

## **Chapter 1: Introduction to Procurement of Works**

### **1.1 Procurement Rules and Regulations; and this Manual**

- i) Various ministries, departments, attached and subordinate offices, local urban bodies, public sector enterprises and other government (including autonomous) bodies (hereinafter referred as 'Procuring Entities') spend a sizeable amount of their budget on procurement of goods, works and services to discharge the duties and responsibilities assigned to them.
- ii) The Ministries/ Departments have been delegated powers to make their own arrangements for procurement of works under the Delegation of Financial Power Rules, which have to be exercised in conformity with the 'Procurement Guidelines'.
- iii) To ensure that these procurements are made by following a uniform, systematic, efficient and cost-effective procedure and also to ensure fair and equitable treatment of bidders/ contractors, there are statutory provisions; rules; financial, vigilance, security, safety, counter- trade and other regulations; orders and guidelines of the Government on the subject of public procurement (hereinafter referred as 'Procurement Guidelines') which provide framework for the public procurement system.
- iv) At the apex of the statutory framework governing public procurement is Article 299 of the Constitution of India, which stipulates that contracts legally binding on the Government have to be executed in writing by officers specifically authorized to do so. The Constitution also enshrines Fundamental Rights (In particular Article 14 – Right to Equality before law and Article 19 (1) (g) – Right to carry on a Profession) which have implications for Public Procurement. Further, the Indian Contract Act, 1872 and the Arbitration and Conciliation Act, 1996 (as amended in 2015) are major legislations governing contracts for procurement (both private and public) in general. There are in addition guidelines issued by Central Vigilance Commission (CVC) relating to Governance issues which are applicable to Public Procurement also. There is no law exclusively governing public procurement.

- v) However, comprehensive Rules and Regulations in this regard are available in the General Financial Rules (GFR), 2017, Delegation of Financial Powers Rules (DFPR); Public Procurement (Preference to Make in India), Order 2017 and the guidelines issued by the Central Vigilance Commission to increase transparency and objectivity in public procurement.
- vi) Without purporting to be a comprehensive compendium of all such 'Procurement Guidelines', this Manual is intended to serve as a portal to enter this vast area and draw attention to basic norms and practices governing public procurement.

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

#### 1.1.1 Preference to Make in India

To encourage 'Make in India' and promote manufacturing and production of goods and services in India with a view to enhancing income and employment, Department of Promotion of Industry and Internal Trade (DPIIT), Ministry of Commerce and Industry, Government of India, issued Public Procurement (Preference to Make in India), Order 2017<sup>5</sup>. The order is issued pursuant to Rule 153 (iii) of GFR, 2017. The Order is applicable on the procurement of Goods, Works and Services. For the purpose of this Order:-

- a) '*L1*' means the lowest tender or lowest bid or the lowest quotation received in a tender, bidding process or other procurement solicitation as adjudged in the evaluation process as per the tender or other procurement solicitation.
- b) '*Margin of purchase preference*' means the maximum extent to which the price quoted by a "Class-I local supplier" may be above the L1 for the purpose of purchase preference. It has been fixed as 20 (twenty) percent.
- c) '*Nodal Ministry*' means the Ministry or Department identified pursuant to this order in respect of a particular item of goods or services or works.

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

- d) '*Procuring entity*' means a Ministry or department or attached or subordinate office of, or autonomous body controlled by, the Government of India and includes Government companies as defined in the Companies Act.
- e) '*Works*' means all works as per Rule 130 of GFR- 2017, and will also include '*turnkey works*'.
- (i) **Eligibility of 'Class-I local supplier'/ 'Class-II local supplier'/ 'Non-local suppliers' for different types of procurement**
- a) In procurement of all goods, services or works in respect of which the Nodal Ministry/ Department has communicated that there is sufficient local capacity and local competition, only 'Class-I local supplier', shall be eligible to bid irrespective of purchase value.
- b) Only 'Class-I local supplier' and 'Class-II local supplier', shall be eligible to bid in procurements undertaken by procuring entities, except when Global tender enquiry has been issued. In global tender enquiries, 'Non-local suppliers' shall also be eligible to bid along with 'Class-I local suppliers' and 'Class-II local suppliers'. In procurement of all goods, services or works, not covered by sub-para (i)(a) above, and with estimated value of purchases less than Rs. 200 Crore, in accordance with Rule 161(iv) of GFR, 2017, Global tender enquiry shall not be issued except with the approval of competent authority as designated by Department of Expenditure.
- c) For the purpose of this Order, works includes Engineering, Procurement and Construction (EPC) contracts and services include System Integrator (SI) contracts.
- (ii) **Purchase Preference**
- a) Subject to the provisions of the Order and to any specific instructions issued by the Nodal Ministry or in pursuance of the Order, purchase preference shall be given to 'Class-I local supplier' in procurements undertaken by procuring entities in the manner specified here under.
- b) In the procurements of goods or works, which are covered by para (i)(b) above and which are divisible in nature, the 'Class-I local supplier' shall get purchase

preference over 'Class-II local supplier' as well as 'Non-local supplier', as per following procedure:

1. Among all qualified bids, the lowest bid will be termed as L1. If L1 is 'Class-I local supplier', the contract for full quantity will be awarded to L1.
2. If L1 bid is not a 'Class-I local supplier', 50 (fifty) percent of the order quantity shall be awarded to L1. Thereafter, the lowest bidder among the 'Class-I local supplier' will be invited to match the L1 price for the remaining 50 (fifty) percent quantity subject to the Class-I local supplier's quoted price falling within the margin of purchase preference, and contract for that quantity shall be awarded to such 'Class-I local supplier' subject to matching the L1 price. In case such lowest eligible 'Class-I local supplier' fails to match the L1 price or accepts less than the offered quantity, the next higher 'Class-I local supplier' within the margin of purchase preference shall be invited to match the L1 price for remaining quantity and so on, and contract shall be awarded accordingly. In case some quantity is still left uncovered on Class-I local suppliers, then such balance quantity may also be ordered on the L1 bidder.

c) In the procurements of goods or works, which are covered by para (i)(b) above and which are not divisible in nature, and in procurement of services where the bid is evaluated on price alone, the 'Class-I local supplier' shall get purchase preference over 'Class-II local supplier' as well as 'Non-local supplier', as per following procedure:

1. Among all qualified bids, the lowest bid will be termed as L1. If L1 is 'Class-I local supplier', the contract will be awarded to L1.
2. If L1 is not 'Class-I local supplier', the lowest bidder among the 'Class-I local supplier', will be invited to match the L1 price subject to Class-I local supplier's quoted price falling within the margin of purchase preference, and the contract shall be awarded to such 'Class-I local supplier' subject to matching the L1 price.
3. In case such lowest eligible 'Class-I local supplier' fails to match the L1 price, the 'Class-I local supplier' with the next higher bid within the margin of purchase preference shall be invited to match the L1 price and

so on and contract shall be awarded accordingly. In case none of the 'Class-I local supplier' within the margin of purchase preference matches the L1 price, the contract may be awarded to the L1 bidder.

4. "Class-II local supplier" will not get purchase preference in any procurement, undertaken by procuring entities.

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

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

- a) In case there is sufficient local capacity and competition for the item to be procured, as notified by the nodal Ministry, only Class I local suppliers shall be eligible to bid. As such, the multiple suppliers, who would be awarded the contract, should be all and only 'Class I Local suppliers'.
- b) In other cases, 'Class II local suppliers' and 'Non local suppliers' may also participate in the bidding process along with 'Class I Local suppliers' as per provisions of the Order.
- c) If 'Class I Local suppliers' qualify for award of contract for at least 50 (fifty) percent of the tendered quantity in any tender, the contract may be awarded to all the qualified bidders as per award criteria stipulated in the bid documents. However, in case 'Class I Local suppliers' do not qualify for award of contract for at least 50 (fifty) percent of the tendered quantity, purchase preference should be given to the 'Class I local supplier' over 'Class II local suppliers' / 'Non local suppliers' provided that their quoted rate falls within 20 (twenty) percent margin of purchase preference of the highest quoted bidder considered for award of contract so as to ensure that the 'Class I Local suppliers' taken in totality are considered for award of contract for at least 50 (fifty) percent of the tendered quantity.
- d) First purchase preference has to be given to the lowest quoting 'Class-I local supplier', whose quoted rates fall within 20 (twenty) percent margin of purchase preference, subject to its meeting the prescribed criteria for award of contract as also the constraint of maximum quantity that can be sourced from any single

supplier. If the lowest quoting 'Class-I local supplier', does not qualify for purchase preference because of aforesaid constraints or does not accept the offered quantity, an opportunity may be given to next higher 'Class-I local supplier', falling within 20 (twenty) percent margin of purchase preference, and so on.

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

(iv) **Exemption of small purchases:** Notwithstanding anything contained in paragraph (i), procurements where the estimated value to be procured is less than Rs. 5 lakhs shall be exempt from the Order. However, it shall be ensured by procuring entities that procurement is not split for the purpose of avoiding the provisions of this Order.

(v) **Minimum local content:** The 'local content' requirement to categorize a supplier as 'Class-I local supplier' is minimum 50 (fifty) percent. For 'Class-II local supplier', the 'local content' requirement is minimum 20 (twenty) percent. Nodal Ministry/ Department may prescribe only a higher percentage of minimum local content requirement to categorize a supplier as 'Class-I local supplier'/ 'Class-II local supplier'. For the items, for which Nodal Ministry/ Department has not prescribed higher minimum local content notification under the Order, it shall be 50 (fifty) percent and 20 (twenty) percent for 'Class-I local supplier'/ 'Class-II local supplier' respectively.

(vi) **Requirement for specification in advance:** The minimum local content, the margin of purchase preference and the procedure for preference to Make in India shall be specified in the notice inviting tenders or other form of procurement solicitation and shall not be varied during a particular procurement transaction.

(vii) **Government E-marketplace:** In respect of procurement through the Government E-marketplace (GeM) shall, as far as possible, specifically mark the items which meet the minimum local content while registering the item for display, and shall, wherever feasible, make provision for automated comparison with purchase preference and without purchase preference and for obtaining consent of the local supplier in those cases where purchase preference is to be exercised.

(vii) **Verification of local content:**

- a) The 'Class-I local supplier'/ 'Class-II local supplier' at the time of tender, bidding or solicitation shall be required to indicate percentage of local content and provide self-certification that the item offered meets the local content requirement for 'Class-I local supplier'/ 'Class-II local supplier', as the case may be. They shall also give details of the location(s) at which the local value addition is made.
- b) In cases of procurement for a value in excess of Rs. 10 crores, the 'Class-I local supplier'/ 'Class-II local supplier' shall be required to provide a certificate from the statutory auditor or cost auditor of the company (in the case of companies) or from a practicing cost accountant or practicing chartered accountant (in respect of suppliers other than companies) giving the percentage of local content.
- c) Decisions on complaints relating to implementation of this Order shall be taken by the competent authority which is empowered to look into procurement-related complaints relating to the procuring entity.
- d) Nodal Ministries may constitute committees with internal and external experts for independent verification of self-declarations and auditor's/ accountant's certificates on random basis and in the case of complaints.
- e) Nodal Ministries and procuring entities may prescribe fees for such complaints.
- f) False declarations will be in breach of the Code of Integrity under Rule 175(1)(i)(h) of the General Financial Rules for which a bidder or its successors can be debarred for up to two years as per Rule 151 (iii) of the General Financial Rules along with such other actions as may be permissible under law.
- g) A supplier who has been debarred by any procuring entity for violation of the Order shall not be eligible for preference under the Order for procurement by any other procuring entity for the duration of the debarment. The debarment for such other procuring entities shall take effect prospectively from the date on which it comes to the notice of other procurement entities, in the manner prescribed under paragraph (h) below.

h) The Department of Expenditure shall issue suitable instructions for the effective and smooth operation of this process, so that:

1. The fact and duration of debarment for violation of the Order by any procuring entity are promptly brought to the notice of the Member-Convenor of the Standing Committee and the Department of Expenditure through the concerned Ministry /Department or in some other manner;
2. on a periodical basis such cases are consolidated and a centralized list or decentralized lists of such suppliers with the period of debarment is maintained and displayed on website(s);
3. in respect of procuring entities other than the one which has carried out the debarment, the debarment takes effect prospectively from the date of uploading on the website(s) in the such a manner that ongoing procurements are not disrupted.

(viii) **Specifications in Tenders and other procurement solicitations:**

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

d) **Reciprocity Clause**

1. When a Nodal Ministry/Department **identifies** that Indian suppliers of an item are not allowed to participate and/ or compete in procurement by any foreign government, due to restrictive tender conditions which have direct or indirect effect of barring Indian companies such as registration in the procuring country, execution of projects of specific value in the procuring country etc., it shall provide such details to all its procuring entities including CMDs/CEOs of PSEs/PSUs, State Governments and



other procurement agencies ***under their administrative control and GeM*** for appropriate reciprocal action.

2. ***Entities of countries which have been identified by the nodal Ministry/Department*** as not allowing Indian companies to participate in their Government procurement for any item related to that nodal Ministry shall not be allowed to participate in Government procurement in India for all items related to that nodal Ministry/ Department, except for the list of items published by the Ministry/ Department permitting their participation.
  3. The stipulation in (2) above shall be part of all tenders invited by the Central Government procuring entities stated in (1) above. All purchases on GeM shall also necessarily have the above provisions for items identified by nodal Ministry/ Department.
  4. State Governments should be encouraged to incorporate similar provisions in their respective tenders.
  5. The term 'entity' of a country shall have the same meaning as under the FDI Policy of DPIIT as amended from time to time.
- e) Specifying foreign certifications/ unreasonable technical specifications/ brands/ models in the bid document is restrictive and discriminatory practice against local suppliers. If foreign certification is required to be stipulated because of non-availability of Indian Standards and/or for any other reason, the same shall be done only after written approval of Secretary of the Department concerned or any other Authority having been designated such power by the Secretary of the Department concerned.
- f) "All administrative Ministries/Departments ***whose procurement exceeds Rs. 1000 Crore per annum*** shall notify/ update their procurement projections every year, including those of the PSEs/PSUs, for the next 5 years on their respective website."
- (ix) **Action for non-compliance of the Provisions of the Order:**In case restrictive or discriminatory conditions against domestic suppliers are included in bid documents, an inquiry shall be conducted by the Administrative Department undertaking the procurement (including procurement by any entity under its administrative control) to fix responsibility for the same. Thereafter, appropriate

action, administrative or otherwise, shall be taken against erring officials of procurement entities under relevant provisions. Intimation on all such actions shall be sent to the Standing Committee.

- (x) **Assessment of supply base by Nodal Ministries:** The Nodal Ministry shall keep in view the domestic manufacturing / supply base and assess the available capacity and the extent of local competition while identifying items and prescribing the higher minimum local content or the manner of its calculation, with a view to avoiding cost increase from the operation of this Order.
- (xi) **Increase in minimum local content:** The Nodal Ministry may annually review the local content requirements with a view to increasing them, subject to availability of sufficient local competition with adequate quality.
- (xii) **Manufacture under license/ technology collaboration agreements with phased indigenization**
  - a) While notifying the minimum local content, Nodal Ministries may make special provisions for exempting suppliers from meeting the stipulated local content if the product is being manufactured in India under a license from a foreign manufacturer who holds intellectual property rights and where there is a technology collaboration agreement / transfer of technology agreement for indigenous manufacture of a product developed abroad with clear phasing of increase in local content.
  - b) In procurement of all goods, services or works in respect of which there is substantial quantity of public procurement and for which the nodal ministry has not notified that there is sufficient local capacity and local competition, the concerned nodal ministry shall notify an upper threshold value of procurement beyond which foreign companies shall enter into a joint venture with an Indian company to participate in the tender. Procuring entities, while procuring such items beyond the notified threshold value, shall prescribe in their respective tenders that foreign companies may enter into a joint venture with an Indian company to participate in the tender. The procuring Ministries/Departments shall also make special provisions for exempting such joint ventures from

meeting the stipulated minimum local content requirement, which shall be increased in a phased manner.

(xiii) **Powers to grant exemption and to reduce minimum local content:** The administrative Department undertaking the procurement (including procurement by any entity under its administrative control), with the approval of their Minister-in-charge, may by written order, for reasons to be recorded in writing,

1. reduce the minimum local content below the prescribed level; or
2. reduce the margin of purchase preference below 20 (twenty) percent; or
3. exempt any particular item or supplying entities from the operation of this Order or any part of the Order.

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

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

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

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

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

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

(xvii) **Ministries having existing policies:** Where any Ministry or Department has its own policy for preference to local content approved by the Cabinet after 1<sup>st</sup> January

2015, such policies will prevail over the provisions of the Order. All other existing orders on preference to local content shall be reviewed by the Nodal Ministries and revised as needed to conform to this Order, within two months of the issue of this Order.

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

*(Rule 153 of GFR 2017)*

## **1.2 Clarification, Amendments and Revision of this Manual**

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

## **1.3 Applicability of this Manual**

- i) **Works:** This manual is applicable to procurement of Works is defined as “any activity, sufficient in itself to fulfil an economic or technical function, involving construction, fabrication, repair, overhaul, renovation, decoration, installation, erection, excavation, dredging, and so on, which make use of a combination of one or more of engineering design, architectural design, material and technology, labour, machinery and equipment. Supply of some materials or certain services may be incidental or consequential to and part of such works. The term “Works” includes (i) civil works for the purposes of roads, railway, airports, shipping-ports, bridges, buildings, irrigation systems, water supply, sewerage facilities, dams, tunnels and earthworks; and so on, and (ii) mechanical and electrical works involving fabrication, installation, erection, repair and maintenance of a mechanical or electrical nature relating to machinery and plants”.
- ii) **Classification of Works:** The civil works are classified in GFR 2017 (Rule 130) into three categories: (a) Original Works (b) Minor Works and (c) Repairs Works. “Original works” means all new constructions, site preparation, additions and alterations to existing works. It also includes special repairs to newly purchased or previously abandoned buildings or structures, including

remodelling or replacement. “Minor works” mean works which add capital value to existing assets but do not create new assets. “Repair works” means works undertaken to maintain building and fixtures. Expenditure on Repair Work does not add to the value of the asset and only restores the functionality of the asset. Repair Work can be further categorized as (i) Annual repairs covering routine and yearly operation and maintenance work on buildings and services (ii) Special repairs, which are undertaken as and when required, covering major repairs to existing buildings or services. Some types of the Special repairs may qualify to be categorised as ‘Original Work’ as mentioned earlier.

**iii) Procurement Entities**

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

Major Works procuring Ministries/ Departments like the Central Public Works Department (CPWD); Military Engineering Service (MES); Border Roads Organisation (BRO); Ministries of Railways; Information & Broadcasting and Departments of Posts, and Space etc. already have their own detailed guidelines tailored to unique individual requirements, e.g. Manuals or Procedure Orders, which will continue to be applicable to these organizations.

