

# Manual for Procurement of Goods

(Updated June, 2022)

Government of India  
Ministry of Finance  
Department of Expenditure

## FOREWORD

(for updated version of Manual issued in 2022)

The Manual for Procurement of Goods was comprehensively revised and issued in 2017. The manual, over a period of time, has become a standard reference document for officials involved in Public Procurement across all Ministries/ Departments/ Attached and Sub-ordinate bodies/ Central Public Sector Enterprises, etc. The Manual is also a resource material for institutes providing training on Public Procurement.

2. Public Procurement is a dynamic field where policies are constantly reviewed to help Government achieve its socio-economic or strategic goals. Hence, there is a need to keep reference documents, like manuals, updated to ensure their continued relevance.

3. Instructions on procurement issued by Department of Expenditure from time to time, since issuance of the last Manual, have been incorporated in the current edition. **Further, all procurement related instructions issued by Central Vigilance Commission have been subsumed into the Manual, in collaboration with the Commission.**

I would like to acknowledge the hard work of the concerned officers not only in this Department but in other Organisations, Ministries and Departments; the role of Shri Vikram Rajvanshi, Consultant (Public Procurement) is also specifically acknowledged.

4. I hope that this updated Manual will help procuring officials working in various Ministries/ Departments and Public Enterprises as a guiding template, deepen the impact of policy initiatives and improve the ease of doing business with the Government.

**(Dr. T. V. Somanathan)**  
Finance Secretary

## FOREWORD

1. Government organizations procure a wide variety of goods and services and undertake execution of works in pursuance of their duties and responsibilities. With a view to improving transparency in decision making in public procurement and reducing the scope for subjectivity, Department of Expenditure in 2006 had prepared a set of three Manuals on Policies and Procedures for Procurement of Goods, Works and hiring of Consultants, in conformity with the General Financial Rules (GFR), 2005. Over the years, these Manuals have served as a guide book for procurement.
2. In the last few years, the Government of India has issued new instructions in the domain of public procurement. Some of these important changes include introduction of Central Public Procurement Portal (CPPP), Government e-Marketplace (GeM), preferential market access for micro and small enterprises, preference for domestic manufacturers of electronic goods, inclusion of integrity pact, etc. The GFR has been revised comprehensively in March 2017 covering inter-alia these set of new instructions. Consequently the Manual of Procurement too has been revised after a decade and within a month of the release of GFR 2017.
3. The new Manual on Procurement of Goods has been extensively revised in keeping with GFR 2017 and in consonance with the fundamental principles of transparency, fairness, competition, economy, efficiency and accountability. Efforts have been made to cover all major aspects of procurement in this Manual in a user-friendly manner. The manual is the outcome of extensive consultations in two stages with Ministries/Departments/PSUs and other organizations over a period of six months.
4. Manuals issued by this Department are to be taken as generic guidelines, which have to be necessarily broad in nature. Ministries/Departments are advised to supplement this manual to suit their local/specialized needs, by issuing their own detailed manuals (including customized formats); Standard Bidding Documents and Schedule of Procurement Powers to serve as detailed instructions for their own procuring officers.
5. I would like to acknowledge the lead taken by Dr. Vivek Joshi, Joint Secretary, DoE and dedicated efforts of Shri Sanjay Aggarwal, Director (PPD), Shri Vinayak T. Likhar, Under Secretary(PPD) and Shri Girish Bhatnagar, Consultant (Public Procurement) in revision of this Manual. I would also like to thank Ministries, Departments, other organisations and individuals who reviewed the drafts of the Manual and provided their valuable inputs.
6. I hope that this Manual would be useful to procuring officials working in various Ministries/ Departments as operating instructions and will bring about greater transparency and predictability in government procedures and help in improving the ease of doing Business with Government.

  
(Ashok Lavasa)  
Finance Secretary

Date : 05.04.2017

## **Disclaimer**

While every care has been taken to ensure that the contents of this manual are accurate and up to date till June 2022, the procuring entities are advised to check the precise current provisions of law and other applicable instructions from the original sources. In case of any conflict between the provisions stipulated in this manual and in the original source such as GFR or the prevailing laws, the provisions contained in the extant law and the original instructions shall prevail.



