furnished by 'Project Management Consultant'. 'Procuring Entity' shall accord approval to DPR/ PE *{and Work specific Draft MOU}*[118] containing Milestones and commensurate activities to be accomplished against each Milestone & Baseline Programme in the form of CPM Network and issue Administrative Approval (A/A) &. Expenditure Sanction (E/S) in about 8 (eight) weeks of its submission by 'Project Management Consultant'.
5. On receipt of the A/A and E/S, the 'Project Management Consultant' shall prepare and accord Technical Sanction (TS) to detailed and coordinated design of all the Architectural, Civil, Electrical, Mechanical, Horticulture and any other services included in the scope of the sanction and of the Detailed Cost Estimates containing the detailed specifications and quantities of various items prepared on the basis of the schedule of rates maintained by CPWD or other Public Works Organizations.

(C) Release of Funds, Payment of Bills

6. 'Project Management Co*nsultant' has agreed to charge [insert the Fee agreed] for carrying out the assigned Deposit Work.*
7. *'Procuring Entity' shall release Initial Deposit of 10% of the approved preliminary estimate amount to 'Project Management Consultant' within 2 (two) weeks of issuing Administrative Approval and Expenditure Sanction (A/A & E/S) {and signing work specific MoU along with Milestones & Baseline Programme between Chief Engineers of 'Procuring Entity' & 'Project Management Consultant', whichever is later}*[118]*.*
   7.1 'Procuring Entity' shall release additional deposit up to 10 (ten) % of approved estimate amount to 'Project Management Consultant' within 2 (two) weeks of award of first major construction contract on the basis of specific request made by 'Project Management Consultant' in this regard along with proper reasons and justifications acceptable to 'Procuring Entity' for additional requirement of fund over and above already released initial deposit of 10 (ten) % of approved preliminary estimate amount in terms of Clause – 7 above.
8. After the Initial and Additional Deposit as per clause 7 and 7.1 above and subsequent release of Fund shall be in the form of recoupment of the expenditure made by 'Project Management Consultant' on the work as per monthly expenditure statements which shall

[118] Applicable to framework MoUs or MoUs for collection of projects
[119] Replace by any other relevant Schedule of Rates for the concerned location/ project

be submitted in Monthly Expenditure Statement (MES) in a form similar to CPWD Form – 65 (Account of Deposit works). While submitting MES, and placing demand for release of fund in the form of recoupment of the monthly expenditure already incurred on the work, 'Project Management Consultant' will also submit a comprehensive report on progress of physical completion of various activities and Milestones vis-a-vis earlier planned activities/ Milestones for the overall completion of the specific work mutually decided between 'Procuring Entity' & 'Project Management Consultant' *{and included as part of work specific MOU}* [118]for enabling 'Procuring Entity' to keep effective check on utilization of fund as well as physical progress of the work.

9. The fund subsequent to Initial Deposits shall be released by 'Procuring Entity' to 'Project Management Consultant' within 4 (four) weeks of submission of request by 'Project Management Consultant' along with all documents as described in Clause - 8 above. As per the monitoring of physical and financial progress indicators, 'Procuring Entity' will take necessary steps for recoupment of the monthly expenditure incurred on the basis of the Fund Utilization Certificate.
10. If any fund requirement is specifically made by 'Project Management Consultant' after the work has been assigned to 'Project Management Consultant' for undertaking pre-construction activities related to the Project Execution etc., the same shall be released by 'Procuring Entity' within 2 (two) weeks of such specific demand provided the amount is within ceiling limit of Rs 25 (twenty-five) lakh. The amount so released to 'Project Management Consultant' shall he adjusted from, Initial Deposit amount.
11. 'Project Management Consultant' shall intimate 'Procuring Entity' about any excess expenditure likely to be incurred over and above the approved Projected Cost and also about possibility of time overruns, as soon as it comes to the knowledge along with reasons and justifications thereof for necessary approvals from 'Procuring Entity' before continuing/ incurring the extra/ additional expenditure.
12. The 'Project Management Consultant' shall be responsible for certifying and making payment of Bills of the Contractors/ Agencies engaged by them and make available Final Statement of Accounts in Standard Format to 'Procuring Entity' & also provide copies of Final Bills for all Contract Packages and other expenditure incurred related to Project Construction after the Completion of the Work. In addition, should 'Procuring Entity' ask for any other details from 'Project Management Consultant' regarding Utilization of Fund at any stage, Detailed Estimates, Technical Sanctions, Award of Works, Running Bills etc., the same shall be provided by 'Project Management Consultant' readily.
13. The 'Procuring Entity' shall settle compensation/ levies, if so required to be paid based on recommendation by 'Project Management Consultant' related to the Project works, under Workmen's Compensation Act or any other Act or Law of the Central or the State Government.

(D) Execution of Work

14. The 'Project Management Consultant' shall obtain necessary Statutory Approvals/ Permission/ Clearances/ Certificates from the concerned Local Bodies & Statutory Authorities like District Authorities, Municipal Corporation, Panchayati Raj Institutions, Town Planning Board, Electricity Board/ Fire Department, State/ Central Pollution Control Boards, Stale/ Central Environmental Authorities, Forrest and Wild-life authorities etc (for e.g. removal of trees, re-locating utilities; conversion of railway level crossings, laying of railway sidings needed by the work; rehabilitation and resettlement of persons affected by the work; traffic control; mining of earth and stone; interfering protected monuments;

blasting permission, environmental/ forest/ wild-life clearances; and shifting of religious shrines etc) to start the work have been obtained. The 'Procuring Entity' shall be responsible for providing all assistance to 'Project Management Consultant' in this process.

15. Works shall not be awarded by 'Project Management Consultant' to contractors till all statutory approvals/ certificates/ permissions required for taking up the work, are in place.
16. 'Procuring Entity' shall make the work site available free from encumbrances to 'Project Management Consultant'. 'Procuring Entity' shall also ensure Availability of auxiliary services - like roads, power, water, solid & liquid waste disposal system, street lighting and other civic services. 'Project Management Consultant' shall provide necessary support in this process.
17. 'Project Management Consultant' shall permit 'Procuring Entity' to inspect or monitor the works, either itself or through Third party as and when it desires for assessing actual progress and quality of construction and any other aspects.
18. 'Procuring Entity' shall provide security clearance and ensure free access for 'Project Management Consultant' staff/ Employees and their workers working at Work site in case these are required. 'Project Management Consultant' shall provide necessary support in this process.
19. 'Project Management Consultant' shall ensure adequate availability of men & material by their contractors.
20. 'Project Management Consultant' shall ensure that it's Contractor(s) implement required Health, Safety & Environmental (HSE) practices at the Construction Sites and they also comply with all statutory obligations related to workmen deployed at the Construction Site. 'Project Management Consultant' will act as Principal Employer in respect of all Statutory Obligations related to workmen deployed at the site in execution of the work.
21. 'Procuring Entity' shall permit and facilitate to the 'Project Management consultant' all utilities required for construction e.g. drawl of Ground Water, obtaining electricity connection, putting up Labour Camps/ Huts inside the available space for facilitating construction by contractors engaged by 'Project Management Consultant'. 'Project Management Consultant' shall provide necessary support in obtaining permission, if any, of Local Bodies in this regard. The cost in this regard borne by 'Procuring Entity', if any, should not be duplicated as reimbursement by the 'Project Management Consultant'.
22. As soon as the work is allocated, 'Project Management Consultant' shall prepare and submit to 'Procuring Entity' an Integrated Programme Chart for the execution of work showing clearly all activities from the start of work to completion with details of manpower and other input information required for the fulfilment of the timelines given therein. 'Project Management Consultant' will intimate 'Procuring Entity', Project Team, both on - site and off-site, starting from Chief Engineer to Junior Engineer associated with execution of the work. The Programme Chart should inter-alia include descriptive note explaining sequence of the various activities, CPM Network Milestones etc. This will form Base Line Programme, and the subsequent progress of the work shall be reviewed with reference to this during periodic Progress Review Meeting preferably monthly. Any increase in time period from the Base Line Value shall be construed as Time Overrun
23. 'Project Management Consultant' shall be responsible for providing Physical Progress Reports to 'Procuring Entity' in the form of CPM (Critical Path Method) Network on monthly basis for reviewing of the progress of the work vis - a vis Base Line Programme

and taking all necessary remedial actions, after considering 'Procuring Entity's observations made in respect of quality and progress of the work during the monthly/ periodic Project Review Meetings. To ensure timely completion of work as per mutually agreed time-schedule/ milestones and within agreed Cost.