This manual for procurement of works is more specifically addressed to those Ministries/ Departments and their attached and subordinate offices, as well as autonomous bodies (except to the extent the bye laws of an autonomous body provides for different provisions, which have been approved by the Government) which don't have in-house capabilities to execute Works and

assign most of the procurement of works to third parties (Public Works Organisations or PSUs).

This Manual is also useful for directly execution of repair works by these agencies up to <sup>6</sup>Rs. thirty lakh.

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

#### **1.4 Basic Aims of Procurement – Five R's of Procurement**

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

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

*(For more details on basic aims of procurement, please refer to Chapter 1 of the Manual for Procurement of Goods 2017 – reproduced in Appendix 1. Please refer to Broader obligation principle under Appendix 1 for instructions related to registration of bidders belonging to countries sharing land border with India, and Annexure-13).*

#### **1.5 Fundamental Principles of Public Procurement**

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<sup>6</sup> Rule 133(1) of GFR, 2017

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

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

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

## **1.6 Standards (Canons) of Financial Propriety**

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

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

- i) *Every officer is expected to exercise the same vigilance in respect of expenditure incurred from public moneys as a person of ordinary prudence would exercise in respect of expenditure of his own money.*
- ii) *The expenditure should not be prima facie more than the occasion demands.*
- iii) *No authority should exercise its powers of sanctioning expenditure to pass an order which will be directly or indirectly to its own advantage.*
- iv) *Expenditure from public moneys should not be incurred for the benefit of a particular person or a section of the people, unless -*
  - i) *a claim for the amount could be enforced in a Court of Law, or*

- ii) *The expenditure is in pursuance of a recognized policy or custom.*

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

## **1.7 Public Procurement Infrastructure at the Centre**

### **i) Procurement Policy Division**

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

### **ii) Central Public Procurement Portal**

Central Public Procurement Portal (CPPP) has been designed, developed and hosted by National Informatics Centre (NIC, Ministry of Electronics & Information Technology) in association with Dept. of Expenditure to ensure transparency in the public procurement process. The primary objective of the Central Public Procurement portal is to provide a single point access to the information on procurements made across various Ministries and the Departments. The CPPP has e-publishing and e-procurement modules. It is mandatory for all Ministries/ Departments of the Central Government, Central Public Sector Enterprises (CPSEs) and Autonomous and Statutory Bodies to publish on the CPPP all their tender enquiries and information about the resulting contracts. CPPP provides access to information such as documents relating to pre-qualification, Bidders' enlistment, Bidding documents; details of bidders, their pre-qualification, enlistment, exclusions/ debarments; decisions taken regarding prequalification and selection of successful bid. GFR 2017 (Rule 160) makes it mandatory for Ministries/ Departments to receive all bids through e-procurement portals in respect of all procurements. Ministries/ Departments which do not have a large volume of procurement or carry out procurements required only for day-to-day running of offices and also have not initiated e-procurement through any other solution



provided so far, may use e-procurement solution (CPPP) developed by NIC. Other Ministries/ Departments may either use e-procurement solution developed by NIC or engage any other service provider following due process. In the latter case, data on tenders are to be published on CPPP as well through web-service.

iii) **Government e-Marketplace (GeM)**

To ensure better transparency and higher efficiency an online Government e-Marketplace (GeM— an e-commerce marketplace) has been developed for common use goods and services. In GeM product or services are offered by a number of eligible sellers and all the eligible buyers can view/ compare all the product/ services and select the product/ services offered by any one of the seller. In general, because online marketplaces aggregate product/ services from a wide array of providers, selection is usually wider, availability is higher, and prices are more competitive than in vendor-specific online retail stores. The procurement process on GeM is online and electronic - end to end from placement of supply order to payment to suppliers. The registration of suppliers on GeM is online and automatic based on ID authentication etc. The procuring authorities have to assess the reasonability of rates. Buyer's transactions are processed by the GeM portal and then product/ services are delivered and fulfilled directly by the participating sellers. Tools of reverse bidding and e-auction are also available which can be utilised for the procurement of bulk quantities. More details are available in Rule 149, GFR, 2017. The Procurement of Goods and Services by Ministries or Departments are mandatory for Goods or Services available on GeM\_ Ministries/ Departments are expected to work with GeM in making available on the GeM platform as many products/ services by making available such Goods and Services which are regularly procured by them.

## **1.8 Legal Aspects Governing Public Procurement of Works**

A public procurement contract, besides being a commercial transaction, is also a legal transaction. There are a number of laws that may affect various commercial aspects of public procurement contracts. A public procurement professional is expected to be generally aware of the implications of following basic laws affecting procurement of works; however, he or she is not expected to be a legal expert. In different contexts of the scope of work, an additional set of laws may be relevant.

- i) The Constitution of India;
- ii) Indian Contracts Act, 1872;
- iii) Arbitration and Conciliation Act, 1996 read with The Arbitration and Conciliation (Amendment) Act, 2015;
- iv) Competition Act, 2002 as amended with Competition (Amendment) Act, 2007;
- v) The Information Technology Act, 2000 (IT Act, regarding e-procurement and e-auction, popularly called the Cyber Law);
- vi) Right to Information (RTI) Act 2005;
- vii) Central Vigilance Commission Act, 2003;
- viii) Delhi Special Police Establishment Act, 1946 (DSPE – basis of the Central Bureau of Investigation);
- ix) Prevention of Corruption Act, 1988;
- x) Code of Criminal Procedure, 1973 (Sections 195(1) and 197(1));
- xi) Various labour laws applicable at the works' site;
- xii) Various building and safety acts, codes, standards applicable in the context of the scope of work; and
- xiii) Various environmental and mining laws, codes, standards applicable in the context of the scope of work.

*(For salient features of laws applicable to public procurement, please refer to Appendix 2).*

### **1.9 The Law of Agency – applicable to Procurement of Works**

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

such violations, under certain circumstances. The Procuring Entities need to be aware of such eventualities. Standard Bidding Documents should take care of this aspect.

### **1.10 The Basic Principles of undertaking works:**

- i) No new works should be sanctioned without
  - i) Careful assessment of the assets or facilities already available and time and cost required to complete the new works.
  - ii) A concept plan/ preliminary drawing have been approved by the Authority competent to accord sanction. While designing projects to the extent possible, principles of Life Cycle Costing may also be considered;
- ii) As budgetary resources are limited and granted on annual basis, adequate provisions should be ensured for works and services already in progress before new works are undertaken.
- iii) No project or work will be split up to bring it within the sanctioning powers of a lower authority.
- iv) <sup>7</sup>For purpose of approval and sanctions, a group of works which forms one project, shall be considered as one work. The approval or sanction of the higher authority for such a project which consists of such a group of work should not be circumvented by resorting to approval of individual works using the powers of approval or sanction of a lower authority. <sup>8</sup>If the component parts of a project are mutually independent of each other and are not dependent on the execution of one or more such component parts, each such part should be treated as a separate project. In case the functioning of a project is dependent on the execution of one or more other projects, the entire group of such projects should be taken as a single scheme/ project and provision made accordingly. If however, a scheme consists of revenue component, capital expenditure and loan content, etc. the provision for which is required to be exhibited separately under respective Heads of Account, there is no objection to the provision being made in the relevant Heads of Account; but the authorities concerned should ensure that the sanction of the Competent Authority is obtained for the

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<sup>7</sup> Rule 137, GFR, 2017

<sup>8</sup> MoF OM No. F.1(26)-E-II(A)/66 dtd 04/01/1967 & 27/10/1967

integrated scheme as a whole depending on the total cost of the scheme. It will not be permissible in such cases to split up a scheme treating each part as a scheme in order to avoid the sanction of a higher authority.

- v) <sup>9</sup>Any anticipated or actual savings from a sanctioned estimate for a definite project, shall not, without special authorisation, be applied to carry out additional work not contemplated in the original project.
- vi) <sup>10</sup>Any development of a project considered necessary while a work is in progress, which is not contingent on the execution of work first sanctioned, shall have to be covered by a supplementary estimate.
- vii) The construction period and sanctioned cost stipulated in the sanction of Project will not be exceeded as far as possible.
- viii) <sup>11</sup>Ministry or Department shall put in place, as far as possible, empowered project teams for all large value projects and these teams should be tasked only with project execution and not given other operational duties.
- ix) The competent financial authority according administrative approval should be kept informed of the physical and financial progress of the work till their completion through regular periodical reports.
- x) <sup>12</sup>Subject to the observance of these general rules (Rule 130 – 141, GFR, 2017), the initiation, authorization, procurement and execution of works allotted to a particular Ministry or Department shall be regulated by detailed rules and orders contained in the respective departmental regulations and by other special orders applicable to them. The detailed procedure relating to expenditure on such works shall be prescribed by departmental regulations framed in consultation with the Accounts Officer, generally based on the procedures and the principles underlying the financial and accounting rules prescribed for similar works carried out by the Central Public Works Department (CPWD).

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<sup>9</sup>Rule 138, GFR, 2017

<sup>10</sup>Rule 136(3), GFR, 2017

<sup>11</sup>Rule 135(2), GFR, 2017

<sup>12</sup>Rule 135(1), and 139(i), GFR, 2017

- xi) <sup>13</sup>No works shall be commenced or liability incurred in connection with it until:-
- i) Feasibility Study Report / Preliminary Project Report (PPR) has been prepared in case of works of substantial value
  - ii) A proper Detailed Project Report (DPR) has been prepared by a competent agency;
  - iii) Administrative approval (A/A) has been obtained from the appropriate authority, in each case;
  - iv) Expenditure Sanction (E/S) to incur expenditure has been obtained from the competent authority;
  - v) Technical approval has been obtained of the detailed and coordinated design of all the Architectural, Civil, Electrical, Mechanical, Horticulture and any other services included in the scope of the sanction and of the Detailed Cost Estimates containing the detailed specifications and quantities of various items prepared on the basis of the schedule of rates maintained by CPWD or other Public Works Organizations.
  - vi) Funds to cover the work, which will be executed, at least during the current year, have been provided by competent authority.
  - vii) Tenders have been invited and processed in accordance with rules.
  - viii) Award of work and execution of Contract Agreement;
  - ix) A work order has been issued.
  - x) Time taken in grant of statutory and other clearances also contributes to the time and cost overrun in public projects. These clearances are required to achieve specific objectives like concern for the environment, aviation safety, preservation of national heritage, conservation of forest and wildlife etc. Public Authorities/ Project Executing Authorities should plan for obtaining all necessary clearances quickly and proper efforts be made for the same, which also should be duly recorded. The progress regarding follow up of obtaining the statutory clearances should be closely monitored.

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<sup>13</sup>Rule 136(1) and 139(vi), GFR, 2017

xi) The process of land acquisition shall be started by the Procuring Entity, well ahead and completed entirely, or at least substantially, before the work is started. Availability of auxiliary services has been ensured - like roads/access, power, water, solid & liquid waste disposal system, street lighting and other civic services shall be ensured. It is desirable to have 100% of the required land in possession before award of contract; however, it may not always be possible to have the entire land due to prevailing circumstances. Also, it may not be prudent to put the entire process of award of contract on hold for want of the remaining portion of land, which in the assessment of public authority or the project executing authority, could possibly be acquired in a targeted manner after award of the contract, without affecting progress. Minimum necessary encumbrance free land should be available before award of contract. The minimum may be determined based on the circumstances of each case or general guidelines, issued by the concerned authorities. Such land, non-availability of which, will prevent essential components of work from execution, should be insisted upon. Public Authorities/ Project Executing Authorities should plan for acquiring balance land quickly and proper efforts be made for the same, which also should be duly recorded. The progress regarding land acquisition should be closely monitored.

### **1.11 Processing of Public Works**

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

- i) Perspective Planning for works;
- ii) Preparation of Preliminary Project Report (PPR) or Rough Cost Estimate;
- iii) Acceptance of necessity and issue of in-Principle Approval;
- iv) Preparation of Detailed Project Report (DPR) or Preliminary Estimate (PE);
- v) Administrative Approval and Expenditure Sanction (A/A&E/S) or 'Go ahead' Approval;
- vi) Detailed Design, Estimate and Technical Sanction;
- vii) Appropriation/ re-appropriation of funds;

- viii) Preparation of Bid documents, Publication, Receipt and Opening of Bids;
- ix) Evaluation of Bids and Award of Work;
- x) Execution and Monitoring of works and Quality Assurance.

Note: For repair works up to Rs. 30 (thirty) lakh, expenditure sanction may be given on the basis of Preliminary Project Report itself.

Annexure 9 shows the above mentioned process of procurement of Public Works as a flow-chart.

## 1.12 Administrative Control and Powers to Sanction

- i) <sup>14</sup>Administrative control of works includes.—
  - i) assumption of full responsibility for construction, maintenance and upkeep;
  - (b) Proper utilization of buildings and allied works;
  - (c) Provision of funds for execution of these functions.
- ii) <sup>15</sup>**Powers to Sanction Works:** The powers delegated to various subordinate authorities to accord administrative approval, sanction expenditure and re-appropriate funds for works are regulated by the Delegation of Financial Powers Rules (DFPR) and other orders contained in the respective departmental regulations. The powers of the Department relating to works are detailed in Rule 133 (1) and 133(2) of GFR, 2017 (Refer para 3.1.1 and 3.1.2 for details).
- iii) <sup>16</sup>**Work under the administrative control of the Public Works Departments-** Works not specifically allotted to any Ministry or Department shall be included in the Grants for Civil Works to be administered by Central Public Works Department. No such work may be financed partly from funds provided in departmental budget and partly from the budget for civil works.

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<sup>14</sup>Rule 131, GFR, 2017

<sup>15</sup>Rule 132, GFR, 2017

<sup>16</sup>Rule 134, GFR, 2017

## **Chapter 2: Preparation of Estimates**

### **2.1 Perspective Planning for Works**

Each Ministry/ Department shall prepare a perspective plan for undertaking different types of works. There shall also be a provision for annual review of the plan for making modifications, if any.

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

2.2.1 In case the work is to be executed under its own arrangement by the Ministry/ Department, a preliminary project report (PPR) or Rough Cost Estimate shall be prepared by the Works Committee based on Land, Site Details, functional and space requirements (or Various Facilities, Special Requirements/ Features and Broad Specifications for specialised Equipment and Plants), Layout Plans etc, with the technical details/ documents mentioned below being prepared by (or under the guidance of) the technical member(s) of the Works Committee (please refer to Para 3.1.4 (iv) below. In case of execution of Work through Public Works Organisation (PWO) or the Public Sector Undertaking (PSU – refer Para 3.1 below), on requisition from Ministry/ Department for procurement of works, PWO or the PSU to whom work is entrusted for execution shall prepare such PPR or Rough Cost Estimate and submit it to the requiring Department/ Ministry. Based on PPR and Rough Cost Estimate, the competent authority in Administrative Ministry/ Department grants in Principle approval indicating approval of the concept and scope of the project at the rough cost assessed. Ministry of Finance (DoE) has issued detailed instructions regarding appraisal and approval of Public Funded projects/ schemes<sup>17</sup>.

2.2.2 The preliminary project report shall provide the following details:

- i) Background of the work/ project justifying the need for the work
- ii) Details of scope of the project

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<sup>17</sup>No. 24(35)/PF-II/2012 dtd 05/08/2016 (where Schemes refers to a collection of Projects/Works of either Central Sector Schemes or Centrally Sponsored Schemes and Project refers to work which can be standalone or part of a scheme). The OM can be downloaded from: [http://doe.gov.in/sites/default/files/GuidelinesAppraisal\\_Approval\\_Schemes\\_Projects.pdf](http://doe.gov.in/sites/default/files/GuidelinesAppraisal_Approval_Schemes_Projects.pdf)



## Chapter 2: Preparation of Estimates

- iii) Exclusions (if any) - This will cover part of the work, which is not included in this particular project estimate.
- iv) Availability of land - There should be a clear indication about the availability of land required for completion of whole project. The land shall be made available free of all encumbrances.
- v) Availability of auxiliary services - like roads, power, water, solid & liquid waste disposal system, street lighting and other civic services shall be ensured.
- vi) Reference to Concept Plans/ Preliminary Drawings, if any and their acceptance - This shall indicate the details of Concept Plans/ Preliminary Drawings prepared and their approval by the requisitioning authority.
- vii) Agency of Procurement – through direct procurement, outsourcing to PWO/ PSUs or otherwise (Refer Para 3.1 below).
- viii) Rough Cost Estimate: Ministries/Department may carefully assess alternative technological options, their area requirements and obtain Rough Cost on the basis of prevailing Plinth Area rates (or any other reliable basis) without preparation of drawings to enable the competent authority to accord in principle approval.
- ix) If relevant, Cost benefits analysis of the project, including evaluation of options for cost sharing/ recovery (user charges) for infrastructure/ services. Principles of Life Cycle Cost may also be considered, to the extent feasible.
- x) Cash flow: This will show year-wise requirement.
- xi) Source & availability of funds - The manner of transferring the fund to the executing agency to be spelt out.
- xii) Appendices:
  - i) Requisition of the Department/ Ministry;
  - ii) Concept Plans/ Preliminary Drawings;
  - iii) Reference to approval of Concept Plans/ Preliminary Drawings.
- xiii) Any other relevant documents.
- xiv) A presentation on the findings of the feasibility study/ PPR may be made by a team (which may include engineers/ consultants/ outside experts, finance

officers etc.) before the public authority/ or designated competent authority. This is to provide an opportunity to the public authority to have an overall assessment of the situation, appraisal of various options as well as likely challenges and mitigation measures. In the case of very large projects, such presentation may be made to the head of the public authority. The record of discussions during the presentation may become part of the Detailed Project Report (DPR) and tender file/ project record.

### **2.3 Acceptance of necessity and issue of in-Principle Approval**

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

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

2.4.1 On receipt of in-Principle Approval of the project, the procuring entity shall finalize the Detailed Project Report giving reference to the documents mentioned below. The DPR should provide a level playing field to the bidders and should ensure as far as feasible, the widest possible competition:

- i) Reference to Concept plan/ preliminary drawings and their acceptance - This shall indicate the details of Concept plan/ preliminary drawings prepared and their approval by the requisitioning authority;
- ii) Details of scope of the project indicating clearly the list of Engineering Services (Mechanical/ Electrical/ Plumbing) as well as Operation and Maintenance included or not included in the DPR/PE;
- iii) Preliminary estimated cost – This will also include the expected escalation for the period of completion of the project and also the departmental or lump sum charges to be paid to the executing agency (Public Works Organization or PSUs). Cash flow projection should show year-wise requirement. While designing the projects etc, if and to the extent possible, principles of Life Cycle Cost may also be considered;
- iv) Time of the completion – This will consist of two parts, one for pre- construction activity till award of the work and the other one for the execution;

## Chapter 2: Preparation of Estimates

- v) Details of land required along with land plan schedule to implement timely land acquisition procedures;
- vi) Environmental impact assessment (EIA) of the project and approval thereof, wherever applicable;
- vii) Social Impact Assessment and Resettlement and Rehabilitation: Social Impact Assessment needs to be done, based on baseline socio-economic survey and census survey data, to identify the Project Affected People (PAPs). A Resettlement and Rehabilitation Plan should be prepared for the PAPs in accordance with the LARR Act 2013 or National Policy on Resettlement and Rehabilitation (NPRR), and State Governments framework of resettlement policies and other social safeguard policies designed to protect the rights of the affected persons and communities as applicable;
- viii) List of Approval of Statutory Bodies required;
- ix) Annual plan allocation and cash flow;
- x) Systems to be adopted for project monitoring;
- xi) Works accounting system;
- xii) Quality assurance system/ mechanism;
- xiii) Bidding Systems - Single, two parts, pre-qualification, Post- qualification.