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## Abbreviations and Acronyms

AMC	Annual Maintenance Contract	CFR	Cost and Freight
ACASH	Association of Corporations and Apex Societies of Handlooms	CHA	Custom House Agent
AITB	Additional Instructions to Bidders (may in some instances be called Bid Data Sheet – BDS or Tender Information Sheet - TIS)	CIF	Cost Insurance and Freight
AMC	Annual Maintenance Contract	CIP	Carriage and Insurance Paid
BC	Bill Currency (selling/ buying)	CIPP	Code of Integrity for Public Procurement
BEE	Bureau of Energy Efficiency	CMC	Comprehensive Maintenance Contract
BG	Bank Guarantee	COMPAT	Competition Appellate Tribunal
BIS	Bureau of Indian Standards	COTS	Commercially Off The Shelf (Items)
BOC	Bid Opening Committee	CPCB	Central Pollution Control Board
BSTC	Buyer Specific Terms & Conditions	CPO	Central Purchasing Organizations
BSV	Balance Sale Value	CPPP	Central Public Procurement Portal
C&AG	Comptroller and Auditor General (of India)	CPSE	Central Public Sector Enterprise
CA	Competent Authority	CRAC	Consignee Receipt and Acceptance Certificate
CAPEX	Capital Expenditure (model of acquisition/ procurement)	CST	Central Sales Tax
CBI	Central Bureau of Investigation	CVC	Central Vigilance Commission
CCI	Competition Commission of India	CVO	Chief Vigilance Officer
		DCF	Discounted Cash Flow
		DDO	Direct Demanding Officer (for RCs)

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DFPR	Delegation of Financial Power	GeMAR&PTS	GeM Availability Report and Past Transaction Summary
DGS&D	Directorate General of Supplies and Disposals	GFR	General and Financial Rules, 2017
DPIIT	Department for Promotion of Industry and Internal Trade	GoI	Government of India
DSC	Digital Signature Certificate	GRIR	Goods Receipt and Inspection Report
eASP	E-Auction Service Provider	GTC	General Terms & Conditions
ECS	Electronic Clearing System	GTE	Global Tender Enquiry
EFT	Electronic Funds Transfer	HOD	Head of the Department
EMD	Earnest Money Deposit	IEM	Independent External Monitor
EoI	Expression of Interest (Tender)	INCOTERMS	International Commercial Terms
EPM	Export Promotion and Marketing	IP	Integrity Pact
ERV	Exchange Rate Variation	IRDA	Insurance Regulatory and Development Authority
EXIM	Export Import (Policy)	ISI	Indian Standards Institute
FA (&CAO)	Financial Adviser (and Chief Accounts Officer)	ISO	International Organization for Standardization
FAS	Free Alongside Ship	ITB	Instructions to Bidders (may in some instance be called Instructions to Tenderers - ITT)
FC	Framework Contract	ITJ	Indian Trade Journal
FEMA	Foreign Exchange Management Act	JLG	Joint Liability Group
FM	Force Majeure	KPIs	Key Performance Indices
FOB	Free On Board	KVIC	Khadi and Village Industries Commission
FOR	Free On Rail	L1	Lowest Bidder
FOT	Free On Truck	LC	Letter of Credit
GCC	General Conditions of Contract		
GCS	General Conditions of Sale		
GeM	Government Electronic Market		

## Abbreviations

LCC	Life Cycle Costing	OPEX	Operating Expense (model of acquisition/ procurement)
LD	Liquidated Damages	OPMs	Original Parts Manufacturers
LoA	Letter (Notification) of Award also called Acceptance of Tender (A/T)	OTE	Open Tender Enquiry
LPP	Last Purchase Price	PAC	Proprietary Article Certificate
LTE	Limited Tender Enquiry	PBG	Performance Bank Guarantee, also see SD
M&P	Machinery and Plant	PC	Producer Companies
MeitY	Ministry of Electronics and Information Technology	PPD	Procurement Policy Division, Department of Expenditure, Ministry of Finance
MoEF	Ministry of Environment and Forests	PPP	Public Private Partnership
MRP	Maximum Retail Price	PPP-MII	Public Procurement (Preference to Make in India), Order
MSE	Micro and Small Enterprise	PQB	Pre-qualification Bidding
MSME(D)	Micro Small and Medium Enterprises (Development Act, 2006)	PQC	Pre-qualification Criterion
MSTC	Metal Scrap Trading Corporation	PR	Purchase Requisition/ Indent
NEFT	National Electronic Funds Transfer	PSU	Public Sector Undertaking
NIC	National Informatics Centre	PVC	Price Variation Clause
NIT	Notice Inviting Tender	QA	Quality Assurance
NSIC	National Small Industries Corporation	RA/ eRA	Electronic Reverse Auction
NTH	National Test House	RBI	Reserve Bank of India
OEM	Original Equipment Manufacturer	RC	Rate Contract (or Framework Contract FC)
OES	Original Equipment Suppliers	(S)RfP	(Standard) Request for Proposals (Document)
		RTGS	Real Time Gross Settlement

