

Chapter 5: Shortlisting Stage in Procurement of Consultancy Services

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

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

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

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

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

5.1.4 **No Global Tender Enquiry (GTE) up to Rs. 200 crores¹⁹** shall be invited or such limit as may be prescribed by the Department of Expenditure from time to time. In exceptional cases where the Ministry or Department feels that there are special reasons for inviting GTE, for tenders below such limit, it may record its detailed justification and seek prior approval for relaxation from the Competent Authority specified by the Department of Expenditure.

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

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

- ii) The proposals shall be submitted along with duly filled format²⁰ (placed at Annexure-2D).

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

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

5.1.6 Exemptions/ Clarifications

- a) For procurement of specialised equipments required for research purposes, and spares and consumables, for such equipments up to Rs. 200 crore for the use of Educational and Research Institutes, Secretary of Ministry/ Department concerned shall be the competent authority to approve issue of Global Tender Enquiries for such requirements subject to fulfilment of conditions as laid down in para 5.1.7 below. The equipment should be of specialized nature

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

required for research purposes and not the routine equipment used in offices²¹.

- b) On procurement of spare parts of the equipments/ Plants & Machinery etc. on nomination basis from Original Equipments Manufacturers (OEMs) or Original Equipment Suppliers (OES) or Original Part Manufacturers (OPMs) as no competitive tenders are invited in such cases²².
- c) On procurement of services like Annual Maintenance Contract (AMC) and auxiliary/ add-on components for existing equipments/ Plant & Machinery etc. , which are procured from OEM/ OES/ OPM on nomination basis, as no competitive tenders are invited in such cases²³.
- d) Where procuring entities need to issue GTEs to fulfil contractual commitments/ obligations entered by them before 15.05.2020 i.e. bid has been submitted by them to their clients before 15.05.2020. similarly, where procuring entities need to issue GTEs in view of existing collaboration agreements entered by them with foreign suppliers before 15.05.2020²⁴.
- e) Based on the reference received from Ministry of Health & Family Welfare, GTE can be floated for 128 Medical Devices (placed at Annexure-2E). The exemptions is provided for such items till 31.03.2023. MoHFW will review domestic availability of these items at the end of 2022, keeping in view the Production Linked Incentive (PLI) scheme etc. launched by Department of Pharmaceuticals in Medical Devices and other relevant factors, in consultation with Department of Expenditure²⁵.
- f) For projects funded by Multilateral Development Banks (MDBs like The World Bank, Asian Development Bank etc.)/ Bilateral Funding Agencies (BFAs), where the procurement is governed by the conditions negotiated in the loan agreement, and where the project executing agencies from time to time further award works to various Autonomous Bodies (ABs)/ Central Public

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

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

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

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

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

Sector Enterprises (CPSEs) etc., the Secretary of the Ministry/ Department responsible for execution of such project shall be the Competent Authority for approval for issuance of GTEs by such Autonomous Bodies/ CPSEs etc²⁶.

g) Exemption to semiconductor..

5.1.7 [Refer to para 5.1.6 (a) above]

5.1.7.1 Educational, Research institutions and other units will make full efforts towards reducing of imports in following manner. This will result in substantial effects both within the institutions and also through impact on the eco-system:-

- a) Identification of equipment being procured time and again from abroad, and help developing them in India by identifying potential manufacturers and providing them technical help and expertise for developing the equipment. This programme will be coordinated by the Empowered Technology Group (constituted by Cabinet and chaired by the Principal Scientific Advisor (PSA).
- b) Efforts to promote technology transfer through agreements or to encourage technological collaboration with foreign manufacturing in India at the Start-ups set up in Research Parks.
- c) Sharing and updating of information about the availability of research equipment across various Indian Institutes on a single portal (the I-STEM²⁷ portal has been developed for this purpose) so that those can be utilized by the needy institutes.
- d) Without compromising quality, Institutes should indicate alternative/ equivalent technical specifications that could suit their requirement, so that there are more chances of local manufacturers participate in the tendering process.
- e) Regular interaction between academia and Indian industry organizations at the level of the institution about the requirement of equipment of foreign origin and for encouraging the domestic manufacturing.
- f) Regular requirement of proprietary/ non-proprietary research consumables may be assessed and domestic alternatives are explored for use.

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

²⁷<https://www.istem.gov.in/>

- g) A national level programme for indigenous development of scientific equipment be initiated by the Office of PSA.
- h) Without compromising quality, institutes should be flexible with specifications so that domestic manufactures are encouraged to meet requirements.

5.1.7.2 **Guidelines for resorting to GTE**

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

5.1.7.3 **Certificates to be issued**

- a) Confirmation of non-availability in India of particular equipment/ consumables of foreign origin through GeM and other sources.
- b) Certification that locally available alternatives with equivalent specifications are not suitable for research purposes.

- c) The non-availability of such equipment for research purposes with nearby research institutes or within the institute.
- d) Certification of the requirement of proprietary items of foreign origin for research purposes (where applicable).

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

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

5.1.10 Empanelment of contractors: Public authorities may empanel/ register contractors of those specific goods and services which are required by them regularly. Performance of such empanelled contractors should be reviewed periodically. The list of registered contractors shall be updated on a regular basis. The category/ class of contractors may be upgraded/ downgraded or contractors

may be de-listed based on their performance. Empanelment of contractors shall be done in a fair and equitable manner, preferably online after giving due publicity²⁸.

5.1.11 The EoI document shall contain following sections:

i) Letter of Invitation:

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

ii) Instructions to the consultants

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

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

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

iv) Qualification Criteria

This may clearly lay down the qualification criteria which shall be applied by the Procuring Entity for short listing the consultants. The REoI should ask for sufficient information so that the Procuring Entity may evaluate the consultant's capabilities and eligibility to undertake the assignment. Information should include: (a) core business and years in business; (b) qualifications in the field of the assignment; (c) technical and managerial organisation of the firm; and (d) general qualifications and number of key staff. In addition, the consultants should indicate information relating to their eligibility and any conflict of interest that they know may impact objective performance and impartial advice for their

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

services. Consultants should not be asked about their approach to the services or to submit any curricula vitae of key personnel, because these documents will be dealt with in the RfP. No legal documents such as certificates of incorporation of the firm, powers of attorney, financial statements, or translations of standard brochures should be requested. Given the often-large number of submissions, the advertisement should stress the importance of brevity of the information to be sent.

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

5.2 Short List of consultants

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

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

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

5.2.4 It is seen that the process of shortlisting is one of the most difficult and time consuming tasks in the selection process of a consultant. The short list of firms is

required for the selection of consultancy services in a competitive process with a minimum of three (*Rule 184 of GFR 2017*) and generally not more than eight.

5.2.5 The Procuring Entity may assign scores to the response of each consultant based on weightages assigned to each of the criteria in the EoI. Each criterion may be sub-divided into sub-criteria, if called for. Normally, the weightages shown in Table 1 may be used for such an evaluation (this is just an indicative criterion to assist the evaluators. The criteria and their weightage may be changed as per the need of Procuring Entity).

Table 2. Qualification criteria and their weightages

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

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

In EoI, simplified evaluation criteria can also be used, instead of marking schemes as mentioned above. A fail-pass, minimum benchmark in each criteria/ sub-criteria can be specified e.g. Must have past experience of at least two similar projects; key professionals must have at least seven years' experience and must have Master's

Qualification in relevant field; Firm must have a turnover of at least Rs 10 (Rupees Ten) Crores and so on. Any firm which passes these benchmarks is declared as qualified.

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

5.2.8 The short lists shall normally comprise at least three firms but not more than eight (to avoid inordinate delays in evaluation of subsequent RfP). The short list may comprise only national consultants (firms registered or incorporated in the country), for small assignments and indicated in the EoI. This situation is applicable where qualified national firms are available at a competitive cost or if the nature of the assignment is such that a foreign consultant's inclusion is not justified (for example, a training or outreach to be carried out in local language) or if foreign consultants have not expressed any interest. RfP documents would be issued only to the shortlisted consultants.

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

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

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

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

Chapter 6: Selection of consultants by Competitive Process

6.1 The evaluation process

The selection process for consultants generally includes the following steps:

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

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

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

- i) A letter of invitation (LoI);
- ii) Information to consultants (ITC) and data sheet (which contains assignment specific information);
- iii) Terms of Reference (ToR);
- iv) List of key experts required for the assignment;
- v) Requirement of qualifications and experience of the firm and key experts;
- vi) Criteria of proposal evaluation and selection procedure;
- vii) Standard formats for the technical proposal;
- viii) Standard formats for the financial proposal; and

- ix) Proposed form of the contract, including General Conditions of Contract and Special Conditions of Contract;
- x) Proposed procedure to be followed pertaining to mid-term review of the progress of the work and review of the final draft report.