24. 'Project Management Consultant' shall also be responsible for providing to 'Procuring Entity' Financial Progress Reports of the project and up to date Expenditure incurred on the work on monthly basis along with Certificate of Utilization of Fund against Fund earlier released to 'Project Management Consultant' by 'Procuring Entity'.
25. 'Project Management Consultant' shall be responsible for total Project Management including day-to-day supervision of works, maintenance of all project records and executing the works as per prescribed guidelines, their own Works Manual, Codes, Books of Specifications etc and also in accordance with relevant and extant provisions of General Financial Rules (GFR), 2017.

(E) Project Management, Cost and Time Control

26. 'Project Management Consultant' shall implement a system of 'Project Team Concept' with dedicated group of Engineers under single and unified command for implementation of projects from concept to completion and call composite tenders to reduce the number of packages for better management. 'Project Management Consultant' shall be obliged to adopt all the above said measures to successful completion of the works within Approved Cost and agreed Time period.
27. 'Project Management Consultant' shall be responsible for managing the Project from concept to commissioning effectively and efficiently to ensure desired/ proportionate pace of progress and completion of work is achieved progressively vis-à-vis approved Plans & Specifications and in Terms and Conditions of the MOUs and mutually agreed milestones and timelines and approved cost, taking with due diligence all required pro-active remedial measures including provision of stringent and elaborate enforceable Clauses to this effect and also making time as the essence of contract in the Bid and Contract Documents. 'Project Management Consultant' shall provide for clauses in the contract and established procedure to recover liquidated damages from their contractors/ agencies. The liquidated damages recovered from the contractors for delay, if any, shall be credited to 'Procuring Entity' in the project accounts.
28. The approved Initial Project Cost & Timeline should not exceed during execution of the Project except for reasons like increase in cost index during construction period, revised specifications or extra work over approved estimate carried out at the request of 'Procuring Entity' etc. In case of either increase in earlier approved cost or timeline, detailed reasons and justifications, based on verifiable facts and figures, shall have to be provided by 'Project Management Consultant' along with comprehensive proposals for revision in earlier approved Project Cost & Timeline, which shall be intensively examined by 'Procuring Entity' in consultation with 'Project Management Consultant' before approval is accorded to their proposals. No additional expenditure over and above the earlier approved Project Cost shall be incurred by 'Project Management Consultant' without prior approval of 'Procuring Entity'. Upward Revisions in either Cost or Timeline should be an exception rather than a rule and for achieving this objective, all required efforts shall be made by 'Project Management Consultant'
29. At any time, it appears to 'Procuring Entity' that the actual progress of the work does not conform to the approved programme referred above and intimated to 'Project Management Consultant' by 'Procuring Entity', detailed reasons and justifications for

such delays shall have to be provided by 'Project Management Consultant', which shall be examined by 'Procuring Entity' to re-Schedule the Programme, if any. Progress Review Meetings preferably monthly shall be held between 'Project Management Consultant' and 'Procuring Entity' for reviewing the progress of works based on Baseline Programme/ Milestones etc. and also for resolving co-ordination issues, if any including fixing priority of some works, facilities and services for their early completion and handing over to 'Procuring Entity' for putting item to use for intended purpose. A&E Consultants may also participate. 'Project Management Consultant' will also designate a nodal officer in respect of specific work for coordinating with 'Procuring Entity' and A & E Consultant. Such designated nodal officer shall be suitably empowered and authorized to lake decisions in work related issues so that delays are minimized for achieving timely completion of work.

(F) Disputes, Enquiries and Queries

30. 'Project Management Consultant' shall be responsible for observing due diligence and adopting all possible measures at various stages of work execution so as to avoid Arbitration/ Litigation end other hindrances and the work is completed within optimum cost and time in hassle free environment
31. 'Project Management Consultant' shall be responsible for defending all Arbitration and Court Cases arising out of execution till the works end examining the Arbitration Award/ Decree of Court or Law/ liability by appropriate authority in 'Project Management Consultant' and forwarding the same along with a comprehensive report on the circumstance leading to the Arbitration/ Court Cases and the reasons and justification as to why an appeal against such awards/ decree was not considered necessary briefing out inter-alia details of the award and clear cut recommendations The decision of the competent authority in 'Project Management Consultant' to accept The award or challenge the same in a Court of Law will be binding on the 'Procuring Entity'.
32. 'Procuring Entity' shall settle and pay the final claims which may be decreed by a Court of Law, Tribunal or by award of an Arbitration in relation-to the-deposit work, based on recommendations of 'Project Management Consultant'.
33. 'Project Management Consultant' shall be responsible for redressing and complying with the observations of CTE/ CVC, Auditors, Statutory Authorities, Local Bodies, Municipal Corporation etc. pertaining to the work under intimation to 'Procuring Entity'. Providing all work -related information promptly to 'Procuring Entity' for replying to Parliament Questions, queries from various Constitutional & Statutory Authorities.

(G) Completion and Handing-over of Completed Work and Facilities

34. 'Project Management Consultant' shall obtain work Completion/ Occupancy Certificates & Clearances for completed Work and Facilities before handing over the same to 'Procuring Entity' for putting them to functional use. 'Procuring Entity' shall provide all assistance in this process.
35. 'Project Management Consultant' shall hand over to 'Procuring Entity' or its Authorized Representative completed Work including all Services and Facilities constructed in accordance with the Approved Plans, Specifications fulfilling all techno-functional requirements agreed with 'Procuring Entity' along with Inventory, As built - Drawings, Maintenance Manual/ Standard Operating Procedure (SOP) for Equipments and Plants, all clearances /Certificates from Statutory Authorities, Local Bodies etc.
36. On completion of the work, a Project Completion Report (PCR) shall be submitted by

'Project Management Consultant' duly bringing out the Final Project Completion Cost, Total Time period taken to complete the work and also completed Project Components as against the approved Cost, Time and Project Components. The PCR shall be submitted along with Final Project Accounts including return of unspent balance amount to 'Procuring Entity' within one month of settlement of final bills of the contractors/ other agencies deployed on the work by 'Project Management Consultant'.

(H) Termination of MoU

37. If 'Procuring Entity' decides to terminate this MOU or decides to drop/ abandon the work after substantial preliminary work has been done by 'Project Management Consultant' on the work, both 'Project Management Consultant' and 'Procuring Entity' shall mutually decide the loss incurred by 'Project Management Consultant' for payment by the latter to the former. In case of abandonment of project/ work by 'Procuring Entity' during construction stage, 'Procuring Entity' shall pay to 'Project Management Consultant', after determining the value of the works, goods and contractor(s) documents and any other sums clue to them for work executed in accordance with the MOU, to help liquidate only such liabilities as were squarely needed towards construction/ consultant agencies engaged on the work, in a fair and reasonable manner.