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RTI	Right to Information	TCS	Tax Collected at Source
SBD	Standard Bidding Document	TDS	Tax Deducted at Source
SC	Survey Committee	ToR	Terms of Reference
SCC	Special Conditions of Contract	TS	Technical Specification
SD	Security Deposit, also see PBG	UAM	Udyam Aadhaar Memorandum
SHG	Self Help Group	UCP 600	The Uniform Customs and Practice for Documentary Credits (UCPDC or simply UCP)
SLA	Service Level Agreement	UNCITRAL	United Nations Commission on International Trade Law
SLTE	Special Limited Tender (Enquiry)	URC	Udyam Registration Certificate
SoPP	Schedule of Procurement Powers	URDG 758	Uniform Rules for Demand Guarantees
SPCB	State Pollution Control Board	VAT	Value Added Tax
STA	Subject to Acceptance	VfM	(Best) Value for Money
STC	Special Terms & Conditions	WOL	Whole of Life (Cost) or Total Cost of Ownership TCO
STE	Single Tender Enquiry		
TC	Tender Committee also called Tender Purchase or Evaluation Committee (TPC/ TEC)		
TCO	Total Cost of Ownership		



## Procurement Glossary

In this Manual and in the 'Procurement Guidelines', unless the context otherwise requires<sup>1</sup>:

- i) "Bid" (including the term 'tender', 'offer', 'quotation' or 'proposal' in certain contexts) means an offer to supply goods, services or execution of works made in accordance with the terms and conditions set out in a document inviting such offers;
- ii) "Bidder" (including the term 'tenderer', 'consultant' or 'service provider' in certain contexts) means any eligible person or firm or company, including a consortium (that is an association of several persons, or firms or companies), participating in a procurement process with a procuring entity;
- iii) "(Standard) Bid(ding) documents" (including the term 'tender (enquiry) documents' or 'Request for Proposal Documents' – RfP documents in certain contexts) means a document issued by the procuring entity, including any amendment thereto, that sets out the terms and conditions of the given procurement and includes the invitation to bid. A Standard (Model) Bidding Document is the standardised template to be used for preparing Bidding Documents after making suitable changes for specific procurement;
- iv) "Bidder registration document" means a document issued by a procuring entity, including any amendment thereto, that sets out the terms and conditions of registration proceedings and includes the invitation to register;
- v) "Bid security" (including the term 'Earnest Money Deposit'(EMD), in certain contexts) means a security from a bidder securing obligations resulting from a prospective contract award with the intention to avoid: the withdrawal or modification of an offer within the validity of the bid, after the deadline for submission of such documents; failure to sign the contract or failure to provide the required security for the performance of the contract after an offer has been accepted; or failure to comply with any other condition precedent to signing the contract specified in the solicitation documents.;

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<sup>1</sup> The main preferred term is within the inverted commas. Alternative equivalent terms used in certain contexts, if any, are listed in the brackets. Text within brackets is not considered for sort-order of terms.

- vi) “Central Public sector enterprise” means a body incorporated under the Companies Act or established under any other Act and in which the Central Government or a Central enterprise owns more than 50 per cent of the issued share capital;
- vii) “Central Purchase Organisation” means a procuring entity which is authorised by the Government of India by an order, made in this behalf, to make procurement for one or more procuring entities. However, Government can authorise other Organisations for specific categories of materials;
- viii) “Class-I local supplier” means a supplier or service provider, whose goods, services or works offered for procurement, meet the minimum local content as prescribed for ‘Class-I local supplier’ under the Public Procurement (Preference to Make in India), Order 2017<sup>2</sup>;
- ix) “Class-II local supplier” means a supplier or service provider, whose goods, services or works offered for procurement, meets the minimum local content as prescribed for ‘Class-II local supplier’ but less than that prescribed for ‘Class-I local supplier’ under the Public Procurement (Preference to Make in India), Order 2017<sup>3</sup>;
- x) “Competent authority” means the officer(s) who finally approves the decision.
- xi) “Consultancy services” means a one-off (that is, not repetitive and not routine) services, involving project specific intellectual and procedural processes using established technologies and methodologies but the outcomes – which are primarily of non-physical nature – may not be standardised and would vary from one consultant to another. It may include small works or supply of goods which are incidental or consequential to such services;
- xii) “e-Procurement” means the use of information and communication technology (specially the internet) by the procuring entity in conducting its procurement processes with bidders for the acquisition of goods (supplies), works and