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

6.2.2 Simplified Technical Proposal: In LCS system of evaluation, since the technical scores are not ranked or weighted and added to Financial Scores, it would suffice if instead of a detailed marking scheme for the criteria/ sub criteria, minimum fail-pass qualifying benchmarks are laid down for each criteria/ sub criteria. For such assignment technical evaluation can be carried out by following a simplified procedure for evaluation of technical quality and only a Simplified Technical Proposal (STP, instead of a Full Technical Proposal - FTP) may be called for and indicated in the data sheet of the RfP document. STP should be used. when the assignment is: (i) unlikely to have significant downstream impact; (ii) of a routine nature where ToR already defines details of tasks to be performed and required output and approach, methodology, organisation and staffing could be evaluated without use of sub criteria; and (iii) that characteristics of work do not require further detailed evaluation of the consultant's experience (e.g. engagement of accountants, auditors, consultant engineers etc). STP reduces the time and cost required to prepare the proposal and could be evaluated faster by the Evaluation Committee. For example following parameters can be used:

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

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

6.2.3 Letter of Invitation (LoI)

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

6.2.4 Instructions to consultants (ITC)

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

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

6.2.5 Standard Formats for Technical and Financial Proposals

- i) The standard formats for technical proposals include those specified for FTP or STP:
 - a) Technical proposal submission form (including declaration on conflict of interest, eligibility, following Code of Integrity in Public Procurement - CIPP);
 - b) For a JV, a LoI or copy of existing agreement, as applicable;
 - c) Power of attorney (in case of a JV, lead member to be authorised);
 - d) consultant's organisation and experience (for FTP only);

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

6.2.6 Important Provisions of RfP/ Contracts

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

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

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

The following are important elements of PVC:

- a) The price agreed upon should specify the base date, that is, the month and year to which the price is linked to enable variations being calculated with reference to the price indices prevailing in that month and year;
- b) The price variation formula must also stipulate a minimum percentage of variation of the contract price, only above which the price variation will be admissible (for example, where the resultant increase is lower than, say, two per cent of the contract price, no price adjustment will be made in favour of the supplier);
- c) The price variation clause should provide for a ceiling on price variations, particularly where escalations are involved. It could be a percentage per annum or an overall ceiling or both;
- d) Where advance or stage payments are made there should be a further stipulation that no price variations will be admissible on such portions of the price, after the dates of such payment;
- e) Where deliveries are accepted beyond the scheduled delivery date subject to levy of liquidated damages as provided in the contract. The

LD (if a percentage of the price) will be applicable on the price as varied by the operation of the PVC;

- f) No upward price variation will be admissible beyond the original scheduled delivery date for defaults on the part of the supplier. However, a downward price variation would be availed by the purchaser as per the denial clause in the letter of extension of the delivery period;
- g) Price variation may be allowed beyond the original scheduled delivery date, by specific alteration of that date through an amendment to the contract in cases of force majeure or defaults by Government;
- h) Where contract execution depends on imported (subject to customs duty and foreign exchange fluctuations) and/or locally sourced goods/ works/ services (subject to excise duty and other duties and taxes), the percentage and element of duties and taxes included in the price should be specifically stated, along with the selling rate of foreign exchange element taken into account in the calculation of the price of the imported item;
- i) The clause should also contain the mode and terms of payment of the price variation admissible; and
- j) The buyer should ensure a provision in the contract for the benefit of any reduction in the price in terms of the PVC being passed on to him.
- k) An illustrative PVC clause is available in Annexure 2F.
- l) Care should be exercised in contracts providing for price variation to finalise the price before final payment is made, after obtaining data and documents in support of claims for escalation, if any. Where no such claims are submitted by the suppliers, an examination of whether there has been a downward trend in the cost, which the contractor may not bring out, is required. At any rate, an undertaking should be obtained from the contractor to the following effect in case it becomes necessary to make the final payment before he has submitted the required data/documents related to the PVC:

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

- m) Notwithstanding the above formalities, it should be appreciated that it is in the interest of the purchaser to be vigilant about downward variation and it is, therefore, the basic responsibility of the purchase officers to make sure that the benefits of downward variation, wherever it occurs, are fully availed of.
- iii) **Payment Provisions:** Payment provisions, including amounts to be paid, schedule of payments, and payment procedures, shall be indicated in RfP and also in the draft contract. Payments may be made at regular intervals (as under time-based contracts) or for agreed outputs (as under lump sum contracts).

Ordinarily, payments for services rendered or supplies made should be released only after the services have been rendered or supplies made. However, it may become necessary to make advance payments for example in the following types of cases :-

- a) Advance payment demanded by firms holding maintenance contracts for servicing of Air- conditioners, computers, other costly equipment, etc.
- b) Advance payment demanded by firms against fabrication contracts, turn-key contracts etc.

Such advance payments should not exceed the following limits :

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

Ministries or Departments of the Central Government may relax, in consultation with their Financial Advisers concerned, the ceilings (including percentage laid down for advance payment for private firms) mentioned above. While making any advance

payment as above, adequate safeguards in the form of bank guarantee etc. should be obtained from the firm.

iv) **Bid Securities (Rule 170 of GFR 2017):** Normally in procurement of consultancy services, it is not a practice to ask for Bid Security. However Procuring Entity has the option of requiring a bid security in time-critical procurements. When used, to safeguard against a bidder's withdrawing or altering its bid during the bid validity period in the case of advertised or limited tender enquiry, Bid Security (also known as Earnest Money) is to be obtained from the bidders except Micro and Small Enterprises (MSEs) as defined in MSE Procurement Policy issued by Central Purchase Organisation or the concerned Ministry of Department or Startups as recognized by Department of Industrial Policy & Promotion (DIPP)³⁰. The bidders should be asked to furnish bid security along with their bids. Amount of bid security should ordinarily range between two percent to five percent of the estimated value. The amount of bid security should be determined accordingly by the Ministry of Department and indicated in the bidding documents. The bid security may be accepted in the form of Insurance Surety Bonds³¹, Account Payee Demand Draft, Fixed Deposit Receipt, Banker's Cheque or Bank Guarantee from any of the Commercial Banks or payment online in an acceptable form, safeguarding the purchaser's interest in all respects. The bid security is normally to remain valid for a period of 45 (forty-five) days beyond the final bid validity period. Bid security should be released to unsuccessful bidders once the contract has been signed with the winning consultant at the earliest after expiry of final bid validity and latest on or before the 30th day after the award of the contract. However, in case of two packet or two stage bidding Bid securities of unsuccessful bidders during first stage i.e. technical evaluation etc should be returned within 30 days of declaration of result of first stage i.e. technical evaluation etc³². In exceptional cases, in place of a Bid security, Procuring Entities after seeking approval of the competent authority may

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

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

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

consider asking Bidders to sign a Bid securing declaration accepting that if they withdraw or modify their Bids during the period of validity, or if they are awarded the contract and they fail to sign the contract, or to submit a performance security before the deadline defined in the request for proposals (RFP) document, they will be suspended for the period of time specified in the request for proposals document from being eligible to submit Bids/Proposals for contracts with the Procuring Entity.

- a). **Performance Security (Rule 171 of GFR 2017):** To ensure due performance of the contract, performance security [or Performance Bank Guarantee (PBG) or Security Deposit (SD)] is to be obtained from the successful bidder awarded the contract. Performance security should be for an amount of five (5) to ten (10) per cent of the value of the contract as specified in the bid documents [The value has been reduced to three (3) percent till 31.03.2023. Refer to para 6.1.2 (iv) (d) below]. Performance security may be furnished in the form of Insurance Surety Bond³³, account payee demand draft, fixed deposit receipt from a commercial bank, bank guarantee issued/confirmed from any of the commercial bank in India, or online payment in an acceptable form, safeguarding the purchaser's interest in all respects. In case of GTE tenders, the performance security should be in the same currency as the contract and must conform to Uniform Rules for Demand Guarantees (URDG 758) – an international convention regulating international securities³⁴. Submission of Performance Security is not necessary for a contract value upto Rupees 1 (one) lakh. Bank guarantees, either received in physical form or electronic form, should be verified for its genuineness following prescribed method for

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

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

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

Department, whichever is lower. Specific reasons justifying the exception shall be recorded³⁵.

- e) As per Rule 172 (1) of General Financial Rules (GFRs) 2017, ordinarily payment for services rendered or supplies made should be released only after the services have been rendered or supplies have been made. The rule further provides for advance payment in case of maintenance contracts and fabrication contracts keeping adequate safeguards in the form of obtaining Bank Guarantees (BGs) from the firms.
 - f) The Government of India has recently approved a revamped Reform based and Results Linked Power Sector scheme, in which installation of smart pre-paid meters will be done across the country. Advance payment towards electricity usage by Government office through pre-paid metering is central to the envisaged reforms process. Government Departments can make advance payments to authorized DISCOMS for pre-paid metered electricity without insisting on any BGs. However, proper accounting of all the payments must be made³⁶.
- v) **Proposed form of contract:** The contract includes accepted ToR methodology, general and specific conditions of contract, etc. wherever possible, the Procuring Entity shall use the Standard Form of Contract. The general conditions of contract shall include all such conditions which are common in nature and not project specific. Such conditions include clauses pertaining to sub contracting, methods of payment, termination and extension of contracts, arbitration, variation in quantities, indemnity and insurance, force majeure, conflict of interest, compliance to local laws and taxes and duties etc. The project specific conditions include clauses relating to the assignment in hand. These clauses should be carefully developed to protect the interest of the Procuring Entity.vi) **Conflict of Interest:** The consultant shall not receive any other remuneration from any source in connection with the same assignment except as provided under the

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

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

contract. Consultants assisting a client in privatisation of public assets shall neither purchase nor advise purchasers of such assets. Similarly, consultants hired to prepare ToR for an assignment shall not be hired for the assignment in question and shall not be in a conflict of interest situation as described in the RfP/contract.