(I) Miscellaneous

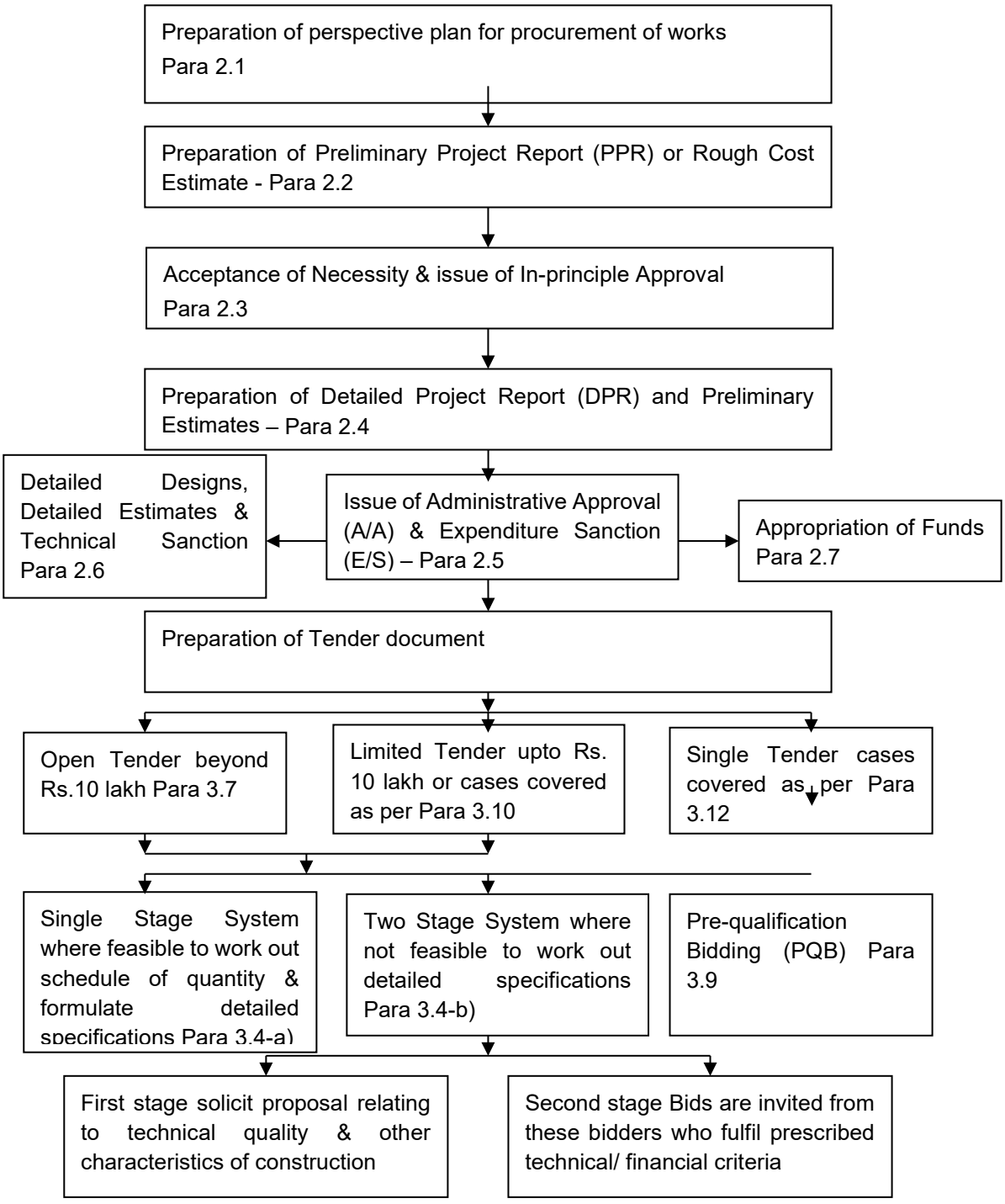
38. **Disputes between 'Procuring Entity' and 'Project Management Consultants'**: As dispute resolution mechanism for implementation of the provisions of this MoU, at the first instance the issues involved shall be brought before Chief Engineer of 'Procuring Entity' and concerned Chief Engineer of 'Project Management Consultant' for their resolution. In case, however, disputes/ differences between the parties do not get resolved, the matter shall be escalated to higher level in 'Procuring Entity', and 'Project Management Consultant', who shall be above the level of CE in the respective organizations. They shall submit a comprehensive report and recommendation to 'Procuring Entity' and 'Project Management Consultant' for facilitating final decision in the matter.
39. Individual and joint responsibilities of the Parties shall be as per clauses mentioned above.
40. No amendment in Terms & Conditions of the MoU shall be valid and effective unless it is in writing and duly signed by authorised representatives of 'Procuring Entity' and 'Project Management Consultant'. Each party shall give due consideration to any proposal for amendment/ modification made by other party with proper justifications thereof.
41. Provisions, if any, made in respect of deposit works in 'Project Management Consultant's Works Manual or Codes shall stand modified to the extent of the stipulations made in this MoU for execution of 'Procuring Entity' works by 'Project Management Consultant'.

Signatures and Witnesses

Date:_____ Place: _____

Annexure 11: Flowchart of Process of Procurement of Works

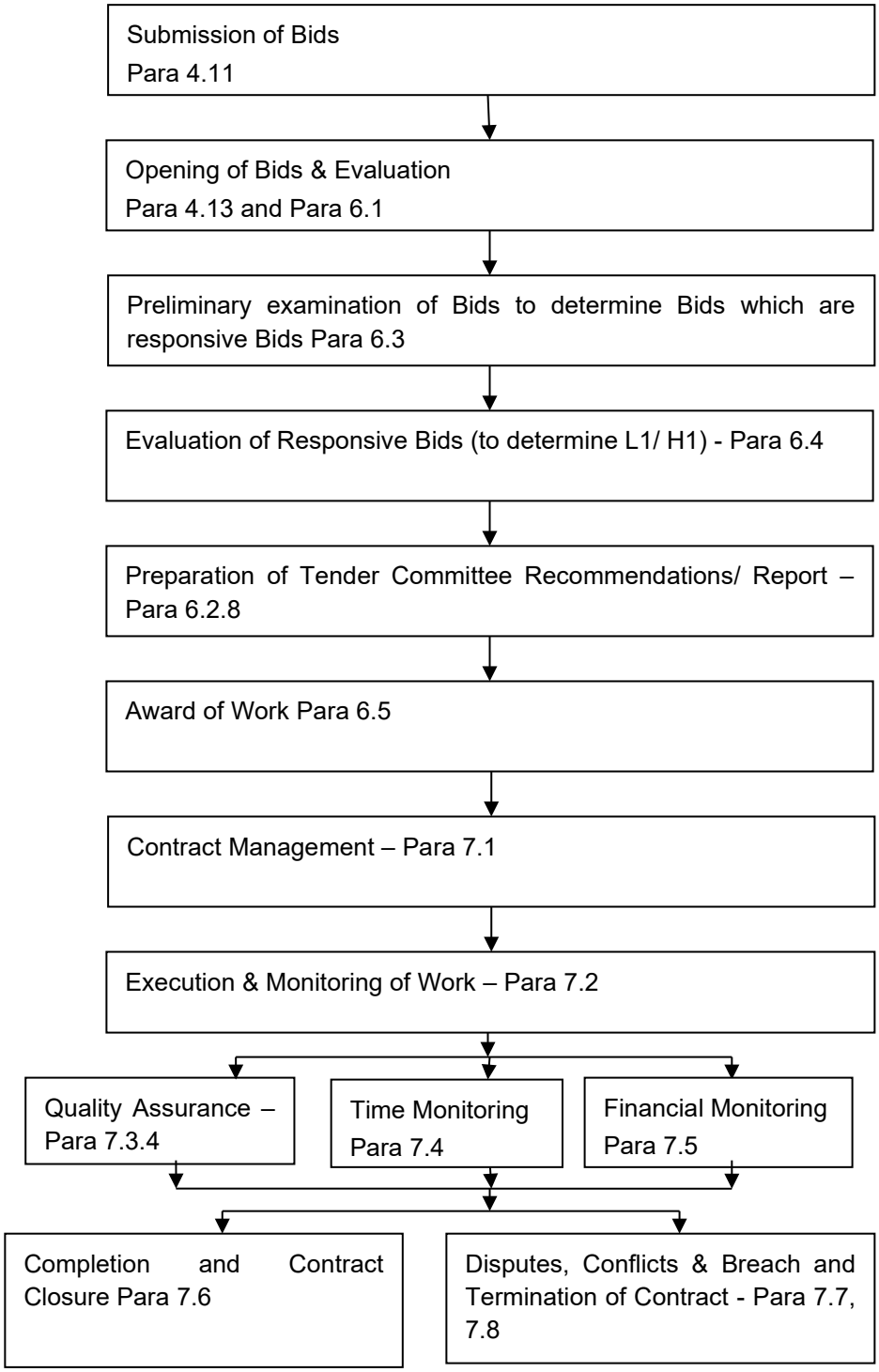
(Refer Para 1.15)