In case the work is being executed by the Ministry/ Department themselves, DPR and PE will be prepared by the Ministry/ Department itself. In case the Work is assigned to Public Works Organisation or the Public Sector Undertaking, that agency shall prepare the DPR and PE.

For repair works costing up to Rs. 30 (thirty) lakh, preparation of DPR and PE may be dispensed with, since repair work does not need detailed designing. Sanction may be accorded by the competent authority based on PPR itself.

2.4.2 Major reasons for the problem in works contracts (in particular relating to construction of roads, highways, ports, runways, dams etc. on item-rate or percentage rate basis) is the out-sourcing of preparation of Detailed Project Reports to consultants without sufficient relevant experience or giving them sufficient time to do so. It is therefore essential to stipulate & ensure successful project design/ supervision

experience while selecting consultants, especially for large works contracts. DPR in such contracts is required to be based on proper ground investigation at each specified stretch (normally 50 metres), called “reach”, and the Consultant be directed to exercise such due diligence.

2.4.3 The involvement of the Ministry/ Department in providing proper inputs including user requirements during the preparation of the DPR and before accepting the draft DPR is paramount in ensuring successful implementation. Proper field surveys and investigations of ground conditions are critical in preparation of a reliable DPR. Providing scientifically valid data to bidders will depend on the quality of the investigations done by the DPR consultant. As a corollary, the Ministry/ Department must insist on a qualified team of engineers with experience for carrying out DPR studies. It is also essential that the Ministry/ Department insists that the Consultant offers them technology options at the early stage of preparation of the DPR, so that a cost-efficient choice may be made using principles of Life Cycle Costing. In case the deviations between actual ground situation and the situation recorded in such DPR results in significant cost and time over-runs, the engineer, while doing valuation of variations [refer to Para 6.5.1 (iii)], must bring to Procuring Entity’s notice the reach-wise differences and the Ministry/ Department may consider stringent action against the consultant who has prepared such DPRs, including debarment from future consultancy contracts, after following due procedure. Such clauses may be included in the contracts for preparation of DPR. Wherever consultants are appointed for preparation of DPR, field units of the public authorities should also be associated with the process. The inputs from these field units can be useful in proposing best solutions for design and execution of the work as they are the custodian of legacy data, which may not be available with the consultants, as they may not be operating regularly in that geographical region.

2.4.4 Presentation may be made about the DPR before the public authority, for projects above a threshold value, as decided by Project Executing Authorities. The presentation may include salient features of the project including general layout, architectural drawings, broad specifications, cash flow (over the life of the project), composition of the project team, quality management plan for the project, important milestones in the project execution, obligations of the authority and the contractor/ concessionaire (hereinafter referred to as "contractor") and possible risks and

mitigation measures. In the case of very large projects such presentation may be made to the head of the public authority. The record of discussions during the presentation shall become part of tender file/project record.

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

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

The sanction order should contain scope of work, estimated cost, and time schedule for completion of work and funding sources along with their share.

Where a project as a whole has been sanctioned after scrutiny and acceptance by the Finance Ministry, further concurrence of the Finance Ministry shall not be required for sanctioning expenditure on the various constituent schemes included in the project.  
[Rule 18(1), DFPR, 1978]

## **2.6 Detailed Designs, Detailed Estimates and Technical Sanction**

Except where the work is to be undertaken in the EPC(Turnkey) mode, on receipt of sanction of the project, based on DPR or PE and assurance of funds, the procuring entity in consultation with the Works Committee (as mentioned in para 3.1.4 (iv) below) shall prepare and accord Technical Sanction to detailed and coordinated design of all the Architectural, Civil, Electrical, Mechanical, Horticulture and any other services included in the scope of the sanction and of the Detailed Cost Estimates containing the detailed specifications and quantities of various items prepared on the basis of the schedule of rates maintained by CPWD or other Public Works Organizations - so as to ensure that proposals are structurally sound and that the estimates are accurately calculated based on adequate data. In case the work is to be executed through a Public Works Organization or Public Sector Undertaking, preparation of detailed design/ estimates and technical sanction shall be done/

accorded by that organization. Architectural and structural drawings: Architectural and structural drawings (fit for construction) are among the core requirements for projects. Finalization of these drawings at the earliest, preferably at the time of preparation of the cost estimate itself, can help to determine quantities of various items of the work. Adverse consequences of not preparing these drawings before invitation of tenders may manifest in the form of delay in execution of the work and deviations in quantities of the items of work. Hence, approved architectural and structural drawings should be available before invitation of tenders. Fit for construction (sometimes called Good for construction) drawings means the architectural and structural drawings approved by the project executing authority as well as by the authority governing the extant rules/ laws, including byelaws, such as local authorities.

## **2.7 Appropriation of funds**

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

## **2.8 Reference Documents used in preparation of Estimates**

For preparation of estimates and during execution of work following reference documents are used by PWOs. These may be separate for different regions, various types of works - Building, Electrical and Mechanical. *Annexure 10 lists further resources regarding Procurement of Works.*

- i) **Plinth Area Rates** which provide a quick but fairly accurate method of estimation of cost of buildings (e.g. CPWD DPAR – Delhi Plinth Area Rates).
- ii) **Schedule of Rates** for each kind of work commonly executed to facilitate the preparation of estimates, as also to serve as a guide in settling rates in connection with contract agreements, maintained up-to-date (e.g. CPWD DSR - Delhi Schedule of Rates). Endeavour may be made to enlarge the base of the 'Schedule of Rates' published by various organizations to bring a maximum

number of items under its ambit. For non-scheduled items, rates may be finalized by a committee constituted by the organization concerned/ consultants as the case may be.

- iii) **Analysis of Rates** by taking market rates of labour, materials, cartage etc and their quantities for each kind of work commonly executed (e.g. CPWD Analysis of Rates)
- iv) **Specifications** describing inputs, processes, tests and mode of measurement for each kind of work commonly executed (e.g. CPWD Specifications)

## **2.9 Procurement Planning**

GFR 2017 [Rule 144 (x)] mandates that All Ministries/Departments shall prepare Annual Procurement Plan within 30 (thirty) days of Budget approval, before the commencement of the year and the same should also be placed on their website

## **Chapter 3: Agency for Procurement; Types of Contract, Bidding Systems and Modes of Procurement**

### **3.1 Agency for Procurement**

Rule 133 of the GFR, 2017, permits Ministries/ Departments at its discretion to assign execution of their original and repair works as follows:-

- i) Directly by the Ministry/ Department
- ii) Public Works Organisations (PWO)
- iii) Public Sector Undertaking (PSU)/ Organisations setup to execute Works

#### **3.1.1 Directly by the Ministry/ Department**

A Ministry or Department at its discretion may directly execute repair works estimated to cost up to Rupees thirty lakh after following due procedure 'laid down for Execution of Works' (Rule 139, 159 and 160 of GFR 2017).

#### **3.1.2 Public Works Organisations**

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

#### **3.1.3 Public Works PSU/ Organisations**

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

- i) any Public Sector Undertaking set up by the Central or State Government to carry out civil or electrical works or



- ii) to any other Central/ State Government organisation/ PSU which may be notified by the Ministry of Urban Development (MoUD) for such purpose after evaluating their financial strength and technical competence.

#### 3.1.4 Procedure for Assigning Work to PWO or PSU/ Organisations

- i) For the assignment of work under provisions of para 3.1.3 above to PSUs, the Ministry/ Department shall ensure competition among all such eligible PSUs/ organisations. This competition shall be essentially on the lump sum service charges to be claimed for execution of work. The award of work to a PSU should be taken as Project Management Consultancy (PMC) and the concerned PSU shall be treated as consultancy firm. Relevant methods (QCBS, LCS etc) for procurement of consultancy will be applicable. For better understanding of selection methodology of consultant(s), Rule 192 to Rule 194 of GFR 2017 and Manual for Procurement of Consultancy and Other Services, 2017 may be referred.
- ii) In exceptional cases, for assignment of work on nomination basis under provisions of para 3.1.3 above to PSU, the conditions contained in para 3.5.7 below would apply. The work under these circumstances shall also be assigned only on the basis of lump sum basis.
- iii) <sup>18</sup>For original works and repair works entrusted under the provisions of Para 3.1.2 and 3.1.3 above, the administrative approval and expenditure sanction shall be accorded and funds allotted by the concerned authority in accordance with the Para 1.12 (ii) above. The Public Works Organisation or the Public Sector Undertaking or any organisation allotted work shall then execute the work entrusted to it in accordance with the rules and procedures prescribed in that organisation.
- iv) A Memorandum of Understanding (MoU) may be drawn with the Public Works Organisation or the Public Sector Undertaking for proper execution of work. The MoU should spell out the obligations on the part of Public Works Organization or PSU regarding execution of works as per proper specifications and for maintaining proper quality and speed of execution of works. Different stages at

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<sup>18</sup>Rule 140, GFR, 2017

which funds shall be released to the Public Works Organization should also be clearly spelt out. Such MoU would normally be for a specific standalone work, but could also be for a Project consisting of a collection of related works. In case of MoU with Public work Organisations (PWOs) it could also be as a long-term framework MoU. A Sample MOU delineating complete procedure of assignment of work to PWO/ PSUs and its monitoring is shown in Annexure 8. Procuring entity may change the MOU format suiting to their requirement, and If felt necessary may also get the MOU document vetted from the Ministry of Law/ or its own legal cell.

- v) For execution of any work, under the provisions of Para 3.1.2 and 3.1.3 above, the Ministry/ Department shall constitute a “Works Committee”, whether on ad hoc or standing basis; comprising of representatives of administrative wing and Finance wing and an officer possessing technical skills and experience of framing estimates and execution of works. If need be, members may be co-opted from User Department; CPWD/ Public Works Organization/ PSUs or any technically sound Government agency such as a relevant NIT/ IIT or a relevant National Research Institute etc. The Works Committee shall ensure observance of due process in the planning and execution of works, check the reasonability of the estimates and other technical details and monitor the execution of the works.

## **3.2 Types of Contract**

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

### **3.2.1 Lump sum (Fixed Price) Contract**

- i) This form is used for work in which contractors are required to quote a lump sum fixed price figure for completing the works in accordance with the given designs, specifications and functional requirements. Bidder's price is deemed to include all elements of cost - no arithmetical correction or price adjustments are allowed during evaluation and execution. Lump sum contracts are easy to administer because it is a fixed price for a fixed scope and payments are linked to clearly specified outputs/ milestones.
- ii) There may be tendency for the Contractor to cut corners on quality and scope of work by saving on resources employed. Disputes may arise due to different possible interpretations of quality and scope of work. The contract should include provision for evaluation of quality and scope of work and certificate for its acceptability may be recorded.
- iii) As time is not linked to the payment, there may be tendency for the Contractor to save on deployment of resources which may result in time-over-run. While the payments are not linked to time, the assignment should be monitored per month to ensure that the progress of work per month is in line with planned and estimated time-line.
- iv) Lump sum service contracts should be used mainly for assignments in which the quality, scope and the timing of the Work are clearly defined. Lump sum contracts may be used where the Works can be defined in their full physical and qualitative characteristics and risk for change in quantity or specification, and unforeseen difficulties and site conditions (for example, hidden foundation problems) are minimal. Thus is suitable for stereotype/ repetitive residential buildings or other structures for which standard drawings are normally available. It is also suitable for minor bridge works, chimneys, bins/ silos, overhead tanks, etc. whether on Department's design or that of the contractor. In the latter case, the Department shall spell out the requirements in detail to enable the contractor to prepare his designs and drawings accordingly, and submit them to the Procuring Entity for check and approval before construction
- v) A Schedule of Rates (SOR) may still be specified in order to regulate the amounts to be added to or deducted from the fixed sum on account of additions

and alterations to drawings, designs and specifications not covered by the contract.

- vi) The contractor shall be paid from time to time as per the schedule specified in the contract or the full amount on completion of the work. In The concept of priced “activity schedules” may be used, to enable payments to be made on the basis of percentage completion of each activity. The billing schedule shall commensurate with the actual work done, and the risk of front-loading strictly guarded against.
- vii) Detailed measurements of work done in a lump sum contract are not required to be recorded, except in respect of additions and omissions. No reference is made in the contract to the departmental estimate of the work, prevailing SOR or the quantities of work to be done. Payment of additions and omissions is regulated by prevailing SOR as agreed upon while approving the tender or the rates.

### 3.2.2 **Item rate (Unit Rate) Contract**

- i) For item rate tenders, contractors are required to quote rate for each individual items of work on the basis of Bill of quantities (BOQ) provided by the Procuring Entity in the Bid Documents. Reasonable variations in quantities can be allowed during the execution in terms of the contract. This is the most commonly used contract type for civil works.
- ii) The payment is made at the rate set out in the contract for the measured quantity within prescribed range [usually +/- 15 (fifteen) percent per item] of the estimated quantity of the initial BOQ.
- iii) This type of contract is suitable for all types of major works such as buildings, bridges, culverts, roads, sewer lines, irrigation works, and carries the least risk of uncertainty for the parties.
- iv) Specifications, design, drawings and contract conditions (including availability of land, forest clearance, social and environmental impact assessment, where applicable) have to be critically appraised before the initiation of procurement process, in order to minimise the incidence of internal inconsistencies, variations, and situation of claims/ disputes or contract failure.

### 3.2.3 Percentage Rate Contract

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

### 3.2.4 Piece Work Contract

Piece Work Contract is to be used mainly in following cases:

- i) The cases, in which it is necessary to start the work in anticipation of formal acceptance of contract, an agreement on piece work contract may be drawn and the contract may be cancelled as soon as regular contract is signed.
- ii) For running contracts i.e. those for pipes, laying of sewerage etc. quotations are called periodically and a running rate contract is drawn up as a result of those quotations usually for one year. The piece work contract provides for payment of stipulated rates only when it refers to such quantity of time and also stipulates that the procuring entity may put an end to the agreement at his option at any time.

### 3.2.5 Engineering, Procurement and Construction (EPC) Contracts

- i) The Engineering, Procurement and Construction (EPC) (also called 'Design & Build' Contracts) approach relies on assigning the responsibility for investigations, design and construction to the contractor for a lump sum price determined through competitive bidding. The objective is to ensure

implementation of the project to specified standards with a fair degree of certainty relating to costs and time while transferring the construction risks to the contractor.

- ii) On the recommendations of National Institution for Transforming India (NITI Aayog) the Cabinet Committee on Economic Affairs (CCEA) <sup>19</sup> has recommended that Item Rate contracts may be substituted by EPC contracts wherever appropriate.
- iii) Unlike the normal practice of construction specifications, the technical parameters in the EPC Agreement are based mainly on output specifications / performance standards. Procuring Entity specifies only the core requirements of design and construction of the project that have a bearing on the quality durability, reliability, maintainability and safety of assets and enough room is left for the contractor to add value. The Contractor has full freedom to design and plan the construction schedule using best practices to achieve quality, durability, reliability, maintainability, and safety as specified along with efficiency and economy. Projects risks such as soil conditions and weather or commercial and technical risks relating to design and construction are assigned to the Contractor. The Procuring Entity bears the risk for any delays in handing over the land, approvals from local authorities, environment clearances, shifting of utilities and approvals in respect of engineering plans.
- iv) Selection of the contractor is based on open competitive bidding. All project parameters such as the contract period, price adjustments and technical parameters are to be clearly stated upfront, and short-listed bidders are required to specify only the lump sum price for the project. The bidder who seeks the lowest payment is awarded the contract. The contract price is subject to adjustment on account of price variation during the contract period as per a specified formula. It also lays down a ceiling of 10 (Ten) per cent of contract price to cater for any changes in the scope of project, the cost of which the Procuring Entity will bear.
- v) The selected Contractor carries out survey and investigations and also develops designs and drawings in conformity with the specifications and

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<sup>19</sup>Niti Aayog OM No. N-14070/14/2016-PPPAU dated September 05, 2016

standards laid down in the Agreement. Procuring Entity's engineer (also called owner's engineer) reviews the design and drawings to ensure that these conform to the scope of the project, design standards and specifications. Any comments by the Procuring Entity on the design proposals submitted by the contractor are to be communicated in totality once in a time-bound manner as indicated in the schedule. The contractor is free to proceed with construction after the expiry of specified period in case no remarks/ clearances are given by the Procuring Entity.

- vi) The Contractor is liable to pay Liquidated Damages for each day of delay beyond the specified date of completion, subject to the total amount of Damages not exceeding 10 (ten) per cent of the Contract Price. However, the Contractor is entitled to time extension arising out of delays on account of change of scope and force majeure or delays caused by or attributable to the Procuring Entity. If so provided in the Bid Document, Procuring Entity is also liable to pay bonus (normally should not exceed ten percent) to the Contractor for completion of the project before the scheduled completion date, if so provided in the contract documents.
- vii) Monitoring and supervision of construction are undertaken through Procuring Entity's engineer, (a qualified firm that will be selected through a transparent process) acting as a single window for coordination with the contractor.
- viii) Each item of work is further sub-divided into stages and payment based on output specifications and performance standard is to be made for each completed stage of work. Defects liability period of two years may be specified in the Agreement in order to provide additional comfort to the Procuring Entity.
- ix) Federation Internationale Des Ingénieurs-Conseils (FIDIC - an International Federation of Consulting Engineers, known by its French acronym) has also published such contractual frameworks. Model EPC contract documents have been developed for Highways and Railways and published by the erstwhile Planning Commission. National Highways Authority of India (NHAI) has already adopted these documents and all construction contracts are currently being structured on this model. Ministry of Railways has also started using such documents. Model bidding documents and Model EPC contracts suitably

revisited or modified wherever required to suit the requirements of particular sectors, may be adopted.