- vii) **Professional Liability:** The consultant is expected to carry out its/his assignment with due diligence and in accordance with the prevailing standards of the profession. As the consultant's liability to the Procuring Entity will be governed by the applicable law, the contract need not deal with this matter unless the parties wish to limit this liability. If they do so, they should ensure that: (a) there must be no such limitation in case of the consultant's gross negligence or wilful misconduct; (b) the consultant's liability to the Procuring Entity may, in no case, be limited to less than a multiplier of the total value of the contract to be indicated in the RfP and special conditions of contract (the amount of such limitation will depend on each specific case); and (c) any such limitation may deal only with the consultant's liability toward the Procuring Entity and not with the consultant's liability toward third parties.
- viii) **Staff Substitution of Key Professional:** During an assignment where key professionals are named in the contract, if substitution is necessary (for example, because of ill health or because a staff member proves to be unsuitable, or the member is no longer working with the consultant), the consultant shall propose other staff of at least the same level of qualifications for approval by the Procuring Entity. The RfP/contract must specifically make provision for terms and conditions under which the staff can be replaced, about the remuneration to be paid, and so on.
- ix) **Applicable Law and Settlement of Disputes:** The contract shall include provisions dealing with the applicable law, which should be the law applicable in India and the forum for the settlement of disputes – applicable Arbitration Clause and procedures.
- x) **Training or Transfer of Knowledge:** If the assignment includes an important component of training or transfer of knowledge to the Ministries/ department staff, the ToR shall indicate the objectives, nature, scope, and goals of the training programme, including details on trainers and trainees, skills to be transferred, timeframe, and monitoring and evaluation arrangements. The cost of the training

programme shall be explicitly stated in the consultant's contract and in the budget for the assignment.

(Rule 186 of GFR 2017)

xi) **Tender Documents**³⁷ :

- a) The tender document is the fundamental document in the public procurement process as after award of the contract it becomes part of the contract agreement. All necessary provisions governing the contract should be clearly provided in the tender document. Examples are technical specifications, drawings, commercial terms and conditions including time period, inspection, payment terms, obligations of the procuring entity and the suppliers timeframe/ milestones, tax implications, compliance framework for statutory and other norms, dispute resolution. Provisions/ clauses in the tender document should be clear to avoid differences in interpretation and possible time overrun, cost overrun and quality compromises. Model Tender Documents³⁸ issued by the DoE may be used, with due customisation.
- b) In tenders containing General Conditions of Contract (GCC), additional/ special conditions to be incorporated in the tender document, shall be need based and specific. The GCCs should not be altered and changes, if any, in conditions of contract should only be made through the Special Conditions of Contract.
- c) Procuring entities may issue instructions regarding appropriate delegation of authority for variations and changes in the scope of the contract.
- d) Provision of price variation, wherever considered appropriate, as well as methodology for calculation of the same shall be clearly stipulated in the tender document.
- e) Technical and Financial eligibility Criteria for the bidders are important in the public procurement process. They shall be clear and fair, having regard to the specific circumstances of the procurement. Appropriate parameters should be

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

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

prescribed in the eligibility criteria for bidders, to enable selection of the right type of bidders in public interest, balancing considerations of quality, time and cost.

- f) Open online tendering should be the default method to ensure efficiency of procurement. Public authorities should also keep the experience criteria broad based so that bidders with experience in similar nature of items/ goods can participate.
- g) Pre-bid conference may be conducted for large value tenders by Procuring Entities. The Place and time of pre-bid conferences should be mentioned in the tender document and/ or publicized through the website of the procuring entity and/ or through newspaper publication.

6.3 Pre-proposal Meeting

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

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

6.4 Receipt of Proposal

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

6.5 Consultancy Evaluation Committee (CEC)

6.5.1 For all cases having financial implications of more than Rs. 10 (Rupees Ten) lakh, a Consultancy Evaluation Committee (CEC), comprising of normally three members including Financial Adviser or his representative and a representative of the user, shall be constituted as per SoPP, in order to carry out the consultant selection procedure. The CEC should not be very large as it may slow down the evaluation process. However, suitable domain/technical experts may be included in the committee to render assistance in evaluation of the bids. No member of CEC should be reporting directly to any other member of the CEC. The CEC shall be responsible for all aspects and stages of the consultant selection, that is, evaluation of EoI, shortlisting of consultants, deciding TORs, issuance of RfP, evaluation of technical and financial proposals, negotiations and final selection of the consultant. There no need to constitute any other committee for technical evaluation, preliminary

evaluation, etc. Even in case of selection of a consultant by direct negotiations having financial implications more than Rs. 10 (Rupees Ten) lakh, the CEC shall negotiate with the consultant on technical and financial aspects. (separate committees may be constituted for separate assignments).

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

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

6.5.4 After the review meeting, the CEC meets again to define the grades of the rating system to be adopted for scoring the technical proposals (if not detailed in the RfP), according to the criteria and sub criteria set out in the Data Sheet. To discourage subjectivity and avoid the use of points and fractions of points, the rating system provides a few grades (from three to four) for each criterion and sub-criterion. Minimum qualifying marks or relative qualifying method for quality of the technical proposal will be prescribed and indicated in the RfP. The grading system must be defined before the technical proposals are opened to prevent bias (or perceived bias) occurring because of the CEC's knowledge of the opened proposal contents. It is recommended that the evaluation and scoring of technical proposals be carried out only after defining the grading system. Otherwise, CEC members would have to assign a level of responsiveness of the proposals to each of the different criteria and

sub criteria without guidance and support from predefined grades. This could easily distort the evaluation for the following main reasons:

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

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

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

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

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

Rating	Assessment	Detailed Evaluation, in case of unquantifiable Criteria	Marks
A	Very Good	The service providers have outstanding, advanced expertise in specific problem areas of the assignment that can promise an excellent execution of the assignment. The	Full Marks

Rating	Assessment	Detailed Evaluation, in case of unquantifiable Criteria	Marks
		service providers' staff includes top experts in the field of the assignment. The service providers are considered world-class specialists in the approaches and methodologies dealing with specific issues in the assignment. The service providers operate according to well-established Quality Management (ISO 9002 etc.) Procedures.	
B	Good	The service providers have extensive experience in the field of the assignment and have worked in Regions and Sectors with similar physical and institutional conditions, including similar critical issues. Permanent staff are adequate and highly qualified to cover the requirements of the assignment. The service providers have experience with advanced approaches and methodologies for dealing with the specific requirements of the assignment.	80% of full Marks
C	Satisfactory	The service providers have experience in the field of assignments similar to the one being considered, but have not dealt with critical issues specific to it (such as, for instance, delicate social or environmental issues). The service providers are experienced in the use of standard approaches and methodologies required for the assignment. The service providers' permanent staff are adequate.	60% of full Marks
D	Unsatisfactory	The service provider has experience which is not considered adequate for the quality needed by the Project.	30% of full Marks
E	Not Relevant	The service provider' experience has no or little relevance to the Project under consideration.	10% of full Marks

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

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

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

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

(Rule 189 of GFR 2017)

6.6 First Stage of Evaluation: Consideration of Responsiveness

Each member of the CEC should first read all proposals, without scoring them. This first review helps determine whether the proposals are free of significant omissions or deviations from the ToR or other key requirements of the RfP; it also allows CEC members to assess the overall clarity of the proposals and identify elements that will require special attention in the evaluation. Proposals without earnest money (bid security), unsigned and incomplete (i.e. when the required bid formats have not been submitted), not responding to the ToR fully and properly and those with lesser validity than that prescribed in the RfP will be summarily rejected as being non-responsive, before taking up the appraisal of the technical proposal for evaluation of

quality. CEC shall evaluate each proposal on the basis of its responsiveness to the ToR. A proposal shall be considered unsuitable and shall be rejected at this stage if it fails to comply with important aspects as described in the RfP. A technical proposal containing any material financial information shall also be rejected

6.7 Evaluation of the Quality – Technical Proposals

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

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

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

*Note: * If this criterion is not required, the marks can be adjusted against some other criteria. The weight given to the firm’s experience can be relatively modest, since this*

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

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

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

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

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

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

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

6.7.4 The CEC evaluation should be based on the proposal as submitted. Under no circumstances can the CEC request information or clarifications that may change the

proposals. Issues to be clarified with the selected consultant will have to be discussed during negotiations. Individual evaluators' results are recorded on pre-established worksheets. After each member has independently rated all criteria and sub-criteria, it is good practice to read each proposal again to ensure that scores reliably reflect the quality of the proposal.

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

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

6.7.7 At the end of the technical evaluation process, the CEC shall prepare a technical evaluation report of the "quality" of the proposals recording the scores given to each criterion and sub-criterion, as well as explain the decisions and take the competent authority's (CA) approval. For each proposal, the report also should

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

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

6.8 Evaluation of Cost

6.8.1 After evaluation of quality has been completed, the Procuring Entity shall notify those consultants whose proposals did not meet the minimum qualifying standard or were considered non-responsive to the RfP and/or ToR, indicating that their financial proposals will be returned unopened after completing the selection process. In case of QCBS, the Procuring Entity shall simultaneously notify the consultants that have successfully satisfied the qualifying standard or where marks have been awarded, the minimum qualifying marks, and indicate the date and time set for opening the financial proposals. In such a case, the opening date shall not be later than three weeks after the notification date. The financial proposals shall be opened publicly in the presence of representatives of the technically qualified consultants who choose to attend. The Evaluation Committee demonstrably verifies that the financial proposals have remained sealed and then opens them. The name of the consultant, quality scores, and proposed prices shall be read aloud and

recorded when the financial proposals are opened. No modification to financial proposals is permitted. The Procuring Entity shall prepare the minutes of the public opening. Format at Annexure 5 may be used for this purpose. When electronic submission of proposals is used, this information shall be posted online.