…….Contd: Submission and Evaluation of Bids

Annexure 11: Flowchart of Process of Procurement of Works

Procedure for Submission and Evaluation of Bids –a flowchart



Annexure 12: Additional Resources Relating to Procurement of Works

(Refer Para 2.8)

1. **Department of Expenditure, Ministry of Finance**

i) Manuals for Procurement of Goods, Second Edition, 2024
https://doe.gov.in/files/circulars_document/Manual_Goods_2024.pdf

ii) Manual for Procurement of Consultancy Services, Second Edition, 2025:
https://doe.gov.in/files/whats_new_documents/MfPoCS_2025.pdf

iii) Manual for Procurement of Non-Consultancy Services, 2025
https://doe.gov.in/files/whats_new_documents/MfPoNCS_2025_0.pdf

iv) General Financial Rules, 2017 (GFR):
https://doe.gov.in/files/whats_new_documents/06032025.pdf

2. **Department of Economic Affairs, Ministry of Finance**

i) PPP Cell, Infrastructure Division:
https://www.pppinindia.gov.in/

3. **CPWD Publications**:
http://cpwd.gov.in/Documents/cpwd_publication.aspx

i) CPWD Works Manual, 2024:
https://cpwd.gov.in/Publication/CPWD_Works_Manual_2024.pdf

ii) Standard Operating Procedure for CPWD Works Manual 2024:
https://cpwd.gov.in/Publication/SOP_2024.pdf

iii) CPWD Maintenance Manual 2023:
https://cpwd.gov.in/Publication/Maintenance_manual_2023.pdf

iv) General Conditions of Contract (GCC) Maintenance Works 2023:
https://cpwd.gov.in/Publication/GCC_CON_Misc_29_Maintenance_Works_2023.pdf

v) General Conditions of Contract (GCC) EPC Projects 2024:
https://cpwd.gov.in/Publication/General_Conditions_of_Contract_2024_EPC_Projects.pdf

vi) General Conditions of Contract (GCC) Construction Works 2023:
https://cpwd.gov.in/Publication/GCC_CON_Misc_30_Construction_Works_2023.pdf

vii) GCC 2014: https://cpwd.gov.in/Publication/GCC-2014-Correction-Slip-CON-302.pdf

4. **Plinth Area Rates**

i) Supplement for Specialized E&M Works 2014:
https://cpwd.gov.in/Publication/SupplementPAR14_SplEnM.pdf

ii) Plinth Area Rates 2023:
https://cpwd.gov.in/Publication/PLINTH_AREA_RATES_2023.pdf

5. **Analysis of Rates for Delhi**

i) 2023 Vol I: https://cpwd.gov.in/Publication/CPWD_DAR_Vol_I_14092023-Civil.pdf -

ii) 2023 Vol II: https://cpwd.gov.in/Publication/CPWD_DAR_Vol_II_14092023_Civil.pdf

iii) 2022 -E & M: https://cpwd.gov.in/Publication/DAR_2022.pdf

6. **Schedules of Rates (Civil)**

i) Delhi Schedule of Rates (DSR) 2023 Vol-I: https://cpwd.gov.in/Publication/DSR_Vol_1_Civil.pdfii)

ii) DSR 2023 Vol-II: https://cpwd.gov.in/Publication/DSR_Vol_2_Civil.pdf

7. **Specifications (Civil)**

i) Specifications Volume I 2019: https://cpwd.gov.in/Publication/Specs2019V1.pdf

ii) Specifications Volume II 2019: https://cpwd.gov.in/Publication/Specs2019V2.pdf

8. **Other Publications**

i) Compendium of High -Rise Buildings 2019: https://cpwd.gov.in/Publication/Compendium_of_High_Rise_Buildings_December_2019.pdf

ii) Various Local Approvals and Clearances Required For Large Scale Project in Metro Cities

9. National Building Code of India 2016 issued by Bureau of Indian Standards: https://www.bis.gov.in/standards/technical-department/national-building-code/?lang=en

10. GeM- Central Public Procurement Portal (CPPP): https://eprocure.gov.in/cppp/

Annexure 13: Template for Qualification Criteria for Joint Ventures

(Refer para 3.9.1-4-g and para 4.6.2-3)

1. As mentioned under para 4.6.2-3 above, in certain cases of high value works procurement, the Joint venture firms are allowed to participate. The procuring entity may seek for the following requirements preferably, for the JV firms to meet:
   a) Separate identity/ name shall be given to the Joint Venture.
   b) Ideally, a Joint Venture (JV) should have no more than three members, but a maximum of five members can be allowed. Among the members, one must be the Lead Member, holding at least 51% of the interest in the JV. Other members should have a share of at least 20% each in JVs with up to three members or 10% each in JVs with more than three members. If there are foreign members in the JV, the Lead Member must be an Indian firm/company with a minimum share of 51%.
   c) A member of the JV cannot participate in the same tender as an individual or as part of another JV.
   d) The tender form should be obtained and submitted in the name of the JV, not any individual member. However, the tender form can be submitted by the JV, any of its constituent members, or a person authorized by the JV through a Power of Attorney.
   e) The Bid Security/Earnest Money Deposit (EMD) should be deposited in the name of the JV by either the JV itself or an authorized representative. If the JV has not been legally established by the tender submission date, the Bid Security can be submitted in the name of all JV members as per the MOU, regardless of each member's share in the JV.
   f) The procuring entity should seek the MOU signed between the members of the Joint Venture (JV) in the tender document. The MOU should include all the important information about the JV members, like who they are, how they'll share responsibilities and financial commitments, and what they're responsible for in terms of technical matters and other obligations.
   g) Once the tender is submitted, the Memorandum of Understanding (MoU) should not be altered during the tender's validity. Failure to comply may result in the forfeiture of the full Bid Security/Earnest Money Deposit (EMD). Changes to the composition of the Joint Venture (JV) after tender submission and during the contract are generally not allowed, except when necessary, due to legal requirements, with the condition that the minimum eligibility criteria of the JV remain unaltered. The Lead Member of the JV must remain constant. Non-compliance with these rules will render the offer invalid.
   h) When a contract is awarded to a Joint Venture (JV), the JV should provide a single Performance Guarantee as required by the tender conditions. It's important to note that all guarantees, such as the Performance Guarantee, Bank Guarantee for Mobilization Advance, Machinery Advance, etc., should be issued in the name of the JV as a whole. Dividing or splitting these guarantees among individual JV members should not be allowed.
   i) Upon receiving the Letter of Acceptance (LoA), the Joint Venture (JV) entity to which the contract has been awarded, with the same ownership structure as declared in the MOU/JV Agreement submitted with the tender, must be officially registered. The type

of registration will depend on whether the JV entity is becoming a Company under 'The Companies Act - 2013,' a Partnership Firm under 'The Indian Partnership Act, 1932,' or an LLP under 'The LLP Act 2008.' A separate PAN (Permanent Account Number) should also be obtained for this entity.