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<sup>2</sup>Notified vide Order No. P-45021/2/2017-PP (BE-II) issued by Department of Promotion of Industry and Internal Trade dated 16.09.2020

<sup>3</sup>Notified vide Order No. P-45021/2/2017-PP (BE-II) issued by Department of Promotion of Industry and Internal Trade dated 16.09.2020

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- services with the aim of open, non-discriminatory and efficient procurement through transparent procedures;
- xiii) "Goods" includes all articles, material, commodity, livestock, medicines, furniture, fixtures, raw material, consumables, spare parts, instruments, machinery, equipment, industrial plant, vehicles, aircrafts, ships, railway rolling stock assemblies, sub-assemblies, accessories, a group of machines comprising an integrated production process or such other categories of goods or intangible, products like technology transfer, licenses, patents or other intellectual properties (but excludes books, publications, periodicals, etc., for a library), procured or otherwise acquired by a procuring entity. Procurement of goods may include certain small work or some services, which are incidental or consequential to the supply of such goods, such as transportation, insurance, installation, commissioning, training and maintenance;
- xiv) "Indenter" ( or the term 'User (Department)' in certain contexts) means the entity and its officials initiating a procurement indent, that is, a request to the procuring entity to procure goods, works or services specified therein;
- xv) "Inventory" means any material, component or product that is held for use at a later time;
- xvi) "Invitation to (pre-)qualify" means a document including any amendment thereto published by the procuring entity inviting offers for pre-qualification from prospective bidders;
- xvii) "Invitation to register" means a document including any amendment thereto published by the procuring entity inviting offers for bidder registration from prospective bidders;
- xviii) "Local Content" means the amount of value added in India which shall, unless otherwise prescribed by the Nodal Ministry, be the total value of the item procured (excluding net domestic indirect taxes) minus the value of imported content in the item (including all customs duties) as a proportion of the total value, in percent<sup>4</sup>.

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<sup>4</sup>Notified vide Order No. P-45021/2/2017-PP (BE-II) issued by Department of Promotion of Industry and Internal Trade dated 16.09.2020

- xix) "Non-consultancy services" includes services of physical and procedural nature and are bid and contracted on the basis of performance of a measurable physical output, and for which performance standards can be clearly identified and consistently applied such as drilling, aerial photography, satellite imagery, mapping and similar operations. It may include small works or supply of goods which are incidental or consequential to such services;
- xx) "Non-Local supplier" means a supplier or service provider, whose goods, services or works offered for procurement, has local content less than that prescribed for 'Class-II local supplier' under the Public Procurement (Preference to Make in India), Order 2017<sup>5</sup>;
- xxi) " Notice inviting tenders" (including the term 'Invitation to bid' or 'request for proposals' in certain contexts) means a document and any amendment thereto published or notified by the procuring entity, which informs the potential bidders that it intends to procure goods, services and/or works.;
- xxii) "Pre-qualification (bidding) procedure" means the procedure set out to identify, prior to inviting bids, the bidders that are qualified to participate in the procurement;
- xxiii) "Pre-qualification document" means the document including any amendment thereto issued by a procuring entity, which sets out the terms and conditions of the pre- qualification bidding and includes the invitation to pre-qualify;
- xxiv) "Procurement" or "public procurement" (or 'Purchase', or 'Government Procurement/ Purchase' in certain contexts) means acquisition by way of purchase, lease, license or otherwise, either using public funds or any other source of funds (e.g. grant, loans, gifts, private investment etc.) of goods, works or services or any combination thereof, including award of Public Private Partnership projects, by a procuring entity, whether directly or through an agency with which a contract for procurement services is entered into, but does not include any acquisition of goods, works or services without consideration, and the term "procure" or "procured" shall be construed accordingly;