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

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

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

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

(Rule 190 of GFR 2017)

6.8.6 An Abnormally Low Bid is one in which the Bid price, in combination with other elements of the Bid, appears so low that it raises material concerns as to the capability of the Bidder to perform the contract at the offered price. Procuring Entity may in such cases seek written clarifications from the Bidder, including detailed price analyses of its Bid price in relation to scope, schedule, allocation of risks and responsibilities, and any other requirements of the bids document. If, after evaluating the price analyses, procuring entity determines that the Bidder has *substantially*

failed to demonstrate its capability to deliver the contract at the offered price, the Procuring Entity may reject the Bid/Proposal. However it would not be advisable to fix a normative percentage below the estimated cost, which would be automatically be considered as an abnormally low bid. Due care should be taken while formulating the specifications at the time of preparation of bid document so as to have a safeguard against the submission of abnormally low bid from the bidder.

6.9 Selection of the winning consultant

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

6.9.1 LCS Selection

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

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

Under QCBS selection, the technical proposals will be allotted weightage of 70% (Seventy per cent) while the financial proposals will be allotted weightages of 30% (Thirty per cent) or any other respective weightages as declared in the RfP (Example, 60:40, 50:50, but not greater than 80%). The proposed weightages for quality and cost shall be specified in the RfP. Proposal with the lowest cost may be given a financial score of 100 (Hundred) and other proposals given financial scores that are inversely proportional to their prices w.r.t. the lowest offer. Similarly, proposal with the highest technical marks (as allotted by the evaluation committee) shall be given a score of 100 (Hundred) and other proposals be given technical score that are proportional to their marks w.r.t. the highest technical marks. The total score, both technical and financial, shall be obtained by weighing the quality and cost scores and adding them up. On the basis of the combined weighted score for

quality and cost, the consultant shall be ranked in terms of the total score obtained. The proposal obtaining the highest total combined score in evaluation of quality and cost will be ranked as H-1 followed by the proposals securing lesser marks as H-2, H-3 etc. The proposal securing the highest combined marks and ranked H-1 will be invited for negotiations, if required and shall be recommended for award of contract. In the event two or more bids have the same score in final ranking, the bid with highest technical score will be H-1

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

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

where

C = Evaluated Bid Price

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

T = the total Technical Score awarded to the Bid

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

X = weightage for the Price as specified in the BDS

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

As an example, the following procedure can be followed. In a particular case of selection of consultant, it was decided to have minimum qualifying marks for technical qualifications as 75 (Seventy five) and the weightage of the technical bids and financial bids was kept as 70: 30 (Seventy: Thirty). In response to the RfP, three proposals, A, B & C were received. The technical evaluation committee awarded the following marks as under:

A: 75 Marks

B: 80 Marks

C: 90 Marks

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

A: $75/90 = 83$ points

B: $80/90 = 89$ points

C: $90/90 = 100$ points

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

A: Rs.120.

B: Rs.100.

C: Rs.110.

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

A: $100/120 = 83$ points

B: $100/100 = 100$ points

C: $100/110 = 91$ points

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

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

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

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

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

Proposal A: 83 points: H-3

Proposal B: 92.3 points: H-2

Proposal C: 97.3 points: H-1

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

6.9.3 SSS selection

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

6.10 Negotiations and Award of Contract

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

6.10.2 Financial negotiations shall only be carried out if, due to negotiations, there is any change in the scope of work which has a financial bearing on the final prices or if the costs/cost elements quoted are not found to be reasonable. In such negotiations, the selected firm may also be asked to justify and demonstrate that the prices proposed in the contract are not out of line with the rates being charged by the

consultant for other similar assignments. However, in no case such financial negotiation should result in an increase in the financial cost as originally quoted by the consultant and on which basis the consultant has been called for the negotiations. If the negotiations with the selected consultant fail, the Procuring Entity shall cancel the bidding procedure and re-invite the bids.

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

6.11 Rejection of All Proposals, and Re-invitation

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

6.12 Confidentiality

Information relating to evaluation of proposals and recommendations concerning awards shall not be disclosed to the consultants who submitted the proposals or to other persons not officially concerned with the process, until the award of contract is notified to the successful firm, except that after technical evaluation, the overall technical score shall be informed to all consultants for each criterion or sub-criterion, if any, as required by RfP document.

6.13 RfP, Evaluation and Award Stage – Risks and Mitigation	
<i>Risks</i>	<i>Mitigation</i>
<i>No key expert proposed from the main qualified partner in JV:</i> It is seen that though the shortlisting and contract is won by a JV on the basis of qualifications of the main qualified partner firm, but no key experts (nor team	RfP should specify that the team leader proposed should have worked for a sufficient number of years (say, two to three years) with the main qualifying firm. If

<p>leader) are proposed from that firm. As consultancy assignment is an intellectual product, the effective contribution of the qualified partner firm can only come from experts (in particular the team leader) who have worked for sufficient time with the main qualified consultant.</p>	<p>this is not complied with it could be a ground for the proposal being termed as non-responsive.</p>
<p>Request for substitution of key experts at the time of contract negotiation: After the firm is invited for negotiation, it asks for substitution of key staff in the contract. This is an unacceptable practice unless the selection process is unreasonably delayed.</p>	<p>Any request for substitution should be examined very closely and agreed only if permitted by the RfP</p>
<p>Presence of one or more unsigned CVs in technical proposal: If a proposal contains one or more unsigned CVs, it should be scrutinised carefully. It can be that the CV is used without permission or commitment from the concerned key expert.</p>	<p>If few CVs are not signed by the key expert, the evaluation should be carried without considering these unsigned CVs and, if this firm is still a winner, clarification may be sought at the negotiation stage for resolution. In no case substitution of such key experts be agreed to at the contract negotiation stage. If most of the CVs are not signed by the respective proposed key experts, the proposal should be termed as non-responsive and rejected at the technical evaluation stage.</p>

Chapter 7: Special Types of Engagements

7.1 Single Source Selection (SSS)

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

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

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

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

7.1.5 While selecting the consultant/ service provider under this method, the Procuring Entity shall ensure that the consultant/ service provider has the requisite

qualification and experience to undertake the assignment. Normally the Procuring Entity shall adopt the same short listing criteria as applied to similar assignments while evaluating the EoI.

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

7.2 Selection of Individual consultants/ service providers

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

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

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

- i) Preparing a Consultancy and other services package including the ToR, time frame, number of person-months, budget, EoI Short-listing criteria and getting it approved by the CA;
- ii) **Advertising:** Advertisement in such case should be given on Central Public Procurement Portal (CPPP) at www.eprocure.gov.in and on Government E-Market (GeM). An organisation having its own website should also publish all its advertised tender enquiries on the website. The advertisements for invitation of tenders should give the complete web address from where the bidding documents can be downloaded.
- iii) **Method of Selection:** They shall be selected through comparison of qualifications of at least three candidates among those who have expressed interest in the assignment or have been approached directly by the Procuring Entity. Candidates who are already employed with the Procuring Entity shall meet all relevant qualifications and shall be fully capable of carrying out the

assignment. Capability is judged on the basis of academic background, experience, and, as appropriate, knowledge of the local conditions, such as local language, culture, administrative system, and government organisation. Selection will be carried out by the CEC which will award marks for educational qualifications and experience and select the most suitable candidate for the assignment. The CEC may also interview candidates and award marks for their performance in the interview and recommend the remuneration to be paid.

- iv) **Direct Negotiation:** Individual consultants/ service providers may be selected on a direct negotiation basis with due justification in exceptional cases such as: (a) tasks that are a continuation of previous work that the consultant/ service provider has carried out and for which the consultant/ service provider was selected competitively; (b) emergency situations resulting from natural disasters; and (c) when the individual is the only consultant/ service provider qualified for the assignment. Individual consultants/ service providers may be (among others) independent consultants/ service providers; consultants/ service providers recruited from firms; or consultants/ service providers recruited from academic, government, or international agencies.
- v) **Staff or Associates of Consultancy/ service provider Firms:** If the candidate is permanent staff or associates of a Consultancy firm the conflict of interest provisions described in these guidelines shall apply to the parent firm.

7.3 Selection of Specialized Agencies/ Institutions

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

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

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

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

7.4 Selection of Nongovernmental Organizations (NGO)

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

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

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

7.5 Procurement Agents

Procurement agents (PAs) may be hired by the Procuring Entity to assist in carrying out procurement, to provide advice, or a combination of both. When PAs are specifically used as “agents” handling the procurement of specific items and generally working from their own offices, they are paid a percentage (either fixed or inversely proportional) of the value of the procurements handled or a combination of a percentage and a fixed fee. In such cases, they are selected under QCBS, with cost being given a weight of up to 50 (fifty) percent. If the weight of the cost element adopted were as high as 50 (fifty) percent, financial considerations would dominate the selection, creating the risk of an unacceptably lower service quality. In such

cases, it is essential to ensure that the quality threshold in the evaluation is set sufficiently high. When PAs provide only advisory services for procurement or act as “agents” for a whole project in a specific Unit of Procuring Entity, they are usually paid based on the staff-months of effort provided, and they shall be selected following the appropriate procedures for other Consultancy assignments using QCBS and time-based contracts, as specified for other Consultancy assignments.