j) All relevant documents, including the PAN, must be provided to the procuring entity before the contract agreement is signed. Failure to comply with this requirement within 60 (sixty) days of receiving the LoA may result in contract termination. If the contract is terminated, the procuring entity may forfeit the entire Bid Security/Earnest Money Deposit and other dues owed to the Contractor under the contract. The registered entity should include specific clauses as specified in the registered documents.

k) The entity to which the contract is awarded shall have joint and several liability, meaning that all members are equally responsible for executing the project in accordance with the General and Special Conditions of Contract. They are jointly and individually liable for any losses or damages caused to the procuring entity during the contract's execution or due to non-execution. The registration of the entity remains valid throughout the contract, including any extensions and the maintenance period after project completion. The entity must comply with Indian laws and regulations in all aspects of its operations under the contract.

l) In the context of Joint Ventures, certain authorizations and restrictions apply. The members of the Joint Venture are required to appoint a Lead Member from within the JV members, who shall be acting as the authorized member of the JV and will represent the JV in dealings related to the tender. The Lead member/ authorized member is responsible for actions such as signing the agreement, entering into the contract, receiving payments, witnessing joint measurements of work completed, and signing measurement books pertaining to the contract. All notices and correspondence regarding the contract will be directed solely to this authorized member.

m) Furthermore, it's important to note that no member of the Joint Venture has the unilateral right to assign or transfer their interest, rights, or liabilities within the contract without obtaining written consent from the remaining member(s) and the procuring entity, specifically for the respective tender or contract. These provisions help ensure clarity, accountability, and compliance within the Joint Venture framework.

n) The procuring entity should seek the following documents from the JV along with the tender in addition to the qualification requirements as stated in the tender document:

   i) In case one or more of the members of the JV is/are partnership firm(s), following documents shall be submitted:

      1) A notarized copy of the Partnership Deed or a copy of the Partnership deed registered with the Registrar,
      2) A copy of consent of all the partners or individual authorized by partnership firm, to enter into the Joint Venture Agreement on a stamp paper,
      3) A notarized or registered copy of Power of Attorney in favour of the individual to sign the MOU/JV Agreement on behalf of the partnership firm and create liability against the firm.
      4) An undertaking by all partners of the partnership firm that they are not blacklisted or debarred by any Ministry / Department of the Govt. of India from participation in tenders.

ii) In case one or more members is/are Proprietary Firm or HUF, the following documents shall be enclosed:
   1) A copy of notarized affidavit on Stamp Paper declaring that his Concern is a proprietary Concern, and he is sole proprietor of the Concern OR he who is signing the affidavit on behalf of HUF is in the position of 'Karta' of Hindu Undivided Family (HUF) and he has the authority, power and consent given by other members to act on behalf of HUF.

iii) In case one or more members of the JV is/are companies, the following documents shall be submitted:
   1) A copy of resolutions of the Directors of the Company, permitting the company to enter into a JV agreement;
   2) The copies of MOA (Memorandum of Association)/ AOA (Articles of Association) of the company;
   3) A copy of Certificate of Incorporation;
   4) A copy of Authorization/copy of Power of Attorney issued by the Company (backed by the resolution of Board of Directors) in favour of the individual to sign the tender, sign MOU/JV Agreement on behalf of the company and create liability against the company.

iv) In case one or more members of the JV is/are LLP firm/s, the following documents shall be submitted:
   1) A copy of LLP Agreement
   2) A copy of Certificate of Incorporation of LLP
   3) A copy of resolution passed by partners of LLP firm, permitting the Firm to enter into a JV agreement
   4) A copy of Authorization /copy of Power of Attorney issued by the LLP firm (backed by resolution passed by the Partners) in favour of the individual**,** to sign the tender and/or sign the MOU/ JV agreement on behalf of the LLP and create liability against the LLP.
   5) An undertaking by all partners of the LLP that they are not blacklisted or debarred by Railways or any other Ministry / Department of the Govt. of India from participation in tenders / contracts as on the date of submission of bids, either in their individual capacity or in any firm/LLP or JV in which they were / are partners/members. Any Concealment / wrong information in regard to above shall make the contract liable for determination under Clause 62 of the Standard General Conditions of Contract.

v) In case one or more members of the JV is/are Society/s or Trust/s, the following documents shall be submitted:
   1) A copy of Certificate of Registration
   2) A copy of Memorandum of Association of Society/Trust Deed
   3) A copy of Rules & Regulations of the Society
   4) A copy of Power of Attorney**,** in favour of the individual to sign the tender documents and create liability against the Society/Trust.

2. **Credentials & Qualifying Criteria for JV**

Technical, financial eligibility and Bid capacity of the JV shall be adjudged based on satisfactory fulfilment of the following criteria:

a) Technical Eligibility Criteria ('(i)' or '(ii)' mentioned here under):

i) **For Contracts without composite components**

The technical eligibility criteria for the contract can be met either by the Joint Venture (JV) as a whole or by the Lead Member of the JV. For the other non-lead members of the JV who do not individually meet the technical eligibility criteria as outlined in the tender document, procuring entity should preferably mention certain percentage (say 10%) of the total cost of project in the tender document, that each of them must demonstrate in the form of a technical capacity. This means that every non-lead member of the JV should have successfully completed or substantially advanced a similar project within the past years (say 5 years), up to the month preceding the tender invitation, with a minimum value in percentage as mentioned in the tender document, of the advertised tender value.

ii) **For Contracts with composite components**

1) The technical eligibility criteria for the main part of the contract can be met by either the entire Joint Venture (JV) or the Lead Member. For other components of the work, the criteria can be met by either the JV as a whole or any individual member of the JV. However, non-lead members of the JV who do not meet the technical eligibility for any component of the work must demonstrate a technical capacity equal to a certain percentage (e.g., 10%) of the cost specified for that component in the technical eligibility criteria. This means that each non-lead member should have successfully completed or substantially progressed in a similar project within the last seven years, ending on the last day of the month preceding the tender invitation, with a minimum value of a certain percentage (e.g., 10%) of the cost specified for that component in the technical eligibility criteria.
2) The Major component of the contract for this purpose shall be the component of contract having highest value. In cases where value of two or more component of contract is same, any one work can be classified as Major component of contract.
3) Value of a completed contract done by a Member in an earlier JV shall be reckoned only to the extent of the concerned member's share in that JV for the purpose of satisfying his/her compliance to the above-mentioned technical eligibility criteria in the tender under consideration.
4) For the purpose of value of work for the past experience of a firm in a JV, credit shall be given in proportion of the percentage share of the firm in that JV. For experience of key activities credit shall be given for execution of the quantity of that specific activity executed by the firm as part of a JV, duly certified by the Employer. If the Employer's Certificate does not indicate the specific quantity of key activity/activities executed by each partner, in such a case credit for quantity of each key activity shall be given as per following provisions in order of priority:

4a. As per details given in JV agreement forming part of the relevant Contract Agreement.

4b. If JV agreement does not provide such details, then credit shall be given in proportion of the percentage share of the firm in that JV.