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<sup>5</sup>Notified vide Order No. P-45021/2/2017-PP (BE-II) issued by Department of Promotion of Industry and Internal Trade dated 16.09.2020

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- xxv) "Procurement contract" (including the terms 'Purchase Order' or 'Supply Order' or 'Withdrawal Order' or 'Work Order' or 'Consultancy Contract' or 'Contract for Services' under certain contexts), means a formal legal agreement in writing relating to the subject matter of procurement, entered into between the procuring entity and the supplier, service provider or contractor on mutually acceptable terms and conditions and which are in compliance with all the relevant provisions of the laws of the country. The term "contract" will also include "rate contract" and "framework contract";
- xxvi) "(Public) Procurement Guidelines" means guidelines applicable to Public Procurement, consisting of under relevant context a set of – i) Statutory Provisions (The Constitution of India; Indian Contract Act, 1872; Sales of Goods Act, 1930; and other laws as relevant to the context); ii) Rules & Regulations (General Financial Rules, 2017; Delegation of Financial Power Rules and any other regulation so declared by the Government); iii) Manuals of Policies and Procedures for Procurement (of Goods; Works; Consultancy Services or any for other category) promulgated by the Ministry of Finance and iv) Procuring Entity's Documents relevant to the context (Codes, Manuals and Standard/ Model Bidding Documents);
- xxvii) "Procurement process" means the process of procurement extending from the assessment of need; issue of invitation to pre-qualify or to register or to bid, as the case may be; the award of the procurement contract; execution of contract till closure of the contract;
- xxviii) "Procuring authority" means the officer who finally approves as well as those officials and committee members who submit the notes/reports for the approval for any decision.
- xxix) "Procuring entity" means any Ministry or Department of the Central Government or a unit thereof or its attached or subordinate office to which powers of procurement have been delegated;
- xxx) "Prospective bidder" means anyone likely or desirous to be a bidder;
- xxxi) "Public Private Partnership" means an arrangement between the central, a statutory entity or any other Government-owned entity, on one side, and a private sector entity, on the other, for the provision of public assets or public services or both, or a combination thereof, through investments being made or management being undertaken by the private sector entity, for a specified

period of time, where there is predefined allocation of risk between the private sector and the public entity and the private entity receives performance-linked payments that conform (or are benchmarked) to specified and predetermined performance standards, deliverables or Service Level agreements measurable by the public entity or its representative;

- xxxii) "Rate contract" ( or the term 'framework agreement' in certain contexts) means an agreement between a Central Purchase Organisation or procuring entity with one or more bidders, valid for a specified period of time, which sets out terms and conditions under which specific procurements can be made during the term of the agreement and may include an agreement on prices which may be either predetermined or be determined at the stage of actual procurement through competition or a predefined process allowing their revision without further competition;
- xxxiii) "Registering authority" means an authority which registers bidders for different categories of procurement.
- xxxiv) "Registered Supplier" means any supplier who is on a list of registered suppliers of the procuring entity or a Central Purchase Organisation;
- xxxv) "Reverse auction" (or the term 'Electronic reverse auction' in certain contexts) means an online real-time purchasing technique utilised by the procuring entity to select the successful bid, which involves presentation by bidders of successively more favourable bids during a scheduled period of time and automatic evaluation of bids;
- xxxvi) "Service" means any subject matter of procurement other than goods or works, except those incidental or consequential to the service, and includes physical, maintenance, professional, intellectual, training, consultancy and advisory services or any other service classified or declared as such by a procuring entity but does not include appointment of an individual made under any law, rules, regulations or order issued in this behalf;
- xxxvii) "Subject matter of procurement" means any item of procurement whether in the form of goods, services or works or a combination thereof;
- xxxviii) "Works" refer to any activity, sufficient in itself to fulfil an economic or technical function, involving construction, fabrication, repair, overhaul, renovation, decoration, installation, erection, excavation, dredging, and so on, which make use of a combination of one or more of engineering design,

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architectural design, material and technology, labour, machinery and equipment. Supply of some materials or certain services may be incidental or consequential to and part of such works. The term "Works" includes (i) civil works for the purposes of roads, railway, airports, shipping-ports, bridges, buildings, irrigation systems, water supply, sewerage facilities, dams, tunnels and earthworks; and so on, and (ii) mechanical and electrical works involving fabrication, installation, erection, repair and maintenance of a mechanical or electrical nature relating to machinery and plants.