7.6 Inspection Agents

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

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

7.7 Financial Advisors

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

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

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

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

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

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

7.8 Auditors

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

7.9 Public competition for Design of symbols/logos

7.9.1 Certain Ministries/Departments are required to conduct competitions for the design of logos/symbols for their use, which should be conducted in a transparent,

fair and objective manner. Following guidelines shall be followed by all Ministries/ Departments as well as their attached/ subordinate offices and the autonomous bodies/ organizations controlled by them, while conducting public competitions for design of symbols/ logos for their use:

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

- i) The number of prizes to be awarded and the amount payable for the successful design(s).
- j) It may be clearly stipulated that the intellectual property rights of the successful design(s) would rest with the sponsoring agency. The status of the unsuccessful designs and whether it is intended to return them should be indicated clearly.
- k) If the selection is to be done by a jury of experts nominated for the purpose, the composition of the jury may also be notified.

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

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

(Rule 196 of GFR 2017)

Chapter 8: Monitoring Consultancy/ Other services Contract

8.1 Monitoring of the Contract

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

8.2 Contract Monitoring Committee – (CMC)

The Procuring Entity shall constitute a CMC comprising at least three members at the appropriate level, including the user's representative, after the selection procedure is over for monitoring the progress of the assignment. If considered appropriate, the Procuring Entity may select all or any of the members of CEC as members of CMC. The Procuring Entity may also include individual experts from the government/private sector/ educational/research institute or individual consultant/ service providers in the CMC. The cost of such members, if any, shall be borne by the Procuring Entity. The CMC shall be responsible for monitoring the progress of the assignment, to oversee that the assignment is carried out as per the contract, to assess the quality of the deliverables, to accept/reject any part of assignment, to levy

appropriate liquidated damages or penalty if the assignment is not carried out as per the contract and if the quality of services is found inferior and for any such deficiency related to the completion of the assignment.

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

- i) Issuing the notice to proceed;
- ii) Review of the inception phase;
- iii) Deciding on possible modifications to scope of work and issuing contract variations;
- iv) Monitoring progress of assignment, Monitoring that key experts are actually employed; reports and their review including review of draft final report and the final report to ensure that assignment (whether time-based or lump-sum) is completed in accordance with the contract;
- v) Billing, payment and monitoring the expenditure vis-à-vis progress;
- vi) Resolving problems faced by consultants/ service providers and dealing with disputes and arbitration;
- vii) Terminating services prior to the end of the contract; and
- viii) Release of final payment and guarantees (if any) and closing the contract;
- ix) Post contract evaluation.

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

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

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

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

8.4 Consultancy Services - Review of Inception Phase:

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

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

8.5 Reporting of Progress

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

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

8.6 Monitoring a Time-based Contract

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

8.7 Monitoring a Lump-sum Contract

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

8.8 Unsatisfactory Performance

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

8.9 Delays

Consultancy and other services may be delayed for a variety of reasons. The consultant/ service provider should notify the Procuring Entity and explain the causes of such delays. If corrective action requires extra work and the delay cannot be attributed to the consultant/ service provider, the extra work should be reimbursed in accordance with the contract.

8.10 Issuing Contract Variations

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

the purchaser on the same e-procurement portals/Websites that were used for publication of the original tender enquiry

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

8.11 Substitution of Named Key Personnel

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

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

8.11.2 Substitution of key personnel during execution of consultancy contract:

- i) Quality in consultancy contracts is largely dependent upon deployment and performance of key personnel, during execution of the contract.

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

8.12 Billing and Payments

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

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

8.13 Disputes and Conflicts

8.13.1 Disputes between the consultant/ service provider and the client may arise for a number of reasons. This could relate to technical and administrative matters such as interpretation of contract, payment for services or substitution of key experts – all of which should be dealt with promptly and amicably between the contracting parties in terms of contract provisions. They may be the result of delays prompted by weaknesses on the part of the consultant/ service provider or the Procuring Entity; by a lack of funds; by delays in getting key approvals, data, or information; or by causes beyond anyone's control such as natural disasters. They may be the result of deviations from the Scope of Work or work plan by the consultant/ service provider or out-of-course requests for deviations by the Procuring Entity.

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

8.13.3 Arbitration and dispute resolution

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

of the litigation, even if in some rare cases of insolvency etc. recovery of the amount in case of success may become difficult. Instructions have been issued in this matter in the past, but have not been fully complied with. (v) The only circumstances in which such payment need not be made is where the contractor declines, or is unable, to provide the requisite bank guarantee and/or fails to open an escrow account as required. Persons responsible for not adhering to are liable to be held personally accountable for the additional interest arising, in the event of the final court order going against the procuring entity

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

8.13.4 **Arbitration Awards**

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

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

used by the contractor/ concessionaire with the prior approval of the lead banker and the Ministry/ Department. If otherwise eligible and subject to contractual provisions, retention money and other amounts withheld may also be released against BG.]⁴²

8.14 Force Majeure

8.14.1 A Force Majeure (FM) means extraordinary events or circumstance beyond human control such as an event described as an act of God (like a natural calamity) or events such as a war, strike, riots, crimes (but not including negligence or wrongdoing, predictable/seasonal rain and any other events specifically excluded in the clause). An FM clause in the contract frees both parties from contractual liability or obligation when prevented by such events from fulfilling their obligations under the contract. An FM clause does not excuse a party's non-performance entirely, but only suspends it for the duration of the FM. The firm has to give notice of FM as soon as it occurs and it cannot be claimed ex-post facto. There may be a FM situation affecting the purchase organisation only. In such a situation, the purchase organisation is to communicate with the supplier along similar lines as above for further necessary action. If the performance in whole or in part or any obligation under this contract is prevented or delayed by any reason of FM for a period exceeding 90 (ninety) days, either party may at its option terminate the contract without any financial repercussion on either side.

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

8.15 Terminating Services Prior to End of Contract

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

⁴²New rule 227A of GFR, 2017 notified vide OM No. F./1/9/2021-PPD issued by Department of Expenditure dated 29,10,2021.

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

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

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

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

8.16 Concluding the Assignment

The contract is normally considered closed on the day after the completion date listed in the contract. Any expenditure incurred after the completion date are unlikely to be paid. It is therefore, important, under all types of assignments, for the consultant/ service provider to request an extension of the completion date if it appears that additional items will need to be billed after the completion date. The consultant/ service provider should submit the final claim promptly after completing the assignment. The standard consultant/ service provider contract states that the claim must be submitted within 60 (sixty) days of completion

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- i) Services to be procured should be justifiable in accordance with Para 1.10 in Chapter-1;
- ii) In other (non-consultancy) services an Activity Schedule (a document covering well-defined scope of work/ description of services and the time frame for which services are to be availed of) should be consistent with the overall objectives of Procuring Entity;
- iii) Equal opportunity to all qualified service providers to compete should be ensured
- iv) Engagements should be economical and efficient; and
- v) Transparency and integrity in the selection process (that is, proposed, awarded, administered, and executed according to highest ethical standards);

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

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

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

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

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

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

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

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

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

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

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

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

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

who do frequent procurement of non-consultancy services, may consider preparation of a Panel of qualified service providers, after evaluation of their credentials, on the lines of registration of vendors in procurement of goods. *(Rule 201 of GFR 2017)*

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

9.7 One Stop Government e-Marketplace (GeM)

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

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

9.7.3 **Products and services are listed on GeM by various suppliers as on other e-Commerce portals:** The registration of suppliers on GeM is online and automatic based on PAN, MCA-21⁴³, Aadhar authentication etc. The suppliers offer their products on GeM and the Government buyer are able to view all the products

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

as well as compare them. Tools of reverse bidding and e-auction are also available which can be utilised for the procurement of bulk quantities.

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

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

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

- i) Up to {Rs.25,000/-}⁴⁵ through any of the available suppliers on the GeM, meeting the requisite quality, specification and delivery period (in case of procurement of Automobiles only the ceiling of direct purchase will be Rs.30 lakh instead of Rs. 25,000/-⁴⁶);
- ii) Above Rs.25,000/- and up to Rs.5,00,000/- through the GeM Seller having lowest price amongst the available sellers (excluding Automobiles where current limit of 30 lakh will continue), of at least three different manufacturers, on GeM, meeting the requisite quality, specification and delivery period. The

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

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

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

tools for online bidding and online reverse auction available on GeM can be used by the Buyer even for procurements less than Rs 5,00,000.

- iii) Above Rs.5,00,000/- through the supplier having lowest price meeting the requisite quality, specification and delivery period after mandatorily obtaining bids, using online bidding or reverse auction tool provided on GeM (excluding Automobiles where current limit of 30 lakh will continue).⁴⁷
- iv) *The invitation for the online e-bidding/reverse auction will be available to all the existing Sellers or other Sellers registered on the portal and who have offered their goods/services under the particular product/service category, as per terms and conditions of GeM.*
- v) The above mentioned monetary ceiling is applicable only for purchases made through GeM. For purchases, if any, outside GeM, relevant GFR Rules shall apply.
- vi) The Ministries/Departments shall work out their procurement requirements of Goods and Services on either “OPEX” model or “CAPEX” model as per their requirement/suitability at the time of preparation of Budget Estimates (BE) and shall project their Annual Procurement Plan of goods and services on GeM portal within 30 (thirty) days of Budget approval.
- vii) The Government Buyers may ascertain the reasonableness of prices before placement of order using the Business Analytics (BA) tools available on GeM including the Last Purchase Price on GeM, Department’s own Last Purchase Price etc.
- viii) A demand for goods shall not be divided into small quantities to make piecemeal purchases to avoid procurement through L-1 Buying/ bidding/ reverse auction on GeM or the necessity of obtaining the sanction of higher authorities required with reference to the estimated value of the total demand.”