- x) The selected Procuring Entity's Engineer (Consultant) has to have good experience in design, project supervision and works management. The Procuring Entity organisation must have an experienced team with (works committee) to super check the quality of supervision exercised by the owner's engineer, including quality of design review, site supervision, quality audits, etc. Periodic audits of the Procuring Entity's Engineer functioning are desirable in ensuring that the Procuring Entity's Engineer carries out his tasks professionally.
- xi) In complex projects, a third party consultant be deployed for specific tasks like design audit, quality audits, safety audits, etc., to cross-check the Procuring Entity's Engineer's diligence in the process.
- xii) In EPC contracts, since primary responsibility to execute the work lies with the EPC contractor, success of the project also depends upon the quality of the tender document wherein enough clarity on the broad framework for execution of the work and the obligations of the contractor needs to be built in.
- xiii) Milestones for payment to the contractor should be fixed in a manner that facilitates smooth cash flow for the contractor as well as for progress of the work. Milestones fixed should avoid excessive front loading or back loading, i.e., amount of payment should be commensurate with stage-wise quantum of work/ cost incurred. Milestones for payment to the contractor should also be linked with the deliverables.
- xiv) In case of EPC contracts, only general arrangement drawings and architectural control parameters should be part of the PEC tender document. In case of EPC contracts, timelines for submission of drawings by the contractors and approval thereof by the competent authority should be clearly prescribed in the tender document, wherein, damages for non-adherence of such timelines in this regard may also be incorporated.
- xv) EPC contracts shall specify broad technical specification and key output parameters. Over-specification of design may lead to increase in cost. Technical specifications shall be framed in such a manner to allow sufficient freedom to the



contractor to optimize design. Provisions on the following should be included in commercial conditions :

- a) Limitation of liability for procuring entity as well as contractor.
  - b) Deviation limits and procedure for change of scope.
  - c) Contract closing timelines and procedure to ensure timely closing of contract.
  - d) Performance parameters and liquidated damages for shortfall in performance
  - e) Risk matrix and responsibilities of the contractor and the procuring entity.
- xvi) In addition, a latent defect period beyond the defect liability period may be included to protect the procuring entity and public authority interest in case of any design/ engineering defect after the defect liability period is over, wherever appropriate.
- xvii) To mitigate the risk involved in the methodology proposed by the contractor, the project executive authority shall either have an in-house engineering, quality assurance and project management expert or alternatively hire an experienced engineer to intensively examine the proposal submitted by the contractor. Project executing authorities are to ensure that optimal technological solutions are provided by the contractor.
- xviii) To ensure equality, regular inspection and quality checks must be carried out. The Project, executing authority shall carry out stage inspections in manufacturing of critical equipment/critical activities of the project.

Note: In para 3.2.5 instructions containing “shall” are mandatory; any deviation from these instructions shall require relaxation from Ministry of Finance (for Ministries/ Departments etc.) or from the Board of Directors (for Central Public Sector Enterprises).

### **3.2.6 Public Private Partnership (PPP)**

PPP means an arrangement between a government/ statutory entity/ government owned entity on one side [Sponsoring (PPP) authority – or simply the Authority] and a private sector entity (a legal entity in which 51% or more of equity is with the private partner/s - concessionaire) on the other, for the creation and/ or management of public assets and/ or public services, through investments being made and/ or management being undertaken by the concessionaire, for a specified period of time (concession

period) on commercial terms, where there is well defined allocation of risk between the concessionaire and the Authority; and the concessionaire (who is chosen on the basis of a transparent and open competitive bidding), receives performance linked payments that conform (or are benchmarked) to specified and pre-determined performance standards, measurable by the Authority or its representative. For further information, PPP instructions issue by Department of Economic Affairs (DEA), Ministry of Finance from time to time, may be referred.

### **3.3 Bidding Systems**

Bidding systems are designed to achieve an appropriate balance between the countervailing needs for Right Quality, Right Source and the Right Price under different complexities/ criticality of Technical requirements and value of procurements. In certain critical and complex requirements, the technical and financial capability of Source of supply becomes an important determinant for value for money. Depending on the complexity and criticality Technical of requirement, Criticality of capability of Source and value of procurement, following types of bidding systems may be used.

#### **3.3.1 Single Stage Bidding System**

In single stage bidding, all bids are invited together in a single envelope or in multiple envelopes system. This bidding system is suitable where technical requirements are simple or moderate; capability of source of supply is not too crucial and the value of procurement is not too high;

#### **3.3.2 Single Stage Single Bid/ Envelope System (1S1E)**

Where it is feasible to work out the schedule of quantities and to formulate detailed specifications for Works and capability of contractor isn't critical and value of procurement is low or moderate, the single envelope system may be adopted, where eligibility, technical/ commercial and financial details are submitted together in the same envelope. This is the simplest and the quickest bidding system. The lowest responsive priced bid that meets the eligibility criteria, technical and commercial requirements laid down in the bid documents is declared as successful and awarded the contract.

#### **3.3.3 Single Stage Two Envelope Systems (1S2E)**

In technically complex requirements but where capability of source of supply is still not crucial and value of procurement is not low, a two envelope system may be followed:

- i) If required, Technical specification and techno-commercial conditions may be modified, after the pre-bid conference in the two envelopes. The pre-bid conference is to be organised before the bid submission date. It may be necessary to issue the pre-bid conference minutes to all participants/ upload to the web-portals and some revised RfQ/ RfP documents where necessary.
- ii) The tenderers should be asked to bifurcate their quotations in two envelopes. The first envelope, called the techno-commercial bid, contains the eligibility, technical quality and performance aspects, commercial terms and conditions and documents sought in the tender, except the price and relevant financial details. In the second envelope, called the financial bid, the price quotations along with other financial details are submitted. Both the envelope are to be submitted together in a sealed outer envelope, as it would not be desirable to invite financial bids after opening of techno-commercial bids;
- iii) The techno-commercial bids are to be opened in the first instance on the bid opening date and time, and scrutinised and evaluated by the tender committee (TC) with reference to parameters prescribed in the tender documents and responsive, eligible and technically compliant bidders are decided;
- iv) Thereafter, in the second instance, the financial bids of only the techno-commercially compliant offers (as decided in the first instance above) are to be opened on a pre-announced date and time for further scrutiny, evaluation, ranking and placement of contract. The financial bids of technically non-compliant bidders should be returned unopened to the respective bidders by registered acknowledgement due/ reliable courier or any other mode with proof of delivery. In e-Procurement, financial bids of technically non-compliant offers would not get opened;

#### **3.3.4 Single Stage Multiple Envelope System (with post-qualification, 1S3E)**

As discussed below, where the procurement is moderately complex and the time, effort and money required from the bidder to participate in a tender is not very high, instead of a separate stage of Pre-Qualification bidding (as described below), a clear-cut, fail-pass qualification criteria can be asked to be submitted as the first (additional) envelope in a three envelope single stage bidding, so that a bidder's risk of having his

bid rejected on grounds of qualifications is remote if due diligence is exercised him. Strictly speaking, this is not a pre-qualification but a Post-qualification of bidders (as in case of Single Envelope and Two Envelope Bidding). In the first instance on the bid opening date only the post-qualification envelope (also containing the EMD and other eligibility documents) is opened and evaluated to qualify the responsive bidders who pass the post-qualification. Rest of procedure is same as two envelope system for only qualified bidders. Rest two envelopes of unqualified bidders are returned unopened to the respective bidders by registered acknowledgement due/ reliable courier or any other mode with proof of delivery;

### **3.3.5 Two Stage Bidding with Expression of Interest (Eoi)**

- i) There are instances where the Works to be procured are of complex nature and the procuring organization may not possess the full knowledge of either the various technical solutions available or the likely Contractors for such Works. To meet the desired objectives of a transparent procurement that ensures value for money simultaneously ensuring up gradation of technology & capacity building- it would be prudent to invite a two-stage Expression of Interest (Eoi) Bids and proceed to explore the market and to finalise specifications based on technical discussions/ presentations with the experienced Contractors in a transparent manner. Expression of Interest (Eoi) bids may be invited in following situations:
  - i) It is not feasible for the procuring entity to formulate detailed specifications or identify specific characteristics for the subject matter of procurement, without receiving inputs regarding its technical aspects from bidders;
  - ii) The character of the subject matter of procurement is subject to rapid technological advances or market fluctuations or both;
  - iii) The procuring entity seeks to enter into a contract for the purpose of research, experiment, study or development; or
  - iv) The bidder is expected to carry out a detailed survey or investigation and undertake a comprehensive assessment of risks, costs and obligations associated with the particular procurement.
- ii) The procedure for two stage bidding shall include the following, namely:

- i) In the first stage of the bidding process, the procuring entity shall invite EoI bids containing the broad objectives, technical and financial eligibility criteria, terms and conditions of the proposed procurement etc without a bid price. On receipt of the Expressions of Interest, technical discussions/ presentations may be held with the short-listed Contractors, which are prima facie considered technically and financially capable of executing the proposed work, giving equal opportunity to all such bidders to participate in the discussions. During these technical discussions stage the procurement agency may also add those other stake holders in the discussions who could add value to the decision making on the various technical aspects and evaluation criteria. Based on the discussions/ presentations so held, one or more acceptable technical solutions could be decided upon laying down detailed technical specifications for each acceptable technical solution, quality bench marks, warranty requirements, delivery milestones etc., in a manner that is consistent with the objectives of the transparent procurement. At the same time care should be taken to make the specifications generic in nature so as to provide equitable opportunities to the prospective bidders. Proper record of discussions/ presentations and the process of decision making should be kept;
- ii) In revising the relevant terms and conditions of the procurement, if found necessary as a result of discussions with the shortlisted bidders, the procuring entity shall not modify the fundamental nature of the procurement itself;
- iii) In the second stage of the bidding process, the procuring entity shall invite bids from all those bidders whose bids at the first stage were not rejected, to present final bid with bid prices in response to a revised set of terms and conditions of the procurement; and
- iv) Any bidder, invited to bid, but not in a position to execute the work due to modification in the specifications or terms and conditions, may withdraw from the bidding proceedings without forfeiting any bid security that he may have been required to provide or being penalised in any way, by declaring his intention to withdraw from the procurement proceedings with adequate justification.

- v) If the procuring entity is of the view that after EOI stage, there is likelihood of further participation by many more bidders and to avoid getting trapped into a legacy technology, the second stage bidding may not be restricted only to the shortlisted bidders of EOI stage and it may be so declared in the EOI document ab-initio. Thereafter in the second stage, normal OTE/ GTE bidding may be done. Such variant of EOI is called 'Non-committal' EOI.
- iii) **Invitation of EoI Tenders:** In EoI tenders, an advertisement inviting expression of interest should be published. The invitation to the EoI document should contain the following information:
- i) A copy of the advertisement;
  - ii) Objectives and scope of the requirement: This may include a brief description of objectives and broad scope of the requirement;
  - iii) Instructions to the bidders: This may include instructions regarding the nature of work, last date of submission, place of submission and any other related instructions;
  - iv) Formats for submission: This section should specify the format in which the bidders are expected to submit their EoI;
  - v) The EoI document should be made available to the interested bidder as a hard copy as well as on its website in a downloadable form; and

Pre-Notice Inviting Tender (NIT) Conference: In complex and innovative procurement cases or where the procuring entity may not have the required knowledge to formulate tender provisions, a pre-NIT conference may help the procuring entity in obtaining inputs from the industry. Such conferences should be widely publicised so that different potential suppliers can attend.

- iv) **Eligibility criteria:** The invitation to EoI should clearly lay down the eligibility criteria, which should be applied for short listing. Supporting documents required need to be clearly mentioned. An example of EoI eligibility criteria is shown in Table 1. However, appropriate eligibility criteria have to be designed, keeping in mind the specific objectives of the EoI. Criteria used should be measurable and based on documents that are verifiable. Definitions and explanatory notes shall be provided for each criteria that are simple and

unambiguous. It may also be advisable to cross-check and verify these documents, when in doubt.

**Table 1: An example of Eol eligibility criteria**

Criteria	Sub-criteria	Weightage*	Break-up of Weightages
Past experience of the firm with similar requirements		A*	
Technical capabilities		D*	
Financial strength of the bidder		B*	
	Turnover figures of the last three years		B1*
	Net profit figures of the last three years		B2*
Quality accreditations, licensing requirements		C*	

\*Weightages (out of 100) should be pre-decided and declared in Eol documents by the CA based on assessment of the required profiles of the potential bidders. The marking/ grading scheme for allotting marks (out of 100) for various parameters should also be laid down.

- v) **Evaluation of Eol:** The bidders should be evaluated for short listing, inter-alia, based on their past experience of performance in a similar context, financial strength and technical capabilities, among others. Each bidder should be assigned scores based on the sum of marks obtained for each parameter multiplied by the weightages assigned to that parameter. All bidders who secure the minimum required marks [normally 60 (sixty) per cent] should be shortlisted. The minimum qualifying marks should be specified in the Eol document. Alternatively, instead of weighted evaluation, the Eol document may specify a 'fail-pass criteria' with the minimum qualifying requirement for each of the criteria, such as minimum years of experience, minimum number of Works executed and minimum financial turnover. Under such circumstances, all bidders who meet the minimum requirement, as specified, should be shortlisted. The short list should normally comprise at least four firms.

### 3.3.6 Pre-qualification Bidding (PQB)

- i) In high value contracts or complex technical requirements where capability of source of supply is crucial (for example in construction of complex bridges), for

the successful performance of the contract, besides considering techno-commercial suitability, it is necessary to ensure that competition is only among bidders with requisite capabilities matching the challenges of the task. In case bidders with inadequate capability are allowed to compete, the better qualified bidders would be eliminated, since their bid price is likely to be higher commensurate with their higher capability and infrastructure. In such situations a separate stage of PQB bidding system may be considered (or single stage multiple envelope bidding – please refer para 3.3.4 above). In PQB stage, competent qualified tenderers are shortlisted prior to the issue of the bid document exclusively to shortlisted bidders in the second stage by using a Pre-qualification Criterion (PQC).

- ii) Pre-qualification Bids (PQB) should meet the norms of transparency, fairness and maintenance of competition. *Since PQB system may strain the transparency principle and there is heightened risk of cartelization among shortlisted bidders, PQB should be done only as an exception under specified circumstances. It should not be a routine/ normal mode of procurement of works and an eligibility criteria clause (post-qualification) as part of single/ two envelope/ cover tendering should suffice in normal/ routine situations. PQB bidding as a separate stage is contra-indicated in the following circumstances:*
  - i) Where procurement can be done through limited tender enquiries;
  - ii) Where the requirement is technically and commercially simple enough that pre-qualification of the bidder is not crucial for the performance of the contract, for example, routine residential buildings; and
  - iii) *Where the procurement is of medium value (say less than Rs 100 crore) or moderately complex in nature and the time, effort and money required from the bidder to participate in a tender is not very high, a clear-cut, (preferably fail-pass) post-qualification criteria can be specified in a three envelope single stage bidding (instead of separate PQB bidding), so that a bidder's risk of having his bid rejected on grounds of qualifications is remote if due diligence is exercised him.*
- iii) **Pre-qualification Criteria:** PQC should be unrestrictive enough so as not to leave out even one capable bidder/ contractor. Otherwise, it can lead to higher



prices of procurement/ works/ services. However, on the other hand, these criteria should be restrictive enough so as not to allow even one incapable bidder/ contractor and thus vitiate fair competition for capable bidders/ contractors to the detriment of the Procuring Entity's objectives. A misjudgement in either direction may be detrimental. Certain guidelines<sup>20</sup> regarding the framing of PQC have been laid down. Due consideration should be given while framing PQC, to its effect on adequacy of competition. PQC should therefore be carefully decided for each procurement with the approval of competent authority (CA). It should be clarified in the PQB documents that bidders have to submit authenticated documents in support of eligibility criteria. Specific criteria of 'pass' for each attribute will be as specified in the standard pre-qualification document. A bidder may be awarded more than one contract in a Tender if he: (a) meets the PQC of each of them; (b) demonstrates having the resources in respect of financial, personnel and equipment capabilities to meet the aggregate of the specified capabilities for each contract; and (c) has bidding capacity at the time of bidding, as calculated by the above formula, more than the total estimated cost of these works. The attributes PQC should cover inter-alia:

a) **General Construction Experience: Annual Turnover**

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

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

**The applicant should have:**

1. successfully completed or substantially completed similar works during last seven years ending last day of month previous to the

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<sup>20</sup> <http://cvc.nic.in/six.pdf>

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one in which applications are invited should be either of the following: -

- 1.1 Three similar completed works costing not less than the amount equal to 40(forty) percent of the estimated cost; or
- 1.2 Two similar completed works costing not less than the amount equal to 50 (fifty) percent of the estimated cost; or
- 1.3 One similar completed work costing not less than the amount equal to 80 (eighty) percent of the estimated cost; and
2. Definition of “similar work” should be clearly defined.
  - 2.1 The pre-qualification criteria specified in the tender document should neither be made very stringent nor very lax to restrict/ facilitate the entry of bidders. It is clarified that the guidelines issued are illustrative and the organizations may suitably modify these guidelines for specialized jobs/works, if considered necessary. However, it should be ensured that the PQ criteria are exhaustive, yet specific and there is fair competition. It should also be ensured that the PQ criteria are clearly stipulated in unambiguous terms in the bid documents.)
3. The applicant should also have achieved the minimum annual production value of the key construction activities (e.g. dredging, piling, or earthworks etc) stipulated.

The similarity of work shall be pre-defined based on the physical size, complexity, methods/ technology and/ or other characteristics described, and scope of works. Substantial completion shall be based on 80 (eighty) per cent (value wise) or more works completed under the contract (Note: Substantial completion should not be defined in terms of percentage completion, rather it should be based on functional consideration. For contracts under which the applicant participated as a joint venture member or sub-contractor, only the applicant’s share, by value, shall be considered to meet this requirement. For arriving at cost of similar work, the value of work executed shall be brought to current costing level by enhancing the actual value of work at simple rate of

seven percent per annum, calculated from the date of completion to the date of Bid opening.

Certificate for 'substantial completion' of project/work/asset should contain two parts. Part -I shall contain 'financial value of work done' and part-II shall contain 'certificate of functional completion of project/work/asset'.

**c) Financial Capabilities**

The applicant should have: (i) access to, or possess available liquid assets and other financial means (independent of any contractual advance payments) sufficient to meet the construction cash flow requirements for the subject contract, of the certain minimum amount specified; (ii) adequate sources of finance to meet the cash flow requirements of works currently in progress and for future contract commitments; and (iii) financial soundness as established by audited balance sheets and/ or financial statements. Average Annual Financial Turnover of the bidders during the last three years ending 31<sup>st</sup> March of the previous financial year should be at least 30% of the estimated cost.

**d) Personnel Capabilities**

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

1. A minimum qualification related to the work, if considered desirable;
2. A minimum number of years of experience in a similar position; and
3. A minimum number of years of experience and/ or number of comparable projects carried out in a specified number of preceding years.

**e) Equipment Capabilities**

The applicant should own, or have assured access (through hire, lease, purchase agreement, other commercial means) to the specified key items of

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

(e) **Available Bid Capacity**

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

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

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

M = Multiplier Factor (usually 1.5)

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

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

(f) **Pre-qualification of JV**

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

1. Qualifying factors to be met collectively: (i) annual turnover from construction; (ii) particular construction experience and key production rates; (iii) construction cash flow for the subject contract; (iv) personnel capabilities; and (v) equipment capabilities;

2. Qualifying factors for lead partner: (i) Annual Turnover from Construction; (ii) particular construction experience; (iii) financial capability to meet cash flow requirement of subject contract –not less than of 50 (fifty) per cent of the respective limits prescribed in case of individual contractors may be accepted; (iv) adequate sources to meet financial commitments on other contracts; (v) financial soundness;
3. Qualifying factors for other partner: Same as for lead partner except that for the factors specified in (2) (iii) above, a lower limit of 25 (twenty-five) per cent may be accepted instead of 50 (fifty) per cent.