5) In case a JV quoting for the tender has executed similar work and construction experience in key activities, with the same constitution of JV, the requirement specified to be met shall be considered to have been met treating the JV as a single entity for this purpose

iii) Financial Eligibility Criteria

1) The “financial capacity” of the lead partner of JV shall not be less than 51% of the financial eligibility criteria mentioned in the tender document.
2) The arithmetic sum of individual “financial capacity” of all the members shall be taken as JV’s “financial capacity” to satisfy this requirement.

Note: Contractual payment received by a Member in an earlier JV shall be reckoned only to the extent of the concerned member’s share in that JV for the purpose of satisfying compliance of the above-mentioned financial eligibility criteria in the tender under consideration.

Annexure 14: Integrity Pact Format

(Refer para 8.3-2)

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 IPC/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 IPC/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 Suppliers," 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 Suppliers" 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 IPC/ 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 Integrity Pact - Guidelines for Indian Agents of Foreign Suppliers

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 Integrity Pact – Appointment and Role of IEMs

(Refer para 7.7.4-4-d) and 8.3-3)

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 15: Format for Show-cause Notice for Debarment

(Refer para 8.7-3-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 supplier 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, dated 19/07/2024 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[120] by the firm that, in the opinion of the Ministry/ Department, warrants debarment].

[120] [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.]

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.
   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 16: Format for Debarment Order

(Refer para 8.7-3-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

Circulation to Procuring Entities

Annexure 17: Format of Declaration by the Appointed Arbitrator

[Refer para 7.7.9-3-d)]

(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:

---

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:

---

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_____)

Annexure 18: FAQs About PPP-MII Order, 2017

(Refer para 1.11.2-20)

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 19: Model Clause/ Certificate to be inserted in tenders etc. w.r.t Order (Public Procurement No.4)

(Refer para 1.11.3-7)

(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.

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

B. 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.)"

C. 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.)"

D. Model additional certificate by Bidders in the cases of specified ToT:

"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."

E. 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 20: Appendix-A, B & C of DMI&SP Policy

(Refer para 1.11.5-8)

Appendix-A: List of iron and steel products which can only be procured from domestic sources

Sl. No.	Iron & Steel Products	HS code	Condition
1	Flat-rolled products of iron or non-alloy steel, of a width of 600 mm or more, hot rolled, not clad, plated or coated	7208	Melt & Pour
2	Flat-rolled products of iron or non-alloy steel, of a width of 600 mm or more, cold rolled (cold-reduced), not clad, plated or coated	7209	Melt & Pour
3	Flat-rolled products of iron or non-alloy steel, of a width of 600 mm or more, clad, plated or coated	7210	Melt & Pour
4	Flat-rolled products of iron or non-alloy steel, of a width of less than 600 mm, not clad, plated or coated	7211	Melt & Pour
5	Flat-rolled products of iron or non-alloy steel, of a width of less than 600 mm, clad, plated or coated	7212	Melt & Pour
6	Bars and rods, hot-rolled, in irregularly wound coils, of iron or non- alloy steel	7213	Melt & Pour
7	Other bars and rods of iron or non-alloy steel, not further worked than forged, hot rolled, hot-drawn or hot-extruded, but including those twisted after rolling	7214	Melt & Pour
8	Other bars and rods of iron or non-alloy steel	7215	Melt & Pour
9	Angles, shapes and sections of iron or non-alloy steel	7216	Melt & Pour
10	Wire of iron or non-alloy steel	7217	Melt & Pour
11	Flat-rolled products of stainless steel, of a width of 600 mm or more	7219	Melt & Pour
12	Flat-rolled products of stainless steel, of a width of less than 600 mm	7220	Melt & Pour
13	Other bars and rods of stainless steel; angles, shapes and sections of stainless steel	7222	Melt & Pour
14	Wire of other alloy steel	7229	Melt & Pour
15	Rails, railway or tramway track construction material of iron or steel	7302	Melt & Pour
16	Tubes, pipes and hollow profiles, of cast iron	7303	Melt & Pour
17	Tubes, pipes and hollow profiles, seamless, of iron (other than cast iron) or steel	7304	Melt & Pour
18	Other tubes and pipes (for example, welded, riveted or similarly closed), having circular cross-sections, the external diameter of which exceeds 406.4 mm of iron or steel	7305	Melt & Pour
19	Other tubes, pipes and hollow profiles (for example, open seam or welded, riveted or similarly closed), of iron or steel	7306	Melt & Pour
20	Tube or pipe fittings (for example connectors/couplings, elbow sleeves), of iron or steel	7307	Melt & Pour
21	Bars and rods, hot-rolled, in irregularly wound coils, of stainless steel	7221	Melt & Pour
22	Wire of stainless steel	7223	Melt & Pour
23	Flat-rolled products of other alloy steel, of a width of 600 mm or more, including electrical steel	7225	Melt & Pour

Sl. No.	Iron & Steel Products	HS code	Condition
24	Flat-rolled products of other alloy steel, of a width of less than 600 mm, including electrical steel	7226	Melt & Pour
25	Bars and rods, hot-rolled, in irregularly wound coils, of other alloy steel	7227	Melt & Pour
26	Other bars and rods of other alloy steel; angles, shapes and sections, of other alloy steel; hollow drill bars and rods, of alloy or nonalloy steel	7228	Melt & Pour
27	Sheet piling of iron or steel, whether or not drilled, punched or made from assembled elements; welded angles, shapes and sections, of iron or steel	7301	Melt & Pour
28	Structures (excluding prefabricated buildings of heading 9406) and parts of structures	7308	Melt & Pour
29	Reservoirs, tanks, vats and similar containers for any material (other than compressed or liquefied gas), of iron or steel of a capacity exceeding 300 whether or not lined or heat insulated, but not fitted with mechanical or Thermal equipment	7309	Melt & Pour
30	Tanks, casks, drums, cans, boxes and similar containers, for any material (other than compressed or liquefied gas), of iron or steel, of a capacity not exceeding 300L, whether or not lined or heat-insulated, but not fitted with mechanical or thermal equipment	7310	Melt & Pour
31	Containers for compressed or liquefied gas, of iron or steel	7311	Melt & Pour
32	Stranded wire ropes, cabled, plaited bands, slings and the like, of iron or steel, not electrically insulated	7312	Melt & Pour
33	Barbed wire of iron or steel; twisted hoop or single flat wire, barbed or not, and loosely twisted double wire, of a kind used for fencing, of iron or steel	7313	Melt & Pour
34	Grill, netting and fencing, of iron or steel wire; expanded metal of iron or steel	7314	Melt & Pour
35	Chain and parts thereof, of iron or steel	7315	Melt & Pour
36	Anchors, grapnels and parts thereof, of iron or steel	7316	Melt & Pour
37	Articles of iron and steel	7317	Melt & Pour
38	Articles of iron and steel	7318	Melt & Pour
39	Articles of iron and steel	7319	Melt & Pour
40	Springs and leaves for springs, of iron or steel	7320	Melt & Pour
41	Stoves, ranges, grates, cookers (including those with subsidiary boilers for central heating), barbecues, braziers, gas-rings, plate warmers and similar non-electric domestic appliances, and parts thereof, of iron or steel	7321	Melt & Pour
42	Radiators for central heating, not electrically heated, and parts thereof, of iron or steel; air heaters and hot air distributors, not electrically heated, incorporating a motor-driven fan or blower, and parts thereof, of iron or steel	7322	Melt & Pour
43	Tables and similar household articles and parts thereof, of iron or steel	7323	Melt & Pour
44	Sanitary ware and parts thereof, of iron or steel	7324	Melt & Pour
45	Other cast articles of iron or steel	7325	Melt & Pour
46	Electrical steel and other articles of iron or steel	7326	Melt & Pour
47	Railway or tramway passenger coaches, not self propelled	8605	Melt & Pour
48	Railway or tramway goods vans and wagons, not self-propelled	8606	Melt & Pour