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

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

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

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

- a. Supply of Goods & Services
 - b. Supply, Installation, Testing and Commissioning of Goods
 - c. Supply, Installation, Testing, Commissioning of Goods and Training of operators and providing Statutory Clearances required (if any)
- i) In respect of contracts for Supply of Goods, 100% payment including GST should be made after receipt and acceptance of Goods and generation of "Goods CRAC" (Consignee Receipt and Acceptance Certificate) subject to recoveries, if any, either on account of short supply and Liquidated Damages etc. for delay in supply.
 - ii) In respect of contracts for Services, payment should be made as per periodicity defined in the contract i.e. Monthly, Quarterly or any other pre-defined payment periodicity. 100% payment including GST for the particular payment cycle should be made after receipt and acceptance of the Services and generation of "Service CRAC" (Consignee Receipt and Acceptance Certificate) subject to recoveries, if any, either on account of short supply,

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

SLA (Service Level Agreement) deviations and Liquidated Damages for delay in supply etc.

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

Incidental Services (such as providing training, or other work/ service as per scope defined in the contract), to be paid on submission of “Final CRAC” by the End User / Consignee. While creating the bid, Buyer shall have functionality to define the deliverables in this milestone. In exceptional cases, Buyer may choose to split this milestone as required.

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

A. Payments through PFMS:

1. The Central Government Buyer i.e. the concerned Programme Division or Administrative Unit in a Ministry/ Department will place the Contract online after taking prior approval of the Competent Authority for procuring a particular Good or

Service. Inter-alia, the Contract form will also contain the following fields including fields required for payment related processes:

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

2. When these fields are duly captured, the Buyer will be in a position to place the Contract online. The GeM portal will generate a Sanction Order and the Contract which will be digitally/e-signed by the Buyer. These documents duly digitally/e-signed by the Buyer will be made available online to the concerned DDO and PAO or Paying Authority as defined in the contract and Seller/ Service Provider. The DDO and PAO/Paying Authority shall have access to the Contract online in order to ensure that the Bill is generated at the stage of payment in accordance with the contractual provisions.

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

4. On issue of Sanction order and placing the Contract for goods, the full amount required from the relevant Budget Head should be blocked in the PFMS. In cases of Services, amount should be blocked for one payment cycle as defined in the contract. Before releasing payment for any cycle, the funds required for the next payment cycle should be blocked so as to ensure availability of payable funds for the next payment cycle. Blocked fund will be treated as accrued expenditure by PFMS for the financial year in question and it will not be withdrawn for any other purpose

other than the one for which the amount is Blocked. In order to alleviate the operational issues as well as to ensure optimum utilization of available funds, the following additions⁴⁹ are made in para 4.17.7 (vi) (A) (4)

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

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

fund blocking is optional for buyer in current financial year and mandatory only in the next financial year in the 1st week of April.

5. Should it be necessary to amend the Contract, such Amendment in the Contract with due approval of the Competent Authority and acceptance of the Seller/Service Provider (wherever required) shall be made available to the Seller /Service Provider/DDO/PAO/Paying Authority on the GeM portal.

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

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

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

9. Provisional Receipt of Stores on GeM:

- a. On dispatch of Goods, the Seller would enter the Dispatch Details and date of Dispatch and will upload documentary evidence of Dispatch against each consignment on GeM Portal. All these documents and details shall be shown to the Consignee on his dashboard and shall also be notified to the consignee on his e-mail and on his registered mobile number.
- b. The Seller shall prepare an electronic Invoice, digitally/e-signed, on GeM portal and shall submit the same on-line to the Buyer. GeM portal will send an SMS/ email alert to the Buyer, on submission of Invoice. This Invoice will contain mode of dispatch of goods, dispatched/delivered quantity with date and all inclusive price claimed based on digitally/e-signed Contract. In case Services are procured, the required data as per Contract may be incorporated in the Invoice.

- c. After actual delivery of goods at consignee destination/ milestone achievement (such as completion of installation/ commissioning or training etc. as defined in the contract)/ service delivery, Seller would enter the actual date of delivery/ milestone achievement/ Service Log-sheet (as applicable) and will upload documentary evidence for the same duly digitally signed / e-signed. All these documents and details shall be shown to the Consignee on his dashboard and shall also be notified to the consignee on his e-mail and on his registered mobile number. In case of Services Contracts, the Service Provider will fill up the required data as per the contract (such as log sheets and /or Invoice etc duly digitally signed/ e-signed).
- d. Immediately upon above entry by Seller I Service Provider regarding delivery of goods/ milestone achievement/ service delivery, an alert will be flashed on the Dashboard of the consignee and an email and an SMS Alert will be sent to Consignee informing that consignee has to mandatorily acknowledge receipt of stores/ milestone achievement/ service delivery through generation of PRC on GeM. The Buyer/Consignee should receive the Goods/Services and issues an online Provisional Receipt Certificate (PRC), within 48 hours, on 'said to contain basis' on the GeM portal with his/her digital signature / e-sign, mentioning the date of Receipt. (From this date of receipt mentioned in PRC, the period of ten (10) days for consignee's/buyer's right of rejection and return policy would be applicable unless otherwise specified in a particular contract)
- e. In case the consignee does not issue PRC within 48 hrs from entry of delivery of goods/ milestone achievement/ service delivery by Seller/ Service Provider, an alert will be flashed on the dashboard of the consignee and an email and an SMS Alert will be sent to Consignee and Buyer informing that consignee has to mandatorily acknowledge receipt of stores/ milestone achievement/ service delivery through generation of PRC on GeM.
- f. After expiry of 72 hrs. from the first alert, another alert will be flashed on the dashboard of the Consignee, Buyer including HoD and an email

along with an SMS Alert to Consignee , Buyer, HoD informing that consignee has to mandatorily acknowledge receipt of stores/ milestone achievement/ service delivery through generation of PRC on GeM and if the time limit of 96 hrs expires from the date of delivery of goods/ milestone achievement/ service delivery as per entry made by Seller/ Service provider and if the consignee does not acknowledge receipt of stores/ milestone achievement/ service delivery by generating PRC or disputes the same by rejecting receipt, it would be presumed that goods have been delivered/milestone achievement I service delivery has been made to consignee and PRC will be auto generated by the system (Deemed PRC).

- g. However, if the consignee does not issue PRC within 96 hrs from delivery of goods/ milestone achievement/ service delivery as per entry made by Seller/ Service provider ,GeM System/Portal would auto generate unsigned PRC considering the date of delivery of goods/ milestone achievement/ service delivery as indicated by the seller as deemed date of receipt for issuance of PRC. GeM portal shall also send periodic notifications every 24 hrs. to the Consignee, Buyer and the HoD about issuance of auto generated Deemed PRC for next 48 hrs.
- h. In case the PRC is auto-generated, the consignee shall have the provision on GeM to respond back within 48 hrs, if the goods have not been received or short received recommending to cancel or amend/correct the date of receipt/ quantity in the auto-generated Deemed PRC. In case nothing is reported/ corrected by consignee on the system, it will be presumed that the consignee has nothing to say and the auto-generated Deemed PRC will be considered as final for all purposes.
- i. If it is found at any stage that seller/ service provider has sent/ uploaded wrong information on GeM, based on which PRC has been wrongly auto generated, the seller/ service provider will be dealt severely and should be debarred by GeM for three years.

10. Consignee Receipt and Acceptance of Stores on GeM:

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

- a. Level 1 - Upto 3 days - Consignee
- b. Level 2-4 and 5th day - Consignee and Buyer
- c. Level 3 - 6 to 10th day - Consignee, Buyer, HOD

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

In case the CRAC is auto-generated, the consignee shall have the provision on GeM to cancel or amend the auto-generated CRAC within 72 hrs, if the goods have not been accepted or found defective/ short received. In case nothing is corrected by

consignee on the system, it will be presumed that the consignee has nothing to say and the auto-generated CRAC will be considered as final for all purposes including payments.

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

12. It is obligatory to make payments without any delay for purchases made on GeM. In no case should it take longer than the prescribed timelines. The timelines after Consignee Receipt and Acceptance Certificate (CRAC) issued on-line and digitally/e-signed by consignee, will be two (2) working days for Buyer, one (1) working day for concerned DDO and two (2) working days for concerned PAO for triggering payment through PFMS for crediting to the supplier's account. In case of return of Bills by PAO/Paying authority, the discrepancies should be addressed by concerned Buyer/DDO within one working day and thereafter on re- submission of Bill the PAO should also not take more than one (1) working day for triggering payment to the Seller/ service provider Any matter needing a resolution will be escalated to the next higher level in each agency (Buyer, DDO and PAO) where the matter should be resolved within 24 hours. In the entire process, time taken for payment should not exceed ten (10) days including holidays

13. After online pre-check of all relevant documents, PAO/Paying Authority shall debit the Government account, releasing the corresponding payment through PFMS/ to be credited into the bank account of the Seller/service Provider. The payment so released shall be credited to the Seller/Service Provider account within 24 hours (excluding public holidays), by the Bank. SMS alerts shall be sent to the

Seller/Service Provider and Buyer after the payment is authorized by PAO and also after the confirmation of the payment by the Bank. The payment authorization as well as payment confirmation details shall be shared by PFMS on the GeM portal. The PAO/Paying Authority and DDO shall comply with the provisions of General Financial Rules for budget implementation.