(g) **Disqualification**

Even if an applicant meets the eligibility criteria (Please refer Para 4.5 below) and PQC, he shall be subject to disqualification if he or any of the constituent partners is found to have:

1. made misleading or false representations in the forms, statements, affidavits and attachments submitted in proof of the qualification requirements; and/ or;
2. Records of poor performance during the last five years, as on the date of application, such as abandoning the work, rescission of the contract for reasons which are attributable to non-performance of the contractor, inordinate delays in completion, consistent history of litigation resulting in awards against the contractor or any of the constituents, or financial failure due to bankruptcy, and so on. The rescission of a contract of venture JV on account of reasons other than non-performance, such as the most experienced partner (major partner) of JV pulling out;
3. On account of currency of debarment by any Government agency.

(iv) **Advertisement and Notification:** The invitation for PQB shall be processed (advertised, bid document preparation, publicity and evaluation, and so on) in the same manner as a normal GTE or OTE (as the situation calls for) tender, ensuring the widest possible coverage. The PQC and evaluation criterion should be notified clearly in the PQB documents. A minimum period of 21 (twenty-one) days may be allowed for the submission of PQBs. In the case of urgency, duly approved by CA, the time limit may be reduced to 30 (thirty) days. The PQB documents should also indicate

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- a) Scope of work (in physical as well monetary terms);
  - b) Pre-qualification criteria for single contractors and joint ventures;
  - c) Disqualification clause for misleading statements, or the applicant found to be ineligible on the basis of facts;
  - d) Various questionnaires and forms, required to be answered and filled by the prospective applicant, in support of pre-qualification;
  - e) Form of affidavit by the applicant in certification of the statements made and information given by him;
  - f) Indicative requirements of qualifications and experience of key personnel for the project;
  - g) Indicative requirements of annual production rates of key items of work;
  - h) Indicative requirements of major plant and equipment;
  - i) Indicative quantities of major items of work;
  - j) Description of the project area, its climate and language, site of work and means of access; and
  - k) Key plan of project area along with the site plan.
- v) **Empanelment of contractors:** Public authorities may empanel/ register contractors of those specific goods and services which are required by them regularly. Performance of such empanelled contractors should be reviewed periodically. The list of registered contractors shall be updated on a regular basis. The category/ class of contractors may be upgraded/ downgraded or contractors may be de-listed based on their performance. Empanelment of contractors shall be done in a fair and equitable manner, preferably online after giving due publicity. The practice of inviting bids for works tenders only from empanelled contractors may be confined to tenders up to certain threshold value, as decided by the project executing authorities.

### (vi) **Evaluation**

At least in high value and critical procurements, the credentials regarding experience and past performance, submitted by the successful bidder, may be verified as per PQC criteria, as far as reasonably feasible, from the parties for whom work has been claimed to be done. The procuring entity shall evaluate the qualifications of bidders

only in accordance with the PQC specified and shall give due publicity to the particulars of the bidders that are qualified on the relevant portals/ websites.

(vii) **Subsequent Procurement Tender**

The pre-qualification shall be valid for such period as may be specified in the pre-qualification document and for a single subsequent procurement within this period, except when it is determined that engaging in fresh pre-qualification shall not result in enhanced competition. During the period of such validity, the procuring entity shall invite bids for procurement (Request for Proposals – RfP) from pre-qualified bidders and all other bids may be treated as unsolicited offers which are normally rejected. In case bids are not invited within such a period, fresh pre-qualification shall be done. It is desirable that the time gap between the pre-qualification approval and floating of the linked main procurement tender is less than six months. EoI should clearly specify the duration for which the pre-qualification criteria(s) is valid. After the expiry of such duration whenever a subsequent procurement shall be carried out, fresh pre-qualification criteria shall be incorporated in such tender documents.

<b>3.3.7 Pre-Qualification Bidding – Risks and Mitigations:</b>	
<b>Risk</b>	<b>Mitigation</b>
<b>Pre-qualification criteria:</b> PQB has the potential of getting misused or being applied without considering the restrictive nature of competition. PQC should be relevant to the quality requirements and neither is very stringent nor very lax to restrict/ facilitate the entry of bidders. These criteria should be clear, unambiguous, exhaustive and yet specific. Also, there should be fair competition.	<b>Lay down</b> criteria when prequalification in single stage or two stage bidding is warranted. Also lay down model PQC criteria for different types of procurements. There must also be an understanding of the size, capacity and competencies of contractors in India and in the Global marketplace.
<b>Dangers of Anti-competitive bidding:</b> Since in a two stage PQB, shortlisted bidders are announced, there is heightened possibility of these bidders forming a cartel and quoting anti-competitive prices in the second stage of bidding.	Two stage PQB should be done only in appropriately justified situations. Alternatively, Single Stage multiple envelope system may be used for prequalification, in which chances of anti-competitive behaviour and time-taken is significantly lesser.
<b>Two Stage PQB</b> is a time-consuming process.	

<p><b>Contentious and Disputes:</b> Both the successful and unsuccessful bidders tend to view PQB process as a means for creating rights/ privileges/ entitlement for them by way of hair-splitting, contentious or viciously legalistic interpretations of PQC criteria, disregarding the very rationale of the PQB and PQC.</p>	<p>In the PQC a caveat against such tendencies may be included, asserting the right of procuring agency to interpret the PQC on common usage of terminologies and phrases in public procurement instead of legalistic and hair-splitting judgements and that their decision in this regard would be final.</p>
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### 3.4 Electronic Procurement (e-Procurement)

Rule 160 of GFR 2017 makes it mandatory for Ministries/ Departments to receive all bids through e-procurement portals in respect of all procurements. Ministries/ Departments which do not have a large volume of procurement or carry out procurements required only for day-to-day running of offices and also have not initiated e-procurement through any other solution provided so far, may use e-procurement solution developed by NIC i.e. Central Public Procurement Portal (CPPP). Other Ministries/ Departments may either use CPPP or engage any other service provider following due process. There are other service providers in Public Sector (e.g. MSTC) and Private sector which can be utilized for e-Procurement. In individual case where national security and strategic considerations demands confidentiality, Ministries/ Departments may exempt such cases from e-procurement after seeking approval of concerned Secretary and with concurrence of Financial Advisers. In case of tenders floated by Indian Missions Abroad, Competent Authority to decide the tender may exempt such case from e-procurement as the bidders may face problems in obtaining digital signatures which is pre-requisite for bidding. Details about the process of e-procurement are available from the service providers. *Appendix 3 also gives such generic details of the e-Procurement process.* The e-procurement solutions meet all the requirements notified by Department of Information Technology under the Guidelines for compliances to Quality requirements of e-procurement systems published on the e-Governance Standards Portal (<http://egovstandards.gov.in>)

### 3.5 Modes of Tendering

Offers from prospective bidders in public procurement must be invited according to a procedure that achieves a balance between the need for the widest competition, on one hand, and complexity of the procedure, on the other hand. Different modes of procurement and bidding systems are used to suit various procurement circumstances



to achieve this balance. There are laid down procedures for delegation of powers of procurement to various competent authorities under different modes as shown in DFPR. Each procuring entity may also publish its own Schedule of Procurement Powers (SOPP) delegating such powers within the entity.

The various modes of procurement that can be used in public procurement of works are:

- i) Open Tender Enquiry (OTE); and
- ii) Global Tender Enquiry (GTE);
- iii) Limited Tender Enquiry - LTE (up to Rs. five lakh); [Rule 139 (iii) of GFR, 2017]
- iv) Single Tender Enquiry (STE) or selection by nomination;
- v) Award of Work through Quotations.

### 3.5.1 <sup>21</sup>Open Tender Enquiry (OTE)

- i) In OTE, an attempt is made to attract the widest possible competition by publishing the NIT simultaneously on the designated websites and in the press (newspapers and trade journals). This is the default mode of procurement and gives the best value for money but the procedure is relatively complex and prolonged. *The systemic cost of this procedure may be high enough to be unviable for smaller value procurements.* OTE procedures through e-procurement or through traditional tendering should be adopted for procurement values above Rs five lakh.

#### ii) Terms and Conditions

- a) Participation should not be restricted to only Bidders enlisted with the Procuring Entity. Bidders already enlisted are also free to participate. However, a requirement that successful un-enlisted Bidders may have to get enlisted with the Procuring Entity, before contract is placed on them.
- b) GFR 2017 (Rule 159) makes it mandatory for all Ministries/ Departments of the Central Government, their attached and Subordinate Offices and Autonomous /Statutory Bodies to publish their tender enquiries, corrigenda thereon and details of bid awards on the Central Public Procurement Portal (CPPP) and has dispensed with print-advertisements in Newspaper etc. An

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<sup>21</sup>Rule 161, GFR 2017

organisation having its own web site should also publish all its advertised tender enquiries on the web site. The procuring entity should also post the complete bidding document in its web site and on CPPP to enable prospective bidders to make use of the document by downloading from the web site. The advertisements for invitation of tenders should give the complete web address from where the bidding documents can be downloaded (for details see para 4.3). In order to promote wider participation and ease of bidding, no cost of tender document may be charged for the tender documents downloaded by the bidders; and

- c) The tender documents should be prepared on the basis of the relevant approved SBD for the category of procurement. Further details on preparing tender documents are provided in Chapter 4.
- d) The sale/ availability for downloading of tender documents against NIT should not be restricted and should be available freely. Tender documents should be available for download free of cost up to the date of opening of tenders. The organization should also post the complete tender document in the web site and permit prospective tenderers to make use of the document downloaded from the web site. If the tender document is a priced one, there should be clear instructions for the tenderers in the document (which has been downloaded) to pay the amount by demand draft etc. along with the tender, prepared in the downloaded document.
- e) The procuring entity shall maintain proper records about the number of tender documents sold, list of parties to whom sold, details of the amount received through sale and, also, the number of unsold tender documents, which are to be cancelled after the opening of the tenders.

<b>3.5.2 OTE - Risks and Mitigations</b>	
<b>Risk</b>	<b>Mitigation</b>
Since the crux of this mode of procurement is attracting bids from all possible prospective bidders. The risk is that this may not be achieved, even after	It should be ensured that the NIT on the website is easily searchable and visible, not hidden under layers of clicks. The matter should not be left entirely to the website or media publicity alone. Due diligence should be done to locate likely bidders (including past bidders) and their attention should be drawn through SMS/ mail/

<b>3.5.2 OTE - Risks and Mitigations</b>	
<b>Risk</b>	<b>Mitigation</b>
<p>incurring extra cost of open tendering. This could be due to</p> <ul style="list-style-type: none"> <li>• Insufficient publicity;</li> <li>• Hindrances in availability of bid documents;</li> <li>• insufficient time for bid preparation; or</li> <li>• Due to onerous cost of bid-documents or EMD</li> </ul>	<p>email. All enlisted vendors/ contractors (in particular past successful vendors/ contractors) should be given intimation about forthcoming tenders via SMS/ mail/ email.</p> <p>Further a limited or open tender which results in only one effective offer shall be treated as a single tender enquiry situation, with relevant powers of approval etc.</p> <p>It should be also ensured that there is no impediment to issue/ access of bid documents.</p> <p>The due date fixed for opening of the tender shall be minimum 21 (twenty-one) days from the date of advertisement which may vary, taking into account the nature of material called for and delivery requirements. The due date may be subsequently extended with the approval of the CA, only if it is felt necessary to have better competition.</p> <p>The tender documents, shall be priced minimally (if at all priced, refer Para 4.4 Issue/ Availability and Cost of Tender Documents) keeping in view the value of the tender as also the cost of preparation and publicity of the tender documents.</p> <p>EMD should be sufficient to ensure that bidders honour their bids but at the same time should not be large enough to reduce competition.</p>
<p>Lack of clarity in description/ specification of requirement or undue stringency in qualifying criteria or other conditions</p>	<p>Mitigations of such risks can be addressed at the time of need assessment and procurement planning, so as to attract adequate competition.</p>

### 3.5.3 <sup>22</sup>Global Tender Enquiry (GTE)

- i) GTE is similar to OTE but, through appropriate advertising and provision for payment in Foreign Currencies through Letter of Credit, it is aimed at inviting the participation of inter-alia foreign firms. *The point of balance between VfM and cost/ complexity of procedure is further aggravated as compared to OTE.*

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<sup>22</sup>Rule 161, GFR 2017

*Development of local industry also needs to be kept in mind. Hence, it may be viable only in following situations:*

- a) Where required Technology/ specifications/ quality are not available within the country and alternatives available in the country are not suitable for the purpose;
- b) Very high value contracts (procuring entities may adopt threshold limit e.g. above Rs 100 crore) or where absence of a sufficient number of competent domestic bidders likely to comply with the required technical specifications, and in case of suspected cartel formation among indigenous bidders where participation of International bidders would enhance value for money.

ii) **Terms and Conditions**

- i) Publishing of tenders may be done as described in case of OTE above. In addition, in GTE tenders copies of NIT should be circulated to Indian Embassies in relevant countries and embassies of those countries in India; and; and
- ii) The tender documents, shall be priced minimally (if at all priced, refer Para 4.4 below) keeping in view the value of the tender as also the cost of preparation and publicity of the tender documents;
- iii) GTE tender documents must be in English and the price should be asked in Indian Rupees or US Dollars or Euros or Pound Sterling or Yen or in currencies under the Reserve Bank of India's notified basket of currencies or a mix of any of these currencies;
- iv) GTE tender documents must contain technical specifications which are in accordance with national requirements or else based on an international trade standard;
- v) The due date fixed for opening of the tender shall be usually about four to six weeks from the date of advertisement which may vary taking into account the nature of material called for as well as the time required to prepare the bids. The due date may be subsequently extended with the

approval of the CA only to promote better competition and also considering account delivery requirement.

**3.5.4 No Global Tender Enquiry (GTE) up to Rs. 200 crores<sup>23</sup>** shall be invited or such limit as may be prescribed by the Department of Expenditure from time to time. In exceptional cases where the Ministry or Department feels that there are special reasons for inviting GTE, for tenders below such limit, it may record its detailed justification and seek prior approval for relaxation from the Competent Authority specified by the Department of Expenditure.

- a) The proposal for approval shall be submitted by Administrative Ministry with the concurrence of Financial Advisor and approval of Secretary concerned. The proposals submitted by individual offices/ organisation (e.g. autonomous bodies, Central Public Sector Undertakings and subordinate offices of Central Government etc.) will not be entertained.
- b) The proposals shall be submitted along with duly filled format<sup>24</sup> (placed at Annexure-11).

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

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

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

<sup>24</sup>Issued by Cabinet Secretariat vide ID No. 213/2/1/2020-C,A,IV dated 06.10.2020

procurement through GTE. Web-link of published procurement plan should be provided in proposal.

### 3.5.6 Exemptions/ Clarifications

- a) For procurement of specialised equipments required for research purposes, and spares and consumables, for such equipments up to Rs. 200 crore for the use of Educational and Research Institutes, Secretary of Ministry/ Department concerned shall be the competent authority to approve issue of Global Tender Enquiries for such requirements subject to fulfilment of conditions as laid down in para 3.5.7 below. The equipment should be of specialized nature required for research purposes and not the routine equipment used in offices<sup>25</sup>.
- b) On procurement of spare parts of the equipments/ Plants & Machinery etc. on nomination basis from Original Equipments Manufacturers (OEMs) or Original Equipment Suppliers (OES) or Original Part Manufacturers (OPMs) as no competitive tenders are invited in such cases<sup>26</sup>.
- c) On procurement of services like Annual Maintenance Contract (AMC) and auxiliary/ add-on components for existing equipments/ Plant & Machinery etc. , which are procured from OEM/ OES/ OPM on nomination basis, as no competitive tenders are invited in such cases<sup>27</sup>.
- d) Where procuring entities need to issue GTEs to fulfil contractual commitments/ obligations entered by them before 15.05.2020 i.e. bid has been submitted by them to their clients before 15.05.2020. similarly, where procuring entities need to issue GTEs in view of existing collaboration agreements entered by them with foreign suppliers before 15.05.2020<sup>28</sup>.
- e) Based on the reference received from Ministry of Health & Family Welfare, GTE can be floated for 128 Medical Devices (placed at Annexure-12). The exemptions is provided for such items till 31.03.2023. MoHFW will review domestic availability of these items at the end of 2022, keeping in view the Production Linked Incentive (PLI) scheme etc. launched by Department of

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

<sup>26</sup>Notified vide OM No. 12/17/2019-PPD issued by Department of Expenditure dated 29.10.2020

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

<sup>28</sup>Notified vide OM No. 4/1/2021-PPD issued by Department of Expenditure dated 12.03.2021

Pharmaceuticals in Medical Devices and other relevant factors, in consultation with Department of Expenditure<sup>29</sup>.

- f) For projects funded by Multilateral Development Banks (MDBs like The World Bank, Asian Development Bank etc.)/ Bilateral Funding Agencies (BFAs), where the procurement is governed by the conditions negotiated in the loan agreement, and where the project executing agencies from time to time further award works to various Autonomous Bodies (ABs)/ Central Public Sector Enterprises (CPSEs) etc., the Secretary of the Ministry/ Department responsible for execution of such project shall be the Competent Authority for approval for issuance of GTEs by such Autonomous Bodies/ CPSEs etc<sup>30</sup>.

- g) Exemption to semiconductor..

### 3.5.7 [Refer to para 3.5.6 (a) above]

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

- a) Identification of equipment being procured time and again from abroad, and help developing them in India by identifying potential manufacturers and providing them technical help and expertise for developing the equipment. This programme will be coordinated by the Empowered Technology Group (constituted by Cabinet and chaired by the Principal Scientific Advisor (PSA).
- b) Efforts to promote technology transfer through agreements or to encourage technological collaboration with foreign manufacturing in India at the Start-ups set up in Research Parks.
- c) Sharing and updating of information about the availability of research equipment across various Indian Institutes on a single portal (the I-STEM<sup>31</sup> 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.

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

<sup>30</sup>Notified vide OM No. F.7/12/2021-PPD-I issued by Department of Expenditure dated 27.07.2021

<sup>31</sup><https://www.istem.gov.in/>

- e) Regular interaction between academia and Indian industry organizations at the level of the institution about the requirement of equipment of foreign origin and for encouraging the domestic manufacturing.
- f) Regular requirement of proprietary/ non-proprietary research consumables may be assessed and domestic alternatives are explored for use.
- g) A national level programme for indigenous development of scientific equipment be initiated by the Office of PSA.
- h) Without compromising quality, institutes should be flexible with specifications so that domestic manufactures are encouraged to meet requirements.