# **Chapter 1: Introduction – Policies and Principles**

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

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.

The Ministries / Departments have been delegated full powers to make their own arrangements for procurement of goods and services, that are not available<sup>6</sup> on Government e-Marketplace (GeM). These powers have to be exercised which have to be exercised as per the Delegation of Financial Power Rules and in conformity with the 'Procurement Guidelines' described below. Common use Goods and Services available on GeM are required to be procured mandatorily through GeM as per Rule 149 of GFR, 2017

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 suppliers, 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.

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 19 (1) (g) – Right to carry on a Profession) which have implications for Public Procurement. Further, the Indian Contract Act, 1872 and the Sale of Goods Act, 1930 are major legislations governing contracts of sale/ purchase of goods in general. There are other mercantile laws (Arbitration and Conciliation Act, 1996; Competition Act, 2002;

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<sup>6</sup>Rule 147 of GFR, 2017 amended vide OM No. F.1/26/2018-PPD dated 02.04.2019

Information Technology Act, 2000 etc), which may be attracted in Public Procurement Transactions. There is no law exclusively governing public procurement.

However, comprehensive Rules and Regulations in this regard are available in the General Financial Rules (GFR), 2017, especially chapter 6; Delegation of Financial Powers Rules (DFPR); Government orders regarding product reservations or purchase preference or other facilities to sellers in Micro and Small Enterprises, Pharmaceutical Central Public Sector Enterprises, Khadi/ Handlooms goods goods, works and services rendered with more than prescribed local content (Make in India) etc.

Without purporting to be a comprehensive compendium of all such 'Procurement Guidelines', this Manual is intended to serve as a portal to enter this vast area and draw attention to basic norms and practices governing public procurement.

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

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**

The term 'goods' used in this manual includes all articles, material, commodity, livestock, medicines, furniture, fixtures, raw material, consumables, spare parts, instruments, machinery, equipment, industrial plants, vehicles, aircraft, ships, railway rolling stock, assemblies, sub-assemblies, accessories, a group of machines comprising an integrated production process or such other goods (but excludes books, publications, periodicals, and so on, for a library), or intangible products like software, technology transfer, licenses, patents or other intellectual properties procured or otherwise acquired by a procuring entity. Procurement of goods may include certain small work or some services, which are incidental or consequential to the supply of such goods, such as transportation, insurance, installation, commissioning, training and maintenance (*Rule 143 of GFR 2017*). What is unique about procurement of goods (as compared to services and works) is the ability to precisely describe the technical specification of the requirement.

The 'Procurement Entities' who can benefit from this manual include Ministries, Departments, or a unit thereof, or an attached or subordinate offices/units; Central Public Sector Enterprises (CPSEs) or undertakings; any other body (including autonomous bodies) substantially owned or controlled by or receiving substantial financial assistance from the Central Government. These procurement guidelines would continue to apply 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 (but not for purpose of trading/ sale) from their subsidiary companies including Joint Ventures in which they have controlling share.

However by a general or special notification, the Government may permit certain 'Procuring Entities' mentioned in sub-para above, considering unique conditions under which they operate, for all or certain categories of procurement, to adopt detailed approved guidelines for procurement, which may deviate in some aspects but conform with all other essential aspects of 'Procurement Guidelines'.

This Manual is to be taken as generic guidelines, which have to be necessarily broad in nature. Subject to the observance of these generic guidelines, the initiation, authorization, procurement and execution of Goods Contracts undertaken by 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. Ministries/ Departments are advised to supplement these manuals to suit their local/ specialized needs, by issuing their own detailed Manuals (including customized formats); Standard Bidding Documents; Schedule of Procurement Powers<sup>7</sup> and Checklists to serve as practical instructions for their officers and to ensure completeness of examination of cases. Major Goods procuring Ministries/Departments like the Ministry of Defence, Ministry of Railways, etc. have their own detailed guidelines tailored to unique individual requirements, e.g. Manuals or Procedure Orders. Many other Ministries/ Departments as well as CPSEs also

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<sup>7</sup>Notified vide OM No.F.1/36/2018-PPD issued by Department of Expenditure dated 28.12.2018

have their own Procurement Manuals. For these Procuring Entities, this Manual would serve as a generic reference.

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.