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

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

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

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

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

19. For all contracts placed through GeM, the payment through PFMS to all Sellers/ Service Providers must be released online only against electronic bill generated on GeM. No offline payment should be made in such cases to avoid

double payment. Only in exceptional cases such as non-availability of the GeM platform or long shutdown of internet services at Buyer location or similar force majeure conditions, such off-line payments can be resorted to subject to the condition that immediately after resolution of the problem, necessary entries would be made on-line in GeM portal to obviate the possibility of double payment.

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

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

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

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

- a. The NPAE will open the GPA (as a savings or current account) which will be utilized by buyer through the online integration of Bank with the platform owned and maintained by GeM SPV, as per Service Level

Agreement (SLA), and solely for procurement of goods and services on GeM.

- b. The terms and conditions of procurement on GeM will be part of the operations agreement between the bank and the NPAE.
- c. The role of the bank will be limited to ensuring operations of the account on the instruction of the NPAE through the authorized NPAE nodal officer for GeM/ buyer.
- d. Real time details of all operations of the account will be shared by the bank, in a mutually accepted format (to be amended from time to time) with the NPAE, only through the GeM Platform.
- e. Once a sub-account/ transaction specific account is credited with an amount, the NPAE cannot withdraw this amount, apart from transfer to the designated Seller/Service Provider, till such a time that the transaction is live.
- f. Any withdrawal/transfer by the NPAE from this account, except for payment to the Seller | Service Provider, would be permitted in the following conditions.
 - a) Order cancellation
 - b) Order rejection
 - c) Refund

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

4. While procuring goods & services through GeM, the NPAEs should credit 100% of the projected Contract Value in case of Goods Contract in their GeM Pool Account before award of contract. In cases of Services, amount should be credited for one payment cycle as defined in the contract and before releasing payment for any cycle, the funds required for the next payment cycle should be credited so as to ensure availability of payable funds for the next payment cycle. Payment so credited will not be withdrawn for any other purpose other than the one for which the amount is credited into GeM Pool Account.

5. After placement of contract on GeM, the process for PRC and CRAC will be same for NPAE category also as indicated in Para 9.7.7 (vi) (A) (9) above regarding

Provisional Receipt of Stores on GeM and Para 9.7.7 (vi) (A) (10) Consignee Receipt and Acceptance of Stores on GeM for PFMS Buyers.

6. After issue of CRAC, NPAE Nodal Officer shall issue an advice without delay to the bank to release actual amount payable to Seller/ Service Provider as per terms of contract from the GeM Pool Account. On authorization, the bank should transfer the prescribed amount to the Seller/Service Provider supplier mapped in the transaction.

7. In case of a Service level agreement (SLA) breach on the part of the NPAE in terms of payments to the Seller/Service Provider, GeM will intimate the buyer and bank of the same. Post such intimation, and non-action on the part of the NPAE with respect to payment transfer, bank will release payments for the delivery of goods at consignee destination/ milestone achievement (such as completion of installation/ commissioning or training etc. as defined in the contract)/ service delivery as notified in the terms and conditions of procurement on GeM to the Seller/ Service Provider mapped in the transaction. Such a provision is required to be incorporated in GPA and should be considered as a standing instruction from the NPAE to the bank. The residual amount cannot be withdrawn/ transferred by the NPAE, in such cases.

8. In case, even after 10 days of issue of Consignee receipt and acceptance certificate (CRAC)/ auto generated CRAC , the buyer has not initiated the payment process through the GeM platform, a payment trigger will be automatically generated for payment equivalent to 80% of the corresponding quantity/ milestone achievement/ service delivery deduced by the system as per CRAC. Simultaneously intimation will be sent to the HoD, buyer and NPAE Nodal officer for GeM, regarding the release of payment, at their risk and cost in line with the terms and condition (T&C) and SLA of procurement on GeM. The residual payment of 20% is to be processed by the buyer within 35 days after adjusting for any statutory deduction and damages, failing which after 35 days, the same will be released to the Seller/ Service Provider automatically through an alert to the bank by the GeM Platform, after statutory deductions and any system know deductions.

9. Unutilized funds after closure of the Contract and interest accrued on the credited amount will be at the disposal of nominated NPAE Nodal officer, who may advise banker for further action as deemed fit.

10. The Steering Committee on GeM of each Ministry should monitor the implementation of these instructions regarding operationalization of GeM Pool Account.

11. Ministries/ Departments of Government of India are accordingly requested to issue necessary instructions to all Non-PFMS Agencies/ Entities under their control.

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

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

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

9.7.10 In case a certain item is not available on the GeM portal,]⁵¹Purchase of goods costing above [Rs.25,000 (Rupees twenty five thousand only) and upto Rs.2,50,000/- (Rupees two lakh and fifty thousand only)] on each occasion may be made on the recommendations of a duly constituted Local Purchase Committee

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

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

consisting of three members of an appropriate level as decided by the Head of the Department. The committee will survey the market to ascertain the reasonableness of rate, quality and specifications and identify the appropriate supplier and will jointly record a certificate before placement of the purchase order.

9.7.11 Where an item is available on GeM and Ministry/ Department/ Organization wants to buy outside the GeM in view of any compelling circumstances, the approval of Standing Committee of GeM (SCoGeM) and Secretary concerned shall be required⁵².

9.7.12 Rule 149 of GFR provides for the mandatory procurement of common use Goods and Services by Ministries or Departments for Goods or Services available on GeM. Hence only in case of goods and services (of required specification or within required delivery period etc.) are not available on GeM, the procuring entity can resort to Rule 154 and 155 of GFRs i.e. procurement without quotation or procurement on the recommendations of a duly constituted Local Purchase Committee⁵³. However, it is mandatory for a buyer to generate a “GeM Availability Report and Past Transaction Summary” (GeMAR&PTS)⁵⁴ with a unique ID on GeM portal using his login credentials on GeM for procurement outside GeM.

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

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

9.9 Obtaining Final Administrative and Budgetary Approvals

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

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

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

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

9.9.1 Activity Schedule and Other Requirements

The objectives of the Activity Schedule are:

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

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

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

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

- d) **Material Schedule:** In case any Materials/ Consumables/ tools of trade are to be consumed/ deployed, a Separate Materials Schedule should be included, indicating the specification and quantity of such materials/ consumables/ tools to be consumed/ deployed per unit activity/ day/ location/ per manpower deployed. Price of all these materials/ tools etc is to be shown as a separate lump-sum cost in the financial bid by the bidder.
- e) **Essential Equipment Schedule:** Any essential equipment, machinery (Trucks, Cranes, Washing Machines, Vessels/ crafts, plant and machinery etc) that the service provider must have and should deploy as a qualifying requirement must be mentioned along with specification, capacity, age of equipment etc. It should be ensured that operators for such equipment must be mentioned as key personnel;
- f) **Performance Specifications, Drawings:** The performance specification or drawings if necessary should be specified for each activity, materials, tools and machines to be used in the activity. Any reporting requirement, periodic meetings or other submissions must be part of the activity schedule.
- g) **Statutory and contractual obligations to be complied with by the contractor:** Service provider mostly works within the premises of Procuring Entity, along with staff of Procuring Entity. Many services are subject to various statutory provisions relating to labour, taxation, Workmen Safety, Child and Women Labour, Private Security Agencies, Environmental Protection, Mining, Forest clearance, Employment reservations etc. The bidder must have Service Tax Number, ESI, EPF Registration Certificate, Registration Declaration of ownership under Indian Registration Act 1908 and Labour License and PAN (Income Tax). Moreover the Procuring Entity himself may have its own regulation about safety, security, confidentiality etc. All such statutory and contractual obligations must be listed, so that price implications and compliance is taken care of by the bidder. In case of security services contracts, the bidder must have the valid license to run the business of Private

Security Agency in the state issued by the appropriate authority for operating Security Services.

- h) **Facilities and Utilities to be provided by the Procuring Entity to service provider at Site:** It should be mentioned, if any facility/ utility (Operation Manuals, Emergency Medical, Room, Furniture, Electricity connection, Water connection) etc would be made available to the successful bidder to carry out the service. In case it is proposed to charge the Electricity/ Water supplied to the service provider, the same may be mentioned, including the rate of charges. This aspect has a great bearing on the cost that will be quoted by the bidders. This can have implications in vitiating the selection process either way – a facility to be provided may not get declared or a declared facility may not be provided ultimately. So great care and reality check is necessary, while preparing this Statement. Specially mention facilities and utilities which will not be provided, or the facilities which would be provided on chargeable basis. It should be clearly mentioned that the service provider will not be allowed to use any of Procuring Entity's facility/ area which are not listed in this section.
- i) **Institutional Arrangements and Procedure for Review of Work of consultant after the Award of Contract:** Institutional arrangements like the placement in a Department, name of project manager and chain of command for reporting may be specified. Process of Review of Service Outcomes and deployment of personnel and resources should be clearly brought out.