#### 3.5.7.2 **Guidelines for resorting to GTE**

- a) Market assessment should be done by the concerned institution, as certified by the Head of the Institution. Only after no Indian manufacturer is found, a GTE should be issued.
- b) In case no Indian manufacturer/ suppliers are found, procurement may be done, through GTE, subject to compliance of provisions of GFR and requirement of procurement through GeM.
- c) DEAN (R&D) or an appropriate authority within the institute will issue certificates as per para 3.5.7.3 below, before inviting GTE. As a reporting matter in the Board of Governors, such certificates should be tabled, and also shared with Office of the PSA, DPIIT and concerned Administrative Ministry.
- d) The information about the procurement of equipment should be shared across various Educational and Research Institutes, through the I-STEM portal, already established for this purpose by the PSA's office. This will allow the equipment to be used by other institutions too, for research purposes.
- e) Analyze the equipment being procured time and again from abroad, and help developing them in India by identifying potential manufacturers and providing them technical assistance and expertise for developing the equipment. Half yearly reports on this action to be shared by the Institutes with the Office of the PSA, DPIIT and concerned Administrative Ministry/ A national level scheme will also be initiated by the Office of PSA for indigenous development of scientific equipment.
- f) Preference to local suppliers over foreign supplier as per the existing Government of India guidelines, should be observed as applicable.



### 3.5.7.3 Certificates to be issued

- 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).

<b>3.5.8 GTE - Risks and Mitigations</b>	
<b>Risks</b>	<b>Mitigations</b>
Risks are same as in OTE	Same mitigation as in case of OTE also applies here.
Moreover, publicity may not reach targeted foreign bidders	NIT should also be sent to commercial attachés in foreign embassies in India and to Indian embassies in relevant foreign countries for inviting the attention of likely foreign bidders. The selection of the embassies will depend on the possibility of availability of the required goods in such countries.
Escalation of costs due to forex rate variation during implementation.	Wherever required technical expertise is available, the possibility of floating open tender than GTE may be explored.
Involvement of agents of foreign bidders in GTE procurements is also a major risk area	Procurements should preferably be made directly from the manufacturers. Either the agent on behalf of the foreign principal or the foreign principal directly could bid in a tender, but not both. Further, in cases where agents participate in a tender on behalf of one manufacturer, they should not be allowed to quote on behalf of another manufacturer along with the first manufacturer. Commissions and scope of services to/ by the agents should be explicit and transparent in the bids/ contracts

### 3.5.9 <sup>32</sup>Limited Tender Enquiry (LTE)

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<sup>32</sup>Rule 162, GFR 2017

- i) LTE is a restricted competition procurement, where a preselected list of bidders (enlisted with the Procuring Entity along with those enlisted with other Public Works Organisations/ Works PSUs) is directly approached for bidding; bids from uninvited bidders are treated as unsolicited and are normally not entertained, except in special circumstances. *This mode provides a short and simple procedure, but may not provide as good a VFM as in case of open tendering – still a good balance for procurements below a threshold.* LTE procedures should be default mode of procurement when the estimated value of procurement is less than Rs. five lakh or when limited numbers of tenderers are known to possess requisite skills, technology and resources, by reason of their high complex or specialized nature, or for works of a secret nature
- ii) **Terms and Conditions**
- a) Copies of the bidding documents should be sent free of cost (except in case of priced specifications/ drawings) directly by speed post/ courier/ e-mail to firms which are enlisted bidders/ contractors. Further, Procuring Entity should also mandatorily publish its limited tender enquiries on Central Public Procurement Portal (CPPP). Apart from CPPP, the organisations should publish the tender enquiries on the Department's or Ministry's web site. The unsolicited bids, if any should not be accepted; however Ministries/ Departments should evolve a system by which interested firms can enlist and bid in next round of tendering. However, under the following exceptional circumstances, these may be considered for acceptance at the next higher level of competency:
- 1) Inadequate Competition
  - 2) Non-availability of suitable quotations from enlisted bidders
  - 3) Urgent demand and capacity/ capability of the firm offering the unsolicited being known, etc.
- b) A simplified Bid Document should be used, instead of a detailed Bid Document. The minimum number of bidders to whom LTE should be sent is more than three. In case less than three approved bidders/ contractors are available, LTE may be sent to the available approved

bidders/ contractors with approval of the CA, duly recording the reasons. The requirement should then be marked for development of more sources by the Bidder Enlistment section.

<b>3.5.10 LTE - Risks and Mitigations</b>	
<b>Risk</b>	<b>Mitigation</b>
Major risk in this mode is that the demand may be artificially split to avoid OTE or higher level approvals	The e-procurement portal may be programmed to raise an alert if the same item is attempted to be procured through LTE repeatedly. Audit should take up a larger percentage of cases in LTE for review.
There is a risk that LTE may not attract sufficient number of bids and sometimes there may be a single acceptable offer. This may be because of an insufficient database of enlisted/ known vendors. It could also be due to bid documents not reaching the targeted bidders – intentionally or otherwise. It could also be due to bidders not getting adequate time for submission of bids. On the other hand, unsolicited bidders may also quote – causing a transparency dilemma about consideration of such offers.	Maintenance of list of enlisted suppliers is a sine-qua-non for LTE. The List of enlisted vendors needs to be reviewed periodically to ensure adequate number of qualified suppliers To ensure sufficient response, in addition to mails/ emails to selected vendors, web-based publicity should be given for limited tenders, with suitable clarifications that unsolicited bids shall not be considered. Further a limited or open tender which results in only one effective offer shall be treated as a single tender enquiry situation, with relevant powers of approval etc.  Adequate time should be given for submission of quotes, which should not be less than three weeks. A longer period (six weeks) could be given in case of import of the materials and, in complex cases, if justifications are given and allowed.
There is also a risk that the selection of vendors may not be transparent. At the evaluation stage, some invited bidders may be passed over on grounds of being ineligible/ unreliable.	All major procuring departments must keep a list of enlisted bidders for use in restricted bidding. Suppliers or contractors should be selected in a non-discriminatory manner. All past successful vendors/ bidders should invariably be invited. In case it is proposed to exclude any enlisted/ approved vendor/ contractor from being shortlisted for inviting LTE, detailed reasons, such as failure in supply, should be duly recorded and approval of the CA be taken before exclusion. The selection

	of bidders should be with due diligence, to ensure that bidders who do not meet eligibility criteria do not get shortlisted. At the evaluation stage, in LTE, passing over of a duly shortlisted bidder on grounds of poor past performance or eligibility may raise questions about transparency.
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### 3.5.11 <sup>33</sup>Single Tender Enquiry (STE) or Selection by Nomination

- i) The selection by direct negotiation/ nomination is called a single tender. This mode may be shortest but since it may provide lesser VfM as compared to LTE/ OTE and may also strain the transparency principle, it should be resorted to only under following conditions:
- a) There is an urgent need for the work and engaging in competitive tendering process would, therefore, be impractical, provided that the circumstances giving rise to the urgency were neither foreseeable by procuring entity nor the result of dilatory conduct on its part.
  - b) Works that represent a natural continuation of previous work carried out by the firm when considering the limited size of the additional work in relation to the original procurement and the reasonableness of the price it will be cost effective to resort to single source procurement. However, the incremental work should not be more than 25 (twenty-five) percent of the original contract value;
  - c) In case of an emergency situation, situations arising after natural disasters, situations where timely completion of the work is of utmost importance subject to the reason for such decision being recorded and approval of the competent authority obtained.
  - d) Situations where execution of the work may involve use of proprietary techniques or only one contractor has requisite expertise.
  - e) The procurement entity engages in procurement involving national defence or national security and determines that single source procurement is the most appropriate method of procurement.

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<sup>33</sup>Rule 166, GFR 2017

- f) Under some special circumstances, it may become necessary to select a particular Agency where adequate justification is available for such single-source selection in the context of the overall interest of the Ministry or Department.

ii) **Terms and Conditions**

- a) The reasons for a STE and selection of a particular firm must be recorded and approved by the CA as per the delegation of powers laid down at in DFPR/ SoPP, prior to single tendering. Powers of procurement of STE are more restricted.
- b) The Procuring Entity shall ensure fairness and equity, and shall have a procedure in place to ensure that: the prices are reasonable and consistent with market rates for work of a similar nature; and the required work is not split into smaller sized procurements.
- c) All works/purchase/ consultancy contracts awarded on nomination basis should be brought to the notice of following authorities for information-
1. The Secretary, in case of ministries/departments.
  2. The Board of directors or equivalent managing body, in case of Public Sector Undertakings, Public Sector Banks, Insurance companies, etc;
  3. The Chief Executive of the organisation where such a managing body is not in existence.

The report relating to such awards on nomination basis shall be submitted to the Secretary/Board/Chief Executive /equivalent managing body, every quarter. The audit committee or similar unit in the organisation may be required to check at least 10% of such cases.]

<b>3.5.12 STE - Risks and Mitigations</b>	
<b>Risk</b>	<b>Mitigation</b>
Risks as applicable in both LTE and OTE are also applicable here. In addition there is a risk that this mode may be	All mitigation strategies of LTE and OTE would apply here also. In addition the systems of checks and balances should be tighter by way of enhanced and severely restricted delegation of powers

<p>used unjustifiably to avoid open tendering (OTE).</p>	<p>in this regard for certification of urgency and approval of this mode of procurement. A system of reports from the authority signing the urgency certificate and post facto review of utilisation of received goods/ works/ services to tackle the expressed urgency may be laid down. Audit should take up the bulk of such cases for review to judge the genuineness of urgency certification.</p>
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### 3.5.13 Award of Work through Quotations

- i) Use of quotations up to Rs Five lakh in each instance shall be adopted for procurement of readily available goods that are not specially produced to the particular specifications and for which there is an established market.
- ii) Procurement entity shall not divide its procurement into separate contracts to bring the amount less than the amount set forth for such purpose.
- iii) Procurement entity shall request quotations from as many contractors as practicable but positively from at least three contractors. Each contractor from whom a quotation is requested, shall be informed whether any elements and other than the charges for the goods themselves, such as, transportation and insurance charges, duties and taxes are to be included in the price.
- iv) Each contractor or contractor is permitted to give only one price quotation and is not permitted to change its quotation.
- v) Award of work through quotations shall be resorted only in emergent cases and suitable reasons shall be recorded.

**3.5.14 Award of works in stalled contracts:** It is noted that in cases, where a contractor abandons or stops the work mid-way, either due to insolvency or a dispute or other reason, engagement of the new contractor takes considerable time and in the meanwhile public money is locked up in assets which cannot be utilized, apart from inconvenience and loss of amenities to the general public due to such half completed works.

Notwithstanding anything in the GFR or the Manual, procuring entities should devise methods (including limited/ single tenders) to deal with part completed contracts, wherever the work is abandoned by the contractor mid-way. However, for issuance of

limited/single tenders in such cases, at least 20% of work should have been billed by the contractor who has abandoned the work. Procurement approval of such limited/single tender should be at the next higher level, or such level as may be prescribed.

**3.5.15 Back to Back Tie Up by PSUs:** Construction PSUs while awarding the work will take following points into consideration:

- a) PSUs (when bag the contract from the client Department) as a contractor, has to execute the work by functioning like a contractor instead of sub-letting the 100% work on back to back basis.
- b) Open tenders to be invited for selection of sub-contractors/pre-tender associate(s) as far as possible.
- c) In case, it is not possible to invite open tenders, selection should be carried out by inviting limited tenders from the panel approved in the following manner. Panel of contractors are to be prepared for different categories monetary limits, regions, in a transparent manner clearly publishing the eligibility criteria etc. The above panel is to be updated every year.
- d) Tenders to be opened confidentially by a high level committee to maintain the secrecy of rates, if required. Tender opening register should be maintained in this regard duly signed by the officers opening the tender and kept confidentially. This should be available for perusal when required by audit/ vigilance.
- e) The terms and conditions of the contract of the client especially those pertaining to subletting of works should be strictly adhered to by the PSUs.
- f) Adequate staff to be deployed by the PSUs to ensure quality in construction etc.
- g) The record of enlistment/updation of contractor and tender opening register shall be produced to the CTEO as well as audit officials when demanded for scrutiny.

## **Chapter 4: Preparing Bid Documents, Publication, Receipt and Opening of Bids**

### **4.1 Bid Documents**

4.1.1 The text of the bid document should be self-contained and comprehensive without any ambiguity. All essential information, which a bidder needs for sending responsive bid, should be clearly spelt out in the bidding document in simple language. This will also enable the prospective bidders to formulate and send their competitive bids with confidence. A carefully prepared tender document avoids delays and complaints. Hence, it is worth spending time and effort on this even in cases of urgency.

4.1.2 In case of a limited tender, instead of a full set of SBD, only a machine numbered simplified tender form is used as the tender document, after filling up the name of the bidder and details of requirements. It has the “terms and conditions of tender” printed on the obverse side. In any case, all enlisted bidders, who normally are invited to quote in such limited tenders, have already acknowledged acceptance of “general conditions of contract” as part of the enlistment application, which are applicable to such procurements, in additions to “terms and conditions of tender” on the obverse of tender form. If necessary, specifications and drawings or any other document may be enclosed with the limited tender form.

4.1.3 While SBDs would be complete in itself and may be slightly different for various categories of procurements, these must necessarily address the following essential aspects:

- i) Description of the subject matter of procurement, its specifications including the nature, quantity, time and location where the construction is to be effective, any incidental services to be performed.;
- ii) Limitation or preference for participation by bidders in terms of the government policies in accordance with Public Procurement (Preference to Make in India), Order 2017 dated 28.05.2018 issued by Department of Industrial Policy & Promotion etc.);



- iii) The criteria for eligibility and qualification to be met by the bidder (the eligibility criteria should take care of the contractor's eligibility to receive such a government contract). The qualification criteria should take care of the contractor's past performance, experience, technical competence, financial strength to handle the contract successfully, compliance with environmental protection regulations/ Environment Management System and so on;
- iv) Requirements as to documentary evidence, which must be submitted by contractors or contractors to demonstrate their qualifications.
- v) The procedure for preparation and submission of tenders by the bidders including date, time and place for obtaining, submitting and opening of the bids;
- vi) Suitable provisions for enabling a bidder to seek clarification/ question the bidding conditions, bidding process and/ or rejection of its bid. Names and contact details of IEM in case of Integrity Pact;
- vii) Criteria for determining the responsiveness of bids, criteria as well as factors to be taken into account for evaluating the bids on a common platform and the criteria for awarding the contract to the responsive, most advantageous (lowest/ highest as the case may be) bidder should be clearly indicated in the bidding documents;
- viii) Suitable provision for settlement of disputes, if any, emanating from the resultant contract, should be kept in the bidding document; and
- ix) Essential terms of the procurement contract including a suitable clause mentioning that the resultant contract will be interpreted under Indian laws.
- x) The names, designations and addresses of one or more officers or employees of the procuring entity who are authorized to communicate directly with and to receive communications directly from contractors or contractors in connection with the procurement proceedings.
- xi) Any formalities that will be required once a tender has been accepted for procurement contract to enter into force.
- xii) **Tender Documents**
  - a. The tender document is the fundamental document in the public procurement process as after award of the contract it becomes part of the contract agreement. All necessary provisions governing the contract

should be clearly provided in the tender document. Examples are technical specifications, drawings, commercial terms and conditions including payment terms, obligations of the procuring entity and the contractor timeframe/milestones for execution of the project, tax implications, compliance framework for statutory and other norms, reporting on progress/ quality of the work, dispute resolution. Provisions/ clauses in the tender document should be clear to avoid differences in interpretation and possible time overrun, cost overrun and quality compromises. Comprehensive survey & solid investigation report, area grading & mapping of underground facilities, where project is to be executed, may be made available and made part of tender document. Model Tender Documents issued by the DoE may be used, with due customisation.

- b. In tenders containing General Conditions of Contract (GCC), additional/ special conditions to be incorporated in the tender document, shall be need based and specific. The GCCs should not be altered and changes, if any, in conditions of contract should only be made through the Special Conditions of Contract.
- c. Identification of milestones may be done in an optimal and sequential manner and the same may be stipulated in the tender document along with enabling provisions.
- d. Payment terms prescribed in the tender document should be such that the payment made to contractors at every stage is commensurate to quantum of work done, subject to any requirements for initial mobilisation.
- e. Procuring entities may issue instructions regarding appropriate delegation of authority for approval of deviations, variations and changes in the scope of the contract.
- f. Provision of price variation, wherever considered appropriate, as well as methodology for calculation of the same shall be clearly stipulated in the tender document.
- g. Quality Assurance Plan (QAP) may be incorporated in the tender document/ contract. Schedule of visit by various levels of officials should also form part of the QAP.

- h. Technical and Financial eligibility Criteria for the bidders are important in the public procurement process. They shall be clear and fair, having regard to the specific circumstances of the procurement. Appropriate parameters should be prescribed in the eligibility criteria for bidders, to enable selection of the right type of bidders in public interest, balancing considerations of quality, time and cost.
- i. Open online tendering should be the default method to ensure efficiency of procurement. Public authorities should also keep the experience criteria broad based so that bidders with experience in similar nature of works in various sectors can participate.
- j. Pre-bid conference may be conducted for large value tenders by Procuring Entities. The Place and time of pre-bid conferences should be mentioned in the tender document and/ or publicized through the website of the procuring entity and/ or through newspaper publication. )

## **4.2 Preparation of Bid Documents by Procuring Entity**

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

### **Volume 1**

- i) Notice Inviting Tenders (NIT)
- ii) Section I Instructions to Bidders (ITB) and Appendix to ITB (AITB)
- iii) Section II General Conditions of Contract (GCC)

- iv) Section III Special Conditions of Contract (SCC)

**Volume 2**

- i) Section IV Technical Specifications

**Volume 3**

- i) Section V Forms of Bid
- ii) Section VI Bill of Quantities
- iii) Section VII Standard Formats: Bid Security, Performance Security, Advance Payment Security, Form of Agreement
- iv) Section VIII Schedules for Supplementary Information
- v) Section IX Sample Forms for updating qualification information, and so on

**Volume 4**

- i) Section X Drawings

**Volume 5**

- i) Section XI Documents to be furnished by the bidder

**4.2.2 Special Conditions of Contract (SCC):**

Any additions, deletions, or variations to the GCC felt necessary for a particular project shall be done by an appropriate entry in the SCC. Conditions of a special nature and project-specific conditions shall be rationally incorporated. Special conditions shall be approved by the authority competent to accept the tender. While drafting SCC, the circumstances warranting them shall be duly considered, including but not limited to the following:

- a) Where the wording in GCC specifically requires that further information is to be included in SCC and the conditions would not be complete without that information;
- b) Where the wording in GCC indicates that supplementary information may be included in SCC, but the conditions would still be complete without that information;
- c) Where the type, circumstances or locality of the works requires additional clauses or sub-clauses; and

- d) Where the laws of the country, or exceptional circumstances, necessitate alterations in GCC. Such alterations are effected by stating in SCC that a particular clause, or part of a clause in GCC, is deleted and giving the substitute clause or part, as applicable.