**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 Authorities competent to purchase goods and their Purchase Powers**

1.4.1 A Competent authority which is competent to incur expenditure may sanction the purchase of goods required for use in public service in accordance with the Delegation of Financial Rules (DFPR – extracted in Annexure 2A) by following the ‘Procurement Guidelines’ described in this Manual (*Rule 145 of GFR 2017*). Each ‘Procuring Entity’ may issue a Schedule of Procurement Powers (SoPP) adding further details to the broad delegations in the DFPR, based on the assessment of risks involved in different decisions/ approvals at various stages of Procurement Cycle. A suggested structure of such SoPP is enclosed as Annexure 2C.

#### **1.5 Basic Aims of Procurement – the 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 the following five parameters called the Five R’s of procurement. The entire process of procurement (from the time the need for an item, facility or services is identified till the need is satisfied) is designed to achieve such a right balance. The word ‘right’ is used in the sense of ‘optimal balance’.

i) **Right Quality**

Procurement aims to buy just the right quality that will suit the needs – no more and no less – with clear specification of the procuring entity's requirements, proper understanding of functional value and cost, understanding of the bidder's quality system and quality awareness. The concept of the right balance of quality can be further refined to the concept of utility/value (Please refer to para 1.6 below). For the Right Quality, Technical Specification is the most vital ingredient. In public procurement, it is essential to give due consideration to Value for Money while benchmarking the specification.

ii) **Right Quantity**

There are extra costs and systemic overheads involved with both procuring a requirement too frequently in small quantities or with buying large quantities for prolonged use. Hence, the right quantity should be procured (in appropriate size of contract) which balances extra costs associated with larger and smaller quantities.

iii) **Right Price**

It is not correct to aim at the cheapest materials/ facilities/ Services available. The price should be just right for the quality, quantity and other factors involved (or should not be abnormally low for a facilities/works/ services which could lead to a situation of non-performance or failure of contract). The concept of price can be refined further to take into account not only the initial price paid for the requirement but also other costs such as maintenance costs, operational costs and disposal costs (Also termed as life cycle costing - please also refer to para 1.6 below)

iv) **Right Time and Place**

If the material (or facility or services) is needed by an organisation in three months' time, it will be costly to procure it too late or too early. Similarly, if the vendor delivers the materials/ facilities/ services in another city, extra time and money would be involved in logistics. An unrealistic time schedule for completion of a facility may lead to delays, claims and disputes.

v) **Right Source**

Similarly, the source of delivery of Goods, Works and Services of the requirement must have just right financial capacity and technical capability for our needs (demonstrated through satisfactory past performance of contracts of same or similar

nature). Buying a few packets of printer paper directly from a large manufacturer may not be the right strategy. On the other hand, if our requirements are very large, buying such requirements through dealers or middlemen may also not be right.

## **1.6 Refined Concepts of Cost and Value – Value for Money**

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

## **1.7 Fundamental Principles of Public Procurement**

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

### **i) Transparency Principle**

All procuring authorities are responsible and accountable to ensure transparency, fairness, equality, competition and appeal rights. This involves simultaneous,

symmetric and unrestricted dissemination of information to all likely bidders, sufficient for them to know and understand the availability of bidding opportunities and actual means, processes and time-limits prescribed for completion of registration of bidders, bidding, evaluation, grievance redressal, award and management of contracts. It implies that such officers must ensure that there is consistency (absence of subjectivity), predictability (absence of arbitrariness), clarity, openness (absence of secretiveness), equal opportunities (absence of discrimination) in processes. In essence Transparency Principle also enjoins upon the Procuring Authorities' *to do only that which it had professed to do as pre-declared in the relevant published documents and not to do anything that had not been so declared*'. As part of this principle, all procuring entities should ensure that offers should be invited following a fair and transparent procedure and also ensure publication of all relevant information on the Central Public Procurement Portal (CPPP).

ii) **Professionalism Principle**

As per these synergic attributes, the procuring authorities have a responsibility and accountability to ensure professionalism, economy, efficiency, effectiveness and integrity in the procurement process. They must avoid wasteful, dilatory and improper practices violating the Code of integrity for Public Procurement (CIPP) mentioned in Chapter 3 of this manual. They should, at the same time, ensure that the methodology adopted for procurement should not only be reasonable and appropriate for the cost and complexity but should also effectively achieve the planned objective of the procurement. As part of this principle, the Government may prescribe professional standards and specify suitable training and certification requirements for officials dealing with procurement matters.