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

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

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

- i) Remunerations for Personnel deployed;
- ii) Reimbursable: (Travel, logistics, Consumable, Material, Tools, Hiring of third party services etc.);

iii) Administrative and Miscellaneous (Mobilisation, demobilisation, Temporary Structures, Administrative expenses, office and IT equipment, contingencies, financing costs, Costs for hiring/ depreciation/ financing of machinery and equipment etc).

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

9.9.3 Final Administrative and Budgetary Approvals

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

9.10 Procedure for Single Source Selection (SSS)

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

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

In many small value procurement of other services, the service provider may neither be capable of handling the bidding process, nor would this be a cost-effective

process for the Procuring Entity. For procurement upto Rs 25,000 (twenty five thousands), the 'Direct Procurement without Quotation' mode of procurement used in Procurement of goods may very well be utilised in such cases. Similarly for procurement of services upto Rs 2.5 (Rupees two and a half) Lakhs, 'Direct Procurement by a Purchase Committee' mode as used in procurement of Goods may be utilised. In all such modes of procurement, the procedure prescribed in the Manual for Policies and Procedures for Procurement of Goods may be followed. Please refer to Annexure 8 & 9 for certificates to be recorded for such procurements.

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

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

9.13 Procedure for higher Value of Procurements

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

9.14 Preparation of the Request for Proposals (RfP)

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

- i) A letter of invitation (LoI);
- ii) Instructions to Bidders (ITB) and data sheet (which contains assignment specific information);
- iii) Qualification/ Eligibility Criteria for service providers;
- iv) Activity Schedules and other Requirements
 - a) Description of Service
 - b) Activity Schedule
 - c) Manpower Schedule: Assessment of Manpower for Deployment
 - d) Materials Schedule (indicating the specification and quantity of such materials/ consumables/ tools to be consumed/ deployed per unit activity/ day/ location/ per manpower deployed).
 - e) Essential Equipment: Any essential equipment, machinery that the service provider must have as a qualifying requirement along with specification, capacity, age of equipment etc.;
 - f) The statutory and contractual obligations to be complied with by the contractor.
 - g) Services & Facilities to be Provided by the Procuring Entity and respective obligations of the Procuring Entity and service provider
- v) General Conditions of Contract (GCC);
- vi) Special Conditions of Contract (SCC);
- vii) Formats
 - a) service provider's Bid Cover Letter
 - b) Qualification Information
 - c) Standard formats for the technical proposal;
 - d) Standard Format for the Financial Proposal
 - e) Letter of Acceptance

- f) Contract Form
- g) Securities Formats
 - 1. Bid Security (Bank Guarantee)
 - 2. Bank Guarantee for Advance Payment
 - 3. Performance Security (Bank Guarantee)

9.15 Important Provisions of ITB

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

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

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

- i) **Financial Capability:**
 - a) Average Annual financial turnover of related services during the last three years, ending 31st March of the previous financial year, should be at least 30% (thirty percent) of the estimated cost.
 - b) Liquid assets and/or credit facilities, net of other contractual commitments and exclusive of any advance payments which may be

made under the Contract, of no less than the amount specified in the BDS.

ii) **Past Experience:**

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

iii) **Equipment and Managerial Capability:**

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

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

- i) Copies of original Registration certificate documents defining the constitution or legal status, place of registration, and principal place of business; written power of attorney of the signatory of the Bid to commit the Bidder. Appropriate business licences/ registrations:

- a) Service Tax registration certificate
 - b) PAN number
 - c) Copies of EPF, ESI, Labour license
 - d) Copy of valid license under the Private Security Agencies (Regulation) Act, 2005 or the similar Act/ Rules promulgated by State in which the service is performed (in case of Security Service)
- ii) Total monetary value of Services performed for each of the last five years;
 - iii) Copies of work orders and experience in Services of a similar nature and size for each of the last three years, and details of Services under way or contractually committed; and names and address of clients who may be contacted for further information on those contracts;
 - iv) Evidence of adequacy of working capital for this Contract (access to line(s) of credit and availability of other financial resources);
 - v) Audited financial Statements for the last three years (Copies of the Profit and Loss (P/L) statements along with Balance Sheet for the concerned period);
 - vi) Bank Account details;
 - vii) Authority to seek references from the Bidder's bankers;
 - viii) Information regarding any litigation, current or during the last five years, in which the Bidder is involved, the parties concerned, and disputed amount; and
 - ix) Proposals for subcontracting components of the Services amounting to more than 10 (ten) percent of the Contract Price.

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

9.15.5 Restrictions regarding Personnel Deployed: The quoted rates shall not be less than the minimum wage fixed/notified by the State Government – where the service is performed and shall include all statutory obligations. However bids without any element of cost over and above such minimum wage (or below it) shall be treated as 'Nil' price quotation and would be rejected. The service provider shall be liable for all kinds of dues payable in respect of all personnel provided under the contract and the Procuring Entity shall not be liable for any dues for availing the services of the personnel. The service provider should ensure that persons to be

deployed are not alcoholic, drug addict and not indulge in any activity prejudicial to the interest of the Procuring Entity. The service provider shall ensure to get the Police verification for all the manpower deployed by them and the contractor should ensure that the manpower deputed should bear good moral character.

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

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

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

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

9.15.10 **Price Adjustment**

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

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

different base dates, which may lead to problems on bringing their prices on a common comparable footing.

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

The following are important elements of PVC:

- a) The price agreed upon should specify the base date, that is, the month and year to which the price is linked to enable variations being calculated with reference to the price indices prevailing in that month and year;
- b) The price variation formula must also stipulate a minimum percentage of variation of the contract price, only above which the price variation will be admissible (for example, where the resultant increase is lower than, say, two per cent of the contract price, no price adjustment will be made in favour of the supplier);
- c) The price variation clause should provide for a ceiling on price variations, particularly where escalations are involved. It could be a percentage per annum or an overall ceiling or both;
- d) Where advance or stage payments are made there should be a further stipulation that no price variations will be admissible on such portions of the price, after the dates of such payment;
- e) Where deliveries are accepted beyond the scheduled delivery date subject to levy of liquidated damages as provided in the contract. The LD (if a percentage of the price) will be applicable on the price as varied by the operation of the PVC;
- f) No upward price variation will be admissible beyond the original scheduled delivery date for defaults on the part of the supplier. However, a downward price variation would be availed by the

purchaser as per the denial clause in the letter of extension of the delivery period;

- g) Price variation may be allowed beyond the original scheduled delivery date, by specific alteration of that date through an amendment to the contract in cases of force majeure or defaults by Government;
- h) Where contract execution depends on imported (subject to customs duty and foreign exchange fluctuations) and/or locally sourced goods/ works/ services (subject to excise duty and other duties and taxes), the percentage and element of duties and taxes included in the price should be specifically stated, along with the selling rate of foreign exchange element taken into account in the calculation of the price of the imported item;
- i) The clause should also contain the mode and terms of payment of the price variation admissible; and
- j) The buyer should ensure a provision in the contract for the benefit of any reduction in the price in terms of the PVC being passed on to him.
- k) An illustrative PVC clause is available in Annexure 2F.
- l) Care should be exercised in contracts providing for price variation to finalise the price before final payment is made, after obtaining data and documents in support of claims for escalation, if any. Where no such claims are submitted by the suppliers, an examination of whether there has been a downward trend in the cost, which the contractor may not bring out, is required. At any rate, an undertaking should be obtained from the contractor to the following effect in case it becomes necessary to make the final payment before he has submitted the required data/documents related to the PVC:

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

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

9.16 Standard Formats for Technical and Financial Proposals

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

9.17 Receipt of Bids, Evaluation and Award of Contract

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

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

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

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

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

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

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

(Rule 203 of GFR 2017)

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

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

- (i) where the procurement has been declared to be a Quality Oriented Procurement (QOP) by the competent authority or

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

- (ii) for procurement of Non-Consulting Services, where estimated value of procurement (including all taxes and option clause) does not exceed Rs 10 crore.

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

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

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

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

(i) For declaring a procurement as QOP:

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

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

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

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

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

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

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

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

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

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

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

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

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

9.17.6.9 Fixing of Scoring/ Marking Criteria:

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

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

9.17.6.11 Joint ventures in QCBS:

- (i) In conventional tenders, some bidders adopt "name borrowing" and Joint Ventures (JV) often do not function in letter and spirit. This results in lack of quality and accountability. JVs often end in one-sided participation, diluting the essence of the tender evaluation during its performance. Since quality is

given weightage in the evaluation itself, in QCBS procurement, it is even more important to guard against such tendencies. Therefore, Joint Ventures may be avoided in QCBS procurements as far as possible. Joint Ventures could, however, become necessary in high technology or innovative projects where a single entity may not be able to execute the work alone.(ii) If JVs are allowed, adequate safeguards should be provided. Since weightage for quality/ experience influences the award itself, measures should be taken to ensure that all the JV partners are present and deliver services all through the contract period. An Implementation Board with participation of all JV partners may be provided for wherein the Project Manager from the procuring entity shall also be allowed audience when required. Meeting of JV partners with the project executing authority for quarterly progress review may be made as a criterion linked to achievement of key dates or even payment.

9.18 Service Level Agreement (SLA)

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

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

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

SLA has two sets of elements:

- a) **Service elements**

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

b) Management elements

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

9.19 Monitoring the Contract

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