Sl. No.	Iron & Steel Products	HS code	Condition
49	Parts of railway or tramway locomotives or rolling-stock, such as bogies, bissel-bogies, axles and forged wheels and parts thereof	8607	Melt & Pour

Appendix-B: Indicative list of Capital Goods (non-exhaustive) which can be imported for Manufacturing Iron & Steel products, and minimum Domestic content applicable for the package

S. no.	Plant /Unit package	Minimum domestic content of Capital Goods (%)	Importable Items
1	Raw Material Handling System (Boundary Limit – from Wagon Tippler to respective user units)	95%	Barrel Couplings, Heavy Duty Bearings, Crane Rail Lubrication System, Slew Ring Bearings, Tongs (Special), Vibration Isolation System (Spring Damper).
2	Mineral beneficiation (iron ore and coal) equipment (Boundary Limit: from Receiving of ROM at the crusher hopper, comminution, segregation, ore/ coal processing up to final product preparation)	75%	• Wet High Intensity Magnetic Separator / High Gradient Magnetic Separator • Heavy Media Cyclone • Gyratory Crusher • Spiral Concentrator • Online Ash Analyser
3	Mining Machinery (Boundary Limit: Equipment for drilling, raising, haulage, and mine preparation)	80%	Dumper (above 220 tons pay load capacity), Hydraulic Excavators (above 10.5 Cubic meter bucket capacity)
4	Coke Oven Battery (Both top charged & stamp charged) (From Coal bunker to coke discharge bucket)	90%	Springs of the anchorage systems, COG booster, stamping train, bonding press
5	Coke Dry Quenching Plant (From Hot coke receiving bucket to discharge chute of cooling chamber)	90%	Mill fan & Motor Special Refractory for Twin Flue of Cooling Chamber.
6	By-Product Plant (From Primary Gas cooler to clean coke oven gas up to the network)	90%	Exhauster & Motor, burner of the clause kiln Catalyst, Tail gas analyzer, Palletization unit.
7	Sinter Plant Equipment (Boundary Limit – Receiving Bin for Raw Material to Vibro-Feeder below Product Sinter Bin)	75%	High Intensive Mixer & Granulator Unit, Pallet cars, Drive Sprocket, Main Drive with Gear Box of sinter machine, slide rail & curved rail, Hot Sinter breaker and Grizzly, Annular Dip Rail Cooler, LCI Drive system for Sinter Plant Exhauster application

S. no.	Plant /Unit package	Minimum domestic content of Capital Goods (%)	Importable Items
8	Pellet Plant Equipment (Boundary Limit – Receiving Ground Hopper for flux & Binder, Belt Conveyor feeding IOF to product pellet belt conveyor)	85%	Pallet car, High Intensive Mixer, Balling Discs, Vertical roller mill, Drive/discharge end Sprocket assembly, Curved rail, Slide rails, Single deck roller screen and Double deck roller screen, Induration Machine Drive assembly, Level-2 automation
9	Blast Furnace Equipment Boundary Limit: Input: • Raw material- Top of bunkers of respective material • Cold Blast- Inlet of the snort valve • Industrial water- BF pump house Output • Hot Metal- Filled in the torpedo ladle • Granulated Slag- to the granulated slag yard	70%	• Bell less top gear box, upper seal device covering upper material gate and upper seal valve, lower seal device covering lower material gate and lower seal valve, Bleeder valve • Hearth Refractory (carbon blocks) • Top Recovery Turbine system (TRT) • Cu-staves • SGI Staves • Cast house equipment (Mud gun, Drilling machine and main trough Manipulator) • Probes, Profilometer & Stock level indicator (radar type) • Gas cleaning plant (AGS system) • Stove system – ceramic burner & technological valve • Waste Heat Recovery system • Turbo blowers • Ball Mill • PCI Injection System • Level-II automation
10	Gas based Direct Reduction Plant Equipment (Boundary Limit: Receipt of raw material at the top of the DRI reactor & discharge of hot DRI to EAF)	50%	• Reactor charging system • Reactor • Reactor discharging system • Pneumatic transfer to EAF • Discharge route to briquetting system • Briquetting feeding system • Briquetting system • Reduction gas circuit • CO2 removal unit • Process gas heater • Reformer system • Heat Recovery System • Process Gas Compressors • Blowers • Seal Gas System • Flue Gas Fan/ Hot Fan • Process valves • Critical bellows • Critical refractories • Natural Gas pre-treatment system • Level-II automation

S. no.	Plant /Unit package	Minimum domestic content of Capital Goods (%)	Importable Items
11	Oxygen Plant 700 tpd & Above (Boundary limit: Water, Power at oxygen plant boundary)	30%	• Main Air Compressor • Booster Air Compressor • Expansion Turbine • Reboiler • Cryogenic Pumps • Heat exchange elements of ASU
12	Steel Making		
12.1	Hot Metal De- De-Sulphurization Station (HMDS) Unit with Co-Injection Process (Hot metal from the blast furnace (BF) is received in a torpedo ladle or open-top ladle, undergoes desulfurization treatment to reduce "Sulphur (S)" content, and is then transferred to the BOF converter)	75%	• Injection Lance and automatic sampling Unit with auxiliaries • De-slagging Machines (slag raking machine) with auxiliaries • Temp. measuring and sampling device with auxiliaries
12.2	Hot Metal De- De-Sulphurization Station (HMDS) Unit with Mechanical Stirrer (KR) Process (Hot metal from the blast furnace (BF) is received in a torpedo ladle or open-top ladle, undergoes desulfurization treatment to reduce "Sulphur (S)" content, and is then transferred to the BOF converter)	70%	• Impeller, Impeller lifting & stirring equipment, Guide Frame with auxiliaries • De-slagging Machines (slag raking machine) with auxiliary facilities • Temp. measuring and sampling device with auxiliaries
12.3	Basic Oxygen Furnace / LD Unit [Treated hot metal is poured into the BOF converter, where it undergoes processing to convert it into steel, which is then supplied to the ladle furnace (LF)]	65%	• Lance body with clamping, Lance carriage, Lance guide, Lance hoist & trolley, Lance copper tips with auxiliaries. • Pneumatic motors for emergency tilting drive. • Bottom stirring system, valve station & rotary joint along with auxiliaries • Valve stations for oxygen/ argon/ nitrogen with auxiliaries • Sub-lance system with auxiliaries • Container lab with all auxiliaries. • Automatic gas coupling (auto coupler) with auxiliaries. • Converter wrecking machine. • Converter tap hole changing machine • Refractory monitoring (laser) machine.

S. no.	Plant /Unit package	Minimum domestic content of Capital Goods (%)	Importable Items
12.4	Electric Arc Furnace Unit (Primary materials such as scrap, DRI, pig iron, and hot metal in Combination are converted into liquid steel using electrical energy to melt and refine the raw materials)	70%	• Electrode regulation system with auxiliaries • High current system including furnace transformer • Oxygen & Carbon Injection System with auxiliaries • Manual Temp Measuring & sampling Lance with auxiliaries
12.5	Ladle Furnace Unit [Liquid steel is processed/ treated to achieve the desired grade and held as buffer stock before being supplied to the continuous casting machine (CCM)]	70%	• Electrode regulation system with auxiliaries • Manual Temp Measuring & sampling Lance with auxiliaries
12.6	RH/ RH-OB Unit [The liquid steel is degassed to achieve the required dissolved gas levels and then supplied to the continuous casting machine (CCM)]	65%	• Gas Stirring System/ Lift Gas Stirring System Valve Stand with auxiliaries • Oxygen Lance System with auxiliaries • Hydris Measurement System with auxiliaries
12.7	Continuous Casting Unit (Slab Caster/ Billet/ Bloom Round/ Combi/ Beam Blank) [The liquid steel is cast into slabs, billets, or blooms in the continuous casting machine (CCM)]	65%	• Ladle slag detection system complete with auxiliaries • Copper tube and Plate, Mould oscillation Cylinder. • Rotary Union. • Continuous temperature measuring system with auxiliaries. • Torch cutting machine/ Emergency torch cutter along with auxiliaries • Deburrer machine along with electrical drive system with auxiliaries • Marking machine . • Roll gap checker complete with auxiliaries • Electromagnetic Stirrer (EMS)/ Electromagnetic Braking (EMBr) system along with auxiliaries
13	Flat Product Mills		
13.1	Hot Strip Mills/ Plate Mill (Boundary Limit: Slab yard to Dispatch Bay, including auxiliaries)	50%	• De-scalars, mill stand, bed plates, backup rolls, Work Rolls, mill spindles, chocks, AGC cylinders, bending blocks & cylinders, shears, down coilers, anti-friction roll neck bearings, oil film bearings, mill reducers, load cells, thickness gauge, profile gauge, width gauge, levelers, roll grinding machines, Coil Marking Machine, Plate Marking Machine, mill stand motors & mill stand MV drive system, automation system, etc.

S. no.	Plant /Unit package	Minimum domestic content of Capital Goods (%)	Importable Items
13.2	CRM (PLTCM) (Boundary Limit: Pickling line entry to mill exit)	50%	• Welding machine, tension leveler, mill stands, backup rolls, antifriction bearings, oil film bearings, roll chocks, roll force cylinders, roll bending and roll shifting cylinders, mill spindles, load cells, position transducers, Electrostatic Oiler, Side Trimmer, Steering System, Surface Inspection System, thickness gauges, laser speed gauge, tensiometer, Flatness Gauge, tension reel, mill reducers, mill stand motors & mill stand MV drive system, automation system etc.
13.3	CRM (HDGL) (Boundary Limit: entry to exit of HDGL including temper mill & tension leveler)	60%	• Welding machine, radiant tube furnaces, jet cooling system, coating pot with induction heating, pot rolls, air knife wiping system, tension leveler, width gauge, thickness gauge, coating thickness gauge, load cells, roll force cylinders, mill stand motors & mill stand drive system, automation system, etc.
13.4	CRM (SPM) (Boundary Limit: entry to exit of SPM)	50%	• Mill stands, backup rolls, antifriction bearings, oil film bearings, roll chocks, roll force cylinders, mill spindles, Electrostatic Oiler, Coil Marking System, load cells, thickness gauge, mill stand motors & mill stand MV drive system, automation system, etc.
13.5	CRM (Bell Annealing Furnace) (Boundary Limit: From furnace bases to post cooling equipment)	55%	• Furnace, automation system, etc.
13.6	CRM (Color Coating Line) (Boundary Limit: Entry to exit of CCL)	80%	• Coater, Coating thickness gauge, digital printer, tension leveler, automation, etc.
14	Long Product Mills		
14.1	Bar Mill/ WRM/MM/ LSM (Boundary Limit: From furnace entry to dispatch)	75%	• Fast finishing blocks, Roll turning lathes, Profile Gauge, automation systems, etc.
14.2	Rail Mill/ Heavy Structural Mill (Boundary Limit: From furnace entry to exit of the rail welding plant excluding material handling)	45%	• straightening machine, NDT facilities, welding machine, Profile Gauge, Hot Saw, Cold Saw, Hot Marking Machine, Roll Turning Lathe, Saw Grinding Machine, automation system, etc.
15	Wheel Plant (receipt of round/ingot to finished wheel)	30%	• Circular saw, forging press, wheel rolling mill, wheel dishing press, wheel stamping machine, rim spaying machine, mobile chargers, (Handling Robots),machining facilities, testing facilities, automation system etc.

S. no.	Plant /Unit package	Minimum domestic content of Capital Goods (%)	Importable Items
16	Refractory Brick (Receipt of raw material to finished brick)	50%	• Hydraulic Press
17	Electrical (Power Quality System)	30%	• MVSTATCOM • (Static Synchronous Compensator) System

Appendix-C: Promotion of Indigenous Technologies in Iron & Steel Sector

1. **Objective:**

To promote self-reliance in the Indian iron and steel sector by incentivizing the adoption, development, and scale- up of indigenous technologies across all stages of steel manufacturing.

2. **Scope:**

This policy applies to Central Public Sector Enterprises involved in steelmaking or putting up a steel manufacturing plant.

3. **Policy Directives:**

3.1 In cases where technology and proof for earlier engineering & supply is available but does not match the present capacity requirement, following conditions will be applicable for indigenous technology providers:

3.1.1 Production capacity reference to be 30% of the capacity of the proposed plant

3.1.2 Availability of demonstrable tie ups with the vendors

3.1.3 Experience of detailed engineering of projects for at least 75% of the capacity of the proposed plant

3.2 In cases where technology is available but no reference for earlier supply is available, following conditions will be applicable for indigenous technology providers:

3.2.1 The indigenous technology supplier has done detailed engineering of projects matching at least 75% of the features of the proposed project

3.2.2 The indigenous technology supplier has done detailed engineering matching 100% of the critical features of the proposed project

3.2.3 Availability of demonstrable tie ups with the vendors

3.2.4 Demonstrable evidence of technology availability (IPR on other sufficient evidence)

4. Implementation Oversight:

The Standing Committee constituted by Ministry of Steel shall monitor implementation, resolve disputes, and update the eligibility and incentive criteria periodically.

Annexure 21: Form-1 of DMI&SP Policy

(Refer para 1.11.5-8)

Format for Affidavit of Self Certification regarding Domestic Value Addition in Iron & Steel Products/capital goods to be provided on Rs. 100/-Stamp Paper

Date:

I_____S/o, D/o, W/o,_Resident of_____ Hereby solemnly affirm and declare as under:

That I will agree to abide by the terms and conditions of the policy of Government of India issued vide Notification No:_____

That the information furnished hereinafter is correct to the best of my knowledge and belief and I undertake to produce relevant records before the procuring agency (ies) for the purpose of assessing the domestic value addition.

That the domestic value addition for all inputs which constitute the said iron & steel products has been verified by me and I am responsible for the correctness of the claims made therein.

That in the event of the domestic value addition of the product mentioned herein is found to be incorrect and not meeting the prescribed value-addition criteria, based on the assessment of procuring agency (ies) for the purpose of assessing the domestic value-addition, I will be disqualified from any Government tender for a period of 36 months. In addition, I will bear all costs of such an assessment.

That I have complied with all conditions referred to in the Notification No_____ wherein preference to domestically manufactured iron & steel products in Government procurement is provided and that the procuring agency (ies) is hereby authorized to forfeit and my EMD. I also undertake to pay the assessment cost and pay all penalties as specified in the tender document.

I agree to maintain the following information in the Company's record for a period of 8 years and shall make this available for verification to any statutory authority.

i. Name and details of the Bidder (Registered Office, Manufacturing unit location, nature of legal entity)
ii. Date on which this certificate is issued
iii. Iron & Steel Products for which the certificate is produced
iv. Procuring agency to whom the certificate is furnished
v. Percentage of domestic value addition claimed and whether it meets the threshold value of domestic value addition prescribed
vi. Name and contact details of the unit of the manufacturer(s)
vii. Net Selling Price of the iron & steel products
viii. Freight, insurance and handling till plant

Government of India
Ministry of Finance
Department of Expenditure