#### 4.2.3 Bid Validity

A bid shall remain valid for the period mentioned in the ITB/ AITB [normally 90 (ninety) days for OTE and 120 (one hundred and twenty) days for GTE]. In exceptional circumstances, the consent of the bidder may be requested in writing for an extension to the period of bid validity. Such requests should preferably be made much before the expiry of the bid validity. The bid security provided shall also be suitably extended. A bidder accepting the request and granting extension shall not be permitted to modify his bid.

Reasons for seeking extension of bid validity should be recorded by the procuring officers at the time of taking such decisions itself.

### 4.3 Publication of Bid Documents

It is mandatory for all Ministries/ Departments of the Central Government, their attached and Subordinate Offices and Autonomous /Statutory Bodies to publish their tender enquiries, corrigenda thereon and details of bid awards on the Central Public Procurement Portal (CPPP)<sup>34</sup>. If the department has its own website/ e-Procurement Portal, it should also publish all its advertised tender enquiries on such website/ Portal also. GFR 2017 has dispensed with advertisements in Newspapers. However, in exceptional circumstances, procuring entities may issue the advertisement in newspapers as deemed fit. Such advertisement should also consist of the link of website from where the detailed advertisement and bidding document can be seen and downloaded. Individual cases where confidentiality is required, for reasons of national security, would be exempted from the mandatory e-publishing requirement. The decision to exempt any case on the said grounds should be approved by the Secretary of the Ministry/ Department with the concurrence of the concerned Financial Advisor. In the case of Autonomous Bodies and Statutory Bodies' approval of the Head of the Body with the concurrence of the Head of the Finance should be obtained in each such case. Statistical information on the number of cases in which exemption

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<sup>34</sup>Rule 159, GFR 2017

was granted and the value of the concerned contract should be intimated on a Quarterly basis to the Ministry of Finance, Department of Expenditure. In order to promote wider participation and ease of bidding, no cost of tender document may be charged for the tender documents downloaded by the bidders. To ensure competition, attention of all likely tenderers, for example, enlisted vendors, past contractors and other known potential contractors, should be invited to the NIT through email/ SMSs/ letters. In e-procurement, the website may be programmed to generate these alerts automatically. In case of procurement through a limited tender, the NIT may be uploaded on CPPP Portal and Procuring Entity's website with a note saying:

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

Printouts of the tenders published on the website should be collected and kept on record as a proof of publicity. The complete details of the dates, on which advertisements actually appeared on the website, should be indicated while sending cases to higher authorities.

In order to increase certainty in the procurement process, all Ministries/Departments shall fix days in every month for issuance of Notice Inviting Tender (NIT), and Tender Opening across various locations, divisions or levels. For example, the tenders may be released by the Ministries/Departments three times a month, i.e., on 10<sup>th</sup>, 20<sup>th</sup> and 30<sup>th</sup> of every month and the bid submission dates are so determined that bids are opened only on fixed scheduled dates, viz, 7<sup>th</sup>, 17<sup>th</sup> and 27<sup>th</sup> of every month. In case there are practical difficulties due to large volume of tenders in having fixed days across the whole organisation, the Ministries/Departments/CPSUs may decide to have region-wise, zone-wise, or division-wise fixed days for issuance of NIT and Opening of Tenders. For procurement of highly technological and complex works, tender submission dates may be extended by the Ministries/Departments/CPSUs in order to reply queries in the pre-bid meetings or any other justifiable reason. For example, CPWD, which is a large procurer of works have region-wise fixed days for issuance of NITs and opening of tenders as per the following table:

**Example 1: Fixation of Days by CPWD**

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

**Note:**

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

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

**4.4 Issue/ Availability and Cost of tender documents**

The sale/ availability for downloading of tender documents against NIT should not be restricted. Tender documents should preferably be sold/ available for download up to the date of opening of tenders. The organization should also post the complete tender document in its web site and on CPPP to enable prospective tenderers to make use of the document downloaded from the web site. The advertisement for invitation of tenders should give complete web-address from where bid documents can be downloaded. The procuring entity shall maintain proper records about the number of tender documents sold, list of parties to whom sold, details of the amount received through sale and, also, the number of unsold tender documents, which are to be cancelled after the opening of the tenders.

**4.5 Eligibility and Qualifications of Bidders**

**4.5.1 Eligibility of Bidders**

- i) All eligible bidders meeting the eligibility criteria as defined in ITB can participate in the tender. The applicant should be a private or government-owned legal entity.

- ii) Bidder should have valid registration with Employees Provident Fund organization under 'EPF and Miscellaneous Provisions Act, 1952'.
- iii) For package size exceeding certain values [say - Rs. 10 (ten) crore], Joint Ventures may be allowed. Maximum number of partners in JV shall be limited (say – three). In case of JV, all the partners shall be jointly and severally liable for the successful completion of the work.
- iv) A firm that has been engaged by Ministry/ Department to provide consultancy services for the preparation or implementation of a project, and any of its affiliates (associates, subsidiary, JV partner), shall not be eligible for subsequently providing goods or works (other than a continuation of the firm's earlier consultancy services) for the same project.
- v) A firm determined non-performing by the Procuring Entity shall not be eligible to bid during the period so determined.
- vi) The bidder must not have in his employment:
  - a) The near relations (defined as first blood relations, and their spouses, of the bidder or the bidder's spouse) of persons involved in decision making in the procurement as listed in the Appendix to ITB.
  - b) Without Government permission, any person who retired as gazetted officer within the last two years of the rank and from the departments listed in the Appendix to ITB.

#### 4.5.2 Qualification of Bidders

Qualification of bidders is done on Pre-qualification Bidding basis (refer Para 3.3.6, PQB) or on post-qualification basis (refer Para 3.3.4, single stage multiple envelope system). In both cases Qualification criteria needs to be laid down in the Bid Document (refer para 3.3.6 iii). It is of utmost importance to develop new contractors and also to provide avenues to Sub-contractors, since they may not get opportunities to accumulate the required credentials to compete in normal tenders. To enable a window of entry for such Start-ups and sub-contractors, in small value contracts (e.g. repair contracts upto Rs. 30 lakh) the requirements regarding General Construction Experience, Particular Construction Experience and Available Bid Capacity may not be insisted upon provided the bidders fulfil other criteria regarding Financial/



Personnel/ Equipment capabilities [refer para 3.3.6 (iii)]. However to avoid overstretching of their resources, no such contractors may be allowed to hold more than 2 contracts under relaxed credentials, at any given time.

#### **4.6 Clarification of Tender Documents**

A prospective bidder requiring clarification on the tender documents may notify the Procuring Entity in writing, well before the due date of submission of bids, and a response must be sent in writing regarding the clarifications sought prior to the date of opening of the tenders. Copies of the query of any bidder and clarification issued must be sent to all prospective bidders who have received the tender documents. There shall be no asymmetry of information as regard to any bidder.

#### **4.7 Amendment of Tender Documents**

At any time prior to the date of submission of bids, the Procuring Entity may, whether at his own initiative or in response to a clarification sought by a prospective bidder, amend bid documents by issuing a corrigendum. The corrigendum shall be notified in writing by registered post/ speed post/ courier/ email to all known prospective bidders and shall be published on CPPP. Copies of such amendments are also to be prominently attached in the unsold sets of the tender documents (which are available for sale, if any), including the tender documents uploaded on the website. When the amendment/ modification changes the requirement significantly and/ or when there is not much time left for the tenderers to respond to such amendments, it is better to prepare a revised tender and the time and date of submission of tenders are also to be extended suitably. Depending on the situation, such an amendment may also need fresh publication adopting the same procedure as for publication of the original tender enquiry. This is very critical as the amendment may lead to any new bidder meeting the qualifying criteria and publicity is required to ensure a level playing field.

#### **4.8 Pre-bid Conference**

In case of turnkey contract(s) or contract(s) of special nature for procurement of sophisticated and costly work/ services/ equipment or wherever felt necessary, a suitable provision is to be kept in the bidding documents for inviting the bidders or their official representatives to attend one or more pre-bid conference at a specified place and time, for clarifying issues and clearing doubts, if any, about the specifications/

Terms of Reference and other allied technical/ commercial details of the work, services, plant, equipment and machinery etc.

Bidders should be asked to submit written queries in advance of the conference. After the conference, Minutes of the pre-bid meeting including all the questions and replies shall be prepared and approved by the competent authority. In order to bring clarity to replies, all questions/ answers and needed amendments should be merged in the sequence of clauses in the bidding document. It is a good practice to consolidate all queries received either as part of pre-bid meeting or just after issuing bidding documents and deal with in a comprehensive way. Minutes of the meeting, including the text of the questions raised and the responses given, shall be transmitted without delay to all purchasers of the bidding documents. The techno-commercial requirements may be revised if considered necessary by way of issue of a formal corrigendum (mere minutes of the meeting of pre-bid conference would not suffice) and shared with all the bidders who purchase or have purchased the bid documents. These pre-bid minutes shall be published along with the bid documents on the appropriate website including CPPP. After the issue of clarifications/ modifications consequent to the pre-bid meeting, at least two clear weeks should be given for submission of bids.

#### **4.9 Submission of Bids by Bidders**

4.9.1 The procuring entity shall fix a place and a specific date and time as the deadline for the submission of tenders. The bid shall be submitted by the bidder well before the deadline (original or extended as the case may be) for submission (to avoid rush in internet traffic). The use of offline mode of tendering shall be done only under the circumstances where exemptions for e-Procurement are provided as per extant instructions.

**Part 1 Technical Bid:** The technical bid shall be hardbound (in other than e-Procurement) and all pages serially numbered. Hardbound implies such binding between two covers through stitching or otherwise whereby it may not be possible to replace any paper without disturbing the document. In e-Procurement, the submission would be online.

- i) Bid security for an amount and in form as specified in ITB;
- ii) Power of attorney;

- iii) Qualification information and supporting documents (if prequalification has been done, original qualification will be updated);
- iv) Evidence of access to a revolving line of credit;
- v) Undertaking for making available the required key equipment as specified;
- vi) Undertaking for making available the required key personnel as specified;
- vii) Annual audited turnover;
- viii) Current contract commitments/ works in progress;
- ix) Financial data;
- x) Additional information regarding litigation, debarment, arbitration, and so on;
- xi) Joint Venture (JV) agreement (or a letter of intent to create a JV in case of award of Contract) in case the bidder is a JV;
- xii) Proposed methodology and programme for execution of work duly supported by equipment planning and QA procedures proposed to be adopted by the bidder; and
- xiii) Affidavit concerning Submission of Bid and abiding by Bid Conditions.

#### **Part II Financial Bid**

- i) Form of bid – duly filled in and signed on each page; and
- ii) Priced BOQ – duly filled in and signed on each page. Each part will be separately sealed and marked as per instructions. In other than e-Procurement tenders, all the quoted rates and the amount in the BOQ shall be laminated.

#### **4.9.1A. Quality-cum-cost based Selection (QCBS) for works and Non-Consultancy Services:**

- i) Procuring entities are hereby allowed to use QCBS for procurement of works and non-consultancy services in the following cases:
  - a. Where the procurement has been declared to be a Quality Oriented Procurement (QOP) by the competent authority or

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

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

1. In case the difference between estimated value (including taxes etc as above) and value of the proposed contract (including taxes etc) is less than 10% of the estimated value, there will be no bar on placement of contract.
  2. In all other cases, the procurement process is to be scrapped and restarted either as QOP or on n on QCBS basis.
- ii) The principles of QCBS shall be as provided in Rule 192(i), (ii) and (iii) of the GFR. However, the maximum weight of the non-financial parameters shall in no case exceed 30%. The Competent Authority for allowing QCBS shall be as follows:-
- a. For declaring a procurement as QOP:
    1. Where the procuring entity/project executing authority is covered by Rule 1 of GFR, the secretary of the Ministry/Department, to which the procuring entity belongs.
    2. Where the procuring entity is a CPSE, the Board of Directors of the CPSE.
  - b. For Non-consulting Services not exceeding Rs. 10 crore in value:
    1. Where the procuring entity is covered by Rule 1 of GFR, by the officer or authority two levels above the officer/authority competent to finalize the particular procurement, or the Secretary of the Ministry/Department whichever is lower.
    2. Where the procuring entity is a CPSE, the authority or officer two levels above the officer competent to finalize the particular procurement, or the Board of Directors of the CPSE whichever is lower.
- iii) In all cases of QOP, a Special Technical Committee (STC) shall be constituted with the following composition:-

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- a. Two or more persons who have expert knowledge and /o9r long experience relevant to the procurement in question;
  - b. One or more persons with extensive experience in handling public projects and/or public finance in the Government or State/Central Public Sector;
  - c. One or more persons with experience in financial management/financial administration/audit/accountancy;
  - d. Note more than one member representing the procuring entity who may *inter alia* provide administrative support to the Committee.
  - e. The persons referred to in sub paras (i) to (iii) shall be persons not working under the Competent Authority specified in para 2 (15.2.2) and shall not belong to any organization under the control of, or receiving funding from, the procuring entity or the Ministry/Department to which such procuring entity belongs.
- iv) The names of members of the Special Technical Committee shall be decided either by the Competent Authority specified in para 2(15.2.2) above or by any other authority to whom such power is delegated by the competent authority; however, powers shall not be delegated to the officer or authority competent to finalize the particular procurement. Sitting fee may be paid to the members of the STC. Incidental costs including travel be paid by the procuring entity.
- The STC shall make specific recommendations on the following matters:-
- a. The weight to be given to non-financial parameters (not exceeding 30%).
  - b. The specific quality/technical parameters, their weights, their scoring methodology, the minimum qualification score etc. and other relevant criteria necessary for enduring fair and transparent quality/technical evaluation of the bids.
- v) The recommendations of the STC shall be followed except where there are special grounds in public interest for deviating from them. However, every case of deviation from the recommendations of the STC shall require approval of the Competent Authority specified in para 2( 15.2.2)(i) above who approved the declaration of the procurement as QOP.
- vi) In respect of QCBS for Non-Consultancy Services not exceeding Rs. 10 crore, a Technical Committee shall be constituted to carry out functions mentioned in para 5( 15.2.5) in lieu of the STC. The composition of the Technical Committee shall

follow the provisions of para 3(15.2.3)(vi) shall however not be applicable in such cases.

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

viii) Tender Documents-Fixing/Selection of the Evaluation/Qualification Criteria

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

ix) Fixing of Scoring/Marketing Criteria:

- a. The coring should not be a variable that relies on the subjective opinion of the evaluating panel. The marking scheme should enable achievement of almost similar cores irrespective of the persons/experts being involved in the evaluation process. When the outcome are consistent for the available information, the QCBS parameters are more reliable. Unambiguous description and criteria help to avoid grey areas so as to endure that there is only one possible score for the item. As far as possible, the criteria should be so specific and clear that bidders can self-mark their own bids.
- b. It is better to specify minimum marks for meeting the qualifying criteria specified.
- c. Examples of fixed quality parameters that ought not to be considered for relative scoring including organizations' ISO/standards accreditation,etc.These are required to establish the credentials of the

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service provider but cannot be used for relative comparison between the various bidders.

- d. Bidders should be asked to produce certificates for the past performance. A format may be given in the tender itself outlining the contract details, completion, sustainability of service, etc. and bidders may be asked to fill it and give evidence to that effect.
  - e. Bidders may be asked to submit a detailed presentation on their proposals in the form of soft copy along with the bid so as to facilitate better understanding of their proposal and to ensure commitment.
  - f. Besides the Bill of Quantity (BOQ) output criteria for payment, Key Performance Indicators (KPI) may be specified with minimum achievement levels for payment so as to ensure quality compliance.
- x) Evaluation of QCBS Bids: For evaluation, a suitable committee shall be constituted. However, members of the STC shall not be involved.
- xi) Joint Ventures in QCBS
- a. In conventional tenders, some bidders adopt 'name borrowing' and Joint Ventures (JV) often do not function in letter and spirit. This results in lack of quality and accountability. JVs often end in one-sided participation, diluting the essence of the tender evaluation during its performance. Since quality is given weightage in the evaluation itself, in QCBS procurement, it is even more important to guard against such tendencies. Therefore, Joint Ventures may be avoided in QCBS procurements as far as possible. Joint Ventures could, however, become necessary in high technology or innovative projects where a single entity may not be able to execute the work alone.
  - b. If JVs are allowed, adequate safeguards should be provided. Since weightage for quality/ experience influences the award itself, measure should be taken to ensure that all the JV partners are present and deliver services all through the contract period. An Implementation Board with participation of

all JV partners may be provided for wherein the Project Manager from the procuring entity shall also be allowed audience when required. Meeting of JV partners with the project executing authority for quarterly progress review may be made as a criterion linked to achievement of key dates or even payment.

Note: In para 4.9.1A instructions containing “shall” are mandatory; any deviation from these instructions shall require relaxation from Ministry of Finance (for Ministries/ Departments etc.) or from the Board of Directors (for Central Public Sector Enterprises).

#### **4.9.2 Sealing and Marking of Tenders**

The tender document is to indicate the total number of tender sets (e.g., in duplicate or in triplicate etc) required to be submitted. In case bids are asked in a number of copies, the tenderer is to seal the original and each copy of the tender in separate envelopes, duly marking the same as “original”, “duplicate” and so on and also marking these as mentioned above. In case of two envelope bidding system, the techno-commercial bid and financial bid should be sealed by the tenderer in separate inner covers duly marking these as ‘Techno-commercial Bid’ and ‘Financial Bid’ and marked with the address of the purchase office and the tender reference number on the envelopes. Further, the sentence “NOT TO BE OPENED” before..... (due date & time of tender opening) are also to be put on these envelopes and these sealed inner covers are to be put in a bigger outer cover which should also be sealed and duly super scribed in a similar manner. If the outer envelope is not sealed and marked properly as above, the Procuring Entity will not assume any responsibility for its misplacement, premature opening, late opening etc. These details regarding the submission of bids should also form a part of the ITB and AITB in the tender documents; all the above instructions are to be suitably incorporated in the tender documents.

#### **4.9.3 Withdrawal, Substitution and Modification of Tenders**

The tenderer, after submitting the tender, is permitted to withdraw, substitute or modify the tenders in writing without forfeiture of Bid Security/ EMD, provided these are received duly sealed and marked like the original tender, up to the date and time of receipt of the tender. Any such request received after the prescribed date and time of



receipt of tenders will not be considered. No bid may be withdrawn in the interval between the deadline for submission of bids and expiration of the period of bid validity. Withdrawal of a bid during this period will result in forfeiture of the bidder's bid security (EMD) and other sanctions.

#### **4.10 Receipt and Opening of Bids**

The tender received by the procuring entity after the deadline for the submission of tender, shall not be opened and shall be returned to the contractors or contractors that submitted it. No submission is allowed in e-Procurement after the submission deadline.