In reference to the above two principles - Transparency and Professionalism Principle, It may be useful to refer to the following provisions in the General Financial Rules, 2017:

Rule 144. Fundamental principles of public buying: Fundamental principles of public buying (for all procurements including procurement of works).— Every authority delegated with the financial powers of procuring goods in public interest shall have the responsibility and accountability to bring efficiency, economy, and transparency



## Chapter 1: Introduction – Policies and principles

in matters relating to public procurement and for fair and equitable treatment of suppliers and promotion of competition in public procurement.

The procedure to be followed in making public procurement must conform to the following yardsticks:-

*a) The description of the subject matter of procurement to the extent practicable should --*

- 1. be objective, functional, generic and measurable and specify technical, qualitative and performance characteristics;*
- 2. not indicate a requirement for a particular trade mark, trade name or brand.*

*b) the specifications in terms of quality, type etc., as also quantity of goods to be procured, should be clearly spelt out keeping in view the specific needs of the procuring organisations. The specifications so worked out should meet the basic needs of the organisation without including superfluous and non-essential features, which may result in unwarranted expenditure.*

*c) Where applicable, the technical specifications shall, to the extent practicable, be based on the national technical regulations or recognized national standards or building codes, wherever such standards exist, and in their absence, be based on the relevant international standards. In case of Government of India funded projects abroad, the technical specifications may be framed based on requirements and standards of the host beneficiary Government, where such standards exist. Provided that a procuring entity may, for reasons to be recorded in writing, adopt any other technical specification<sup>8</sup>.*

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<sup>8</sup>It has been reiterated by Department of Expenditure vide OM F.N.12/17/2019-PPD dated 12.05.2020 that wherever Indian Technical specifications and Quality Certifications exists, the procuring entity should prescribe them. In those rare or exceptional cases where, despite the existence of Indian technical specifications, the procuring entity intends to specify foreign Technical Certifications and Accreditations, it must record its reasons in writing for adoption of such other technical specifications. This may also be subject to matter of audit.

- d) Care should also be taken to avoid purchasing quantities in excess of requirement to avoid inventory carrying costs;*
- e) offers should be invited following a fair, transparent and reasonable procedure;*
- f) the procuring authority should be satisfied that the selected offer adequately meets the requirement in all respects;*
- g) the procuring authority should satisfy itself that the price of the selected offer is reasonable and consistent with the quality required;*
- h) at each stage of procurement the concerned procuring authority must place on record, in precise terms, the considerations which weighed with it while taking the procurement decision.*
- i) a complete schedule of procurement cycle from date of issuing the tender to date of issuing the contract should be published when the tender is issued.*
- j) All Ministries/Departments shall prepare Annual Procurement Plan before the commencement of the year and the same should also be placed on the their website”*
- k) [Notwithstanding anything contained in these Rules, Department of Expenditure may, by order in writing, impose restrictions, including prior registration and/or screening, on procurement from bidders from a country or countries, or a class of countries, on grounds of defence of India, or matters directly or indirectly related thereto including national security; no procurement shall be made in violation of such restrictions.]<sup>9</sup>*

iii) **Broader Obligations Principle**

Over and above transparency and professionalism, the procuring authorities have also the responsibility and accountability to conduct public procurement in a manner to facilitate achievement of the broader objectives of the Government - to the extent these are specifically included in the ‘Procurement Guidelines’:

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<sup>9</sup>Inserted vide Department of Expenditure (DoE), Ministry of Finance (MoF) OM No. F.6/18/2019-PPD dated 23.07.2020.

- a) Preferential procurement from backward regions, weaker sections and MSEs, locally manufactured goods or services, to the extent specifically included in the 'Procurement Guidelines'; and
- b) Reservation of procurement of specified class of goods from or through certain nominated CPSEs or Government Organisations, to the extent specifically included in the 'Procurement Guidelines'.
- c) Support to broader social policy and programme objectives of the Government (for example, economic growth, strengthening of local industry - make-in-India, Ease of Doing Business, job and employment creation, and so on, to the extent specifically included in the 'Procurement Guidelines');
- d) Facilitating administrative goals of other Departments of Government (for example, ensuring tax or environmental compliance by participants, Energy Conservation, accessibility for People With Disabilities etc. to the extent specifically included in the 'Procurement Guidelines').
- e) Procurement policies and procedures must comply with accessibility criteria which may be mandated by the Government from time to time. Keeping this in view, Department of