On the due date and appointed time, as mentioned in the bid document, the Bid Opening Committee (BOC - comprising one officer each from the procuring entity and Associated/ integrated Finance) will open the bids in the presence of the intending bidders or their representative. The bidder's name, the bid prices and conditional and unconditional discount, if any will be announced by the procuring entity during opening of bids. A record of opening of bids will be maintained, including signatures of bidders present.

In e-procurement, all tenders uploaded by tenderers are received, safeguarded and opened online on the portal as detailed in Appendix 3. In offline tenders, receipt and custody of bids shall be done in a transparent manner to maintain the credibility of the process. The following guidelines should be adhered to for receipt and custody of bids:

- i) The procuring entity shall maintain tender boxes for receiving the bids at suitable locations which would facilitate security and easy access to bidders. If required, Tender boxes should be separate for each day of the week of tender opening and should be sealed by the Bid Opening Committee (BOC) of the day. The tender box shall have two locks. Key of one lock will be with the head of the office and the other key with the official nominated by him;
- ii) Bids received by courier shall be deposited in the tender box by the Dispatch Section till the date and time of bid opening. Bids sent by telex, cable or facsimile are to be ignored and rejected.; and
- iii) For bulky/ oversized bids which cannot be dropped into tender boxes, the officials authorised to receive such bids shall maintain proper records and provide a signed receipt with date and time to the bearer of the bid. He will also

sign on the cover, duly indicating the date and time of receipt of the tender(s). Names and designations of at least two such authorised officers should be mentioned in the bid documents

- iv) The authorised representatives of bidders, who intend to attend the tender opening in OTE/ GTE, are to bring with them letters of authority from the corresponding bidder. The prescribed format for the letter of authority for attending the bid opening should be given in the bidding document. All bid-opening activities should be carried out demonstrably before such a gathering. The prescribed format for the bid opening attendance sheet and report are given at Annexure 2;
- v) At a prescheduled date and time, the BOC of the day should get the particular tender box opened, after ensuring and demonstrating that the seal on the box has not been tampered with. All bids should be collected from the tender box. Bids for tenders not opening on that day should be put back into the box and the box resealed. Sometimes, there would be tenders dropped wrongly into this tender box. Such wrongly dropped tenders with appropriate endorsement should be put into the appropriate box or sent to the Tender Committee (TC) concerned, if the date of opening is over. The bids for different tenders opening on the day (including oversized bids, which were submitted to designated officers) should be sorted, and a count for each tender should be announced and recorded, particularly noting any modifying/ altering/ withdrawal of bids. BOC should ensure and demonstrate that bid envelopes are duly sealed and un-tampered. Late bids should be separately counted but kept aside and not opened. In the case of an advertised tender enquiry or limited tender enquiry, late bids (that is, bids received after the specified date and time for receipt of bids) should not be considered;
- vi) After opening, every tender shall be numbered serially (say 3/ 14 – if it is the third bid out of 14 total), initialled, and dated on the first page by the BOC. Each page of the price schedule or letter attached to it shall also be similarly initialled, particularly the prices, delivery period, and so on, which shall also be circled and initialled along with the date. Any other page containing significant information should also be dealt with similarly. Blank tenders, if any, should be marked accordingly by the BOC. The original (and duplicate, if any) copies in a

tender set are to be marked accordingly by the BOC. As the bids are to be submitted in hardbound form, signing of covering letters and index page by all the committee members is sufficient;

- vii) Erasure/ cutting/ overwriting/ use of whitener/ columns left unfilled in tenders, if any, shall be initialled along with date and time and numbered by the officials opening the tenders and total number of such noticed alterations (or the absence of any alteration) should be explicitly marked on the first page of the bid. Wherever quantity/ amount is written only in figures, the BOC should write them in words. All rebates/ discounts should be similarly circled, numbered and signed. In the absence of any alteration/ overwriting/ whitener/ blanks, the remark “no corrections noted” should be written. Similarly, the absence of discounts should be marked with “no discounts noted;”
- viii) The BOC is to announce the salient features of the tenders such as description and specification of the goods, quoted price, terms of delivery, delivery period, discount, if any, whether EMD furnished or not, and any other special feature of the tender for the information of the representatives attending the tender opening. No clarifications by tenderers should be entertained or allowed to be recorded during the bid opening. It should be understood that BOC has no authority to reject any tender at the tender opening stage;
- ix) A bid opening report containing the names of the tenderers (serial number wise), salient features of the tenders, as read out during the public opening of tenders, will be prepared by the tender opening officers, and duly signed by them along with the date and time. The tenders that have been opened, list of the representatives attending the tender opening, and bid opening report are to be handed over to the nominated purchase officer and an acknowledgement obtained for him.

#### **4.11 Bid Security/ Earnest Money Deposit (EMD)**

To safe guard against a bidder's with drawing or altering its bid during the bid validity period in the case of OTE and GTE tenders, bid security [also known as Earnest Money Deposit (EMD)] is to be obtained from the bidders along with their bids. Any bid not accompanied by the requisite bid security shall be rejected as non-responsive in accordance with provisions of the bidding document. The amount of bid security

should generally be between two to five per cent of the estimated value of the goods to be procured. The amount of bid security, rounded off to the nearest thousands of Rupees, as determined by the Procuring Entity, is to be indicated in the bidding documents.

The Bid Security may be obtained in the form of Insurance Surety Bonds<sup>35</sup>, account payee demand draft, fixed deposit receipt, banker's cheque or Bank Guarantee from any of the Commercial Banks or payment online in an acceptable form, safeguarding the purchaser's interest in all respects. The bid security is normally to remain valid for a period of 45 (forty-five) days beyond the final bid validity period.

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

In appropriate cases, Submission of the bid security may be waived with the Competent Authority's (CA's) approval in the case of indigenisation/ development tenders, limited tenders and Single Tender.

Bid securities of the unsuccessful bidders should be returned at the earliest after expiry of the final bid validity period and latest by the 30<sup>th</sup> day after the award of the contract. Bid security should be refunded to the successful bidder on receipt of a performance security. However, in case of two packet or two stage bidding, Bid securities of unsuccessful bidders during first stage i.e. technical evaluation etc. should be returned within 30 days of declaration of result of first stage i.e. technical evaluation etc.<sup>36</sup>

A bidder's bid security will be forfeited if the bidder

- i) withdraws or amends its/ his tender;

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<sup>35</sup>Notified vide OM No. F.1/1/2022-PPD issued by Department of Expenditure dated 02.02.2022

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

- ii) impairs or derogates from the tender in any respect within the period of validity of the tender;
- iii) If the bidder does not accept the correction of his bid price during evaluation; and
- iv) If the successful bidder fails to sign the contract or furnish the required performance security within the specified period.

#### **4.12 Performance Guarantee**

- i) To ensure due performance of the contract, performance security [or Performance Bank Guarantee (PBG)] is to be obtained from the successful bidder awarded the contract. Performance security should be for an amount of five (5) to ten (10) per cent of the value of the contract. [The value has been reduced to three (3) percent till 31.03.2023. Refer to para 4.12 (iv) below]. In works contract it is usual to take five percent of contract value Performance Security. Performance security may be furnished in the form of Insurance Surety Bond<sup>37</sup>, account payee demand draft, fixed deposit receipt from a commercial bank, bank guarantee issued/ confirmed from any of the commercial bank in India or online payment in an acceptable form, safeguarding the Procuring Entity's interest in all respects. In case of a JV, the BG towards performance security shall be provided by all partners in proportion to their participation in the project. In case of GTE tenders, the performance security should be in the same currency as the contract and must conform to Uniform Rules for Demand Guarantees (URDG 758) – an international convention regulating international securities<sup>38</sup>. Submission of Performance Security is not necessary for a contract value upto Rs. one lakh.
- ii) Performance Security is to be furnished by a specified date [generally 21 (twenty-one) days after notification of the award] and it should remain valid for a period of 60 (sixty) days beyond the date of completion of all contractual obligations of the contractor, including Defect Liability Period (DLP).

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<sup>37</sup>Notified vide OM No. F.1/1/2022-PPD issued by Department of Expenditure dated 02.02.2022

<sup>38</sup> 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.

- iii) The performance security will be forfeited and credited to the procuring entity's account in the event of a breach of contract by the contractor. It should be refunded to the contractor without interest, after he duly performs and completes all obligations under the contract but not later than 365 days of completion of the Defect Liability Period (DLP). Return of Bid/ Performance Securities should be monitored and delays should be avoided. If feasible, the details of these securities may be listed in the e-Procurement Portal, so as to make the process transparent and visible.
- iv) On account of the COVID-19 pandemic, that caused slowdown in economy, it is decided to reduce Performance Security from existing five to ten percent to three (3) percent of the value of the contract for all existing contracts till 31.03.2023. However, the benefit of the reduced Performance Security will not be given in the contracts under dispute wherein arbitration/ court proceedings have been already started or are contemplated. All tenders/ contracts issued/ concluded till 31.03.2023 should also have the provision of reduced Performance Security. In all contracts, where Performance Security has been reduced to three percent, the reduced percentage shall continue for the entire duration of the contract and there should be no subsequent increase of Performance Security even beyond 31.03.2023. Similarly, in all contracts entered into with the reduced percentage of Performance Security of three percent, there will be no subsequent increase in Performance Security even beyond 31.03.2023. Where, there is compelling circumstances to ask for Performance Security in excess of three percent as stipulated above, the same should be done only with the approval of the next higher authority to the authority competent to finalise the particular tender, or the Secretary of the Ministry/ Department, whichever is lower. Specific reasons justifying the exception shall be recorded<sup>39</sup>.

#### **4.13 Security Deposit/ Retention Money**

In addition to Performance Security (usually five percent), Contracts for works usually provide for a percentage (usually five percent) of each running bill (periodic/ interim payment) to be withheld as Security Deposit/ retention money until final acceptance.

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<sup>39</sup>Notified vide OM No.F.9/4/2020-PPD issued by Department of Expenditure dated 30.12.2021

The earnest money instead of being released may form part of the security deposit. The contractor may, at his option, replace the retention amount with an unconditional BG from a bank acceptable to the Procuring Entity at the following stages:

- i) After the amount reaches half the value of the limit of retention money; and
- ii) After the amount reaches the maximum limit of retention money. One-half of the retention money (or BG, which replaced retention money) shall be released on the issue of the taking-over certificate; if the Taking Over Certificates (TOCs) are issued in parts, then in such proportions as the engineer may determine, having regard to the value of such part or section. The other half of the retention money (or BG, which replaced the retention money) shall be released upon expiration of 365 days after the DLP of the works or final payment, whichever is earlier, on certification by the engineer. In the event of different defect liability periods being applicable to different sections or parts, the expiration of defect liability period shall be the latest of such periods.

#### **4.14 Sources and Verification of Bank Guarantees**

Bank Guarantee for Bid Security (EMD) or Performance Guarantee (Security Deposit) should be irrevocable and operative Bank Guarantee (BG) as per format enclosed in the Bid Document and should be issued by a Scheduled Commercial (i.e. Indian or Foreign Banks included in the Second Schedule of Reserve Bank of India Act, 1934 excluding Co-operative banks or Regional Rural Banks). In case of foreign bidders or in case of GTE, if Bank Guarantee is from a foreign bank branch situated outside India, the Bank Guarantee must be issued through any of the Scheduled Commercial Bank. In case BG is issued directly by a bank outside India, it should be executed on Letter Head of the Bank and should be advised and made payable through their Indian Branch/Corresponding Bank in India. The Issuing Bank should also state the name and designation of the next Higher Authority of the Officials who have issued the Bank Guarantee.

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

the bidders/ contractors against EMD/ performance security/ advance payments and for various other purposes are as follows:

- i) BG shall be as per the prescribed formats
- ii) The BG contains the name, designation and code number of the Bank officer(s) signing the guarantee(s);
- iii) The address and other details (including telephone no.) of the controlling officer of the bank are obtained from the branch of the bank issuing the BG (this should be included in all BGs);

The confirmation from the issuing branch of the bank is obtained in writing through registered post/ speed post/ courier. The bank should be advised to confirm the issuance of the BGs specifically quoting the letter of Procurement Entity on the printed official letterhead of the bank indicating address and other details (including telephone nos.) of the bank and the name, designation and code number of the officer(s) confirming the issuance of the BG;

Pending receipt of confirmation as above, confirmation can also be obtained with the help of responsible officer at the field office, which is close to the issuing branch of the bank, who should personally obtain the confirmation from issuing branch of the bank and forward the confirmation report to the concerned procurement entity.

As far as possible organizations should follow e-verification of bank guarantees as per the procedure prescribed by Reserve Bank of India.

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

#### **4.15 Safe Custody and Monitoring of Securities**

A suitable mechanism for safe custody and monitoring of EMDs and performance securities and other instruments should be evolved and implemented by each ministry/ department. The ministries/ departments shall also make institutional arrangements for taking all necessary actions on time for extension or encashment or refund of EMDs and performance securities, as the case may be. Monitoring should also include a monthly review of all bank guarantees and other instruments expiring in next three



months, along with a review of the progress of the corresponding contracts. Extension of bank guarantees and other instruments, where warranted, should be sought immediately and implemented within their validity period. Bank Guarantee should never be handed over to the contractor for propose of extension of validity. Such a system of monitoring of securities and other instruments may be considered to be computerised with automatic alerts about lapse of validity etc. For release of BGs, the proposal shall be forwarded by the executing agency with its recommendations in accordance with the contract conditions, for approval by the CA with the concurrence of the Finance Division.

#### 4.16 Goods and Services Tax (GST)

- i) A detailed clause regarding GST may be included in the bid documents, in consultation with the Financial Advisor, stipulating inter-alia that all the bidders/ tenders should ensure that they are GST compliant and their quoted tax structure /rates are as per GST Law. While before enactment of GST, the bid prices were normally inclusive of applicable taxes, now after its enactment, as per the GST Act the bid and contract must show the GST Tax Rates and GST Amount explicitly and separate from the bid/ contract price (exclusive of GST). Asking for a bid-price inclusive of taxes/ GST would be a violation of the GST Act. Bid format may be suitably modified accordingly. In the transition period, any variation in tax structure/rate due to introduction of GST shall be dealt with under Statutory Variation Clause.

Ministries/ Departments may follow the procedure as mentioned below while dealing with contractor's payment, post GST promulgation:

- a) **Works is treated as a 'Service'**. (- GST rate would vary depending on type of work). All works contracts are to be provided with Harmonized System of Nomenclature - HNS Code (actually Service Accounting Code SAC, being a service). The HNS code can be downloaded from the website [www.cbec.gov.in](http://www.cbec.gov.in). Works Contracts in general come under Chapter 99, Section 5, Heading 9954(Construction Services)as 'Composite supply of Works contract as defined in clause<sup>40</sup> 119 of section 2 of CGST Act'.GST

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<sup>40</sup> (119) "works contract" means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or

rate would be based on the type of contract. In case contract consists of both goods & service, then interpretation regarding nature of contract should be done as per clause<sup>41</sup> 8, Chapter III of CGST Act, 2017.

- b) The 'on account/ final contract certificate' shall be prepared by the Ministry/ Department on the basis of quantity of work executed at the contracted rates, duly segregating the GST component as detailed in para (iii) below.
- c) Since before promulgation of GST, the contracted rates normally used to be inclusive of all taxes, the calculation of 'Gross amount of work executed', 'Amount of work executed excluding GST amount' and 'GST amount' in the 'on account / final contract certificate' may be done as under:

Let Z = Gross amount of work executed on the basis of quantum of work executed at the contracted rates.

R = Percentage rate of GST for that HSN code

Y = GST amount as per applicable GST rate for that HSN code.

X - Amount of work executed excluding GST amount.

**Then, Z = X + Y;**

**Where Y = X\*R/100**

Thus from the known amount of Z, amounts of X and Y can be worked out.

- d) Once the 'on account / final contract certificate' is prepared by Ministry/ Department and communicated to contractor, the contractor shall submit invoice (bill) in a GST compliant format duly segregating the 'Amount of work executed excluding GST amount' and 'GST amount' (i.e. "X" & "Y" as mentioned in para (iii) above) along with Invoice No. (Bill No.) and all other details required under GST act. In case any need arises to modify the Invoice (Bill) due to any reason, contractor shall submit amended fresh invoice for processing the payment.

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commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract;

<sup>41</sup>8. The tax liability on a composite or a mixed supply shall be determined in the following manner, namely:—

(a) a composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply; and

(b) a mixed supply comprising two or more supplies shall be treated as a supply of that particular supply which attracts the highest rate of tax.

- e) In case contractor is liable to be registered under GST Act, Ministry/ Department shall pay to the Contractor 'Gross amount of work executed' (i.e. "Z" as mentioned in para (iii) above) duly deducting all other leviable taxes like I/Tax, labour cess, royalty etc. as applicable. Contractor shall be liable to pay 'GST amount' to respective authority himself. Whereas, Ministry/ Department shall deposit all other taxes deducted to concerned authority as is being done presently.
- f) In case contractor is not liable to be registered under GST Act, contractor shall be paid "Amount of work executed excluding GST amount" (i.e. "X" as mentioned in para (iii) above) duly deducting all other leviable taxes like I/Tax, labour cess, royalty etc. as applicable. Ministry/ Department shall deposit 'GST amount' as well as all other taxes deducted to concerned authority.
- ii) Pre-GST contracts need to be viewed in the light of the clauses of the contracts already signed and provision for change in law.

<b>4.17 Risks and Mitigations- Preparing Bid Documents, Publication, Receipt and Opening of Bids</b>	
<b>Risk</b>	<b>Mitigation</b>
<b>Exceptions to an open bidding</b> process are abused, leading to single source processes.	<b>Rigorously follow the conditions</b> under which open tendering can be dispensed with.
<b>When short lists are used</b> , the process of preparation of short lists may be non-transparent and all eligible firms may not be included and some ineligible firms may get included.	<b>Enlistment of bidders/contractors:</b> All major procuring departments must keep a list of enlisted bidders for use in restricted bidding. Publicise even restricted bids on your website. Bidders for LTE may be transparently selected with the approval of CA.
<b>Pre-qualification criteria:</b> PQB has the potential of getting misused or being applied without considering the restrictive nature of competition. PQC should be relevant to the quality requirements and neither be very stringent nor very lax to restrict/facilitate the entry of bidders. These criteria should be clear, unambiguous, exhaustive and yet specific. Also, there should be fair competition.	<b>Lay down</b> criteria when two stage bidding is warranted. Also lay down model PQC criteria for different types of procurements.
<b>Invitation to tender</b> (an open bid) is not well publicised or gives insufficient time, thereby restricting the number of bidders that participate.	<b>Publicity and adequate time for bid submission</b> must be ensured. Require a higher level approval for short bid submission period.

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<p><b>Evaluation criteria</b> are not set from the beginning or are not objective or not clearly stated in the bid documents, thereby making them prone to being abused.</p>	<p><b>Objective, relevant and clearly</b> stated evaluation criteria must be specified in the bid document.</p>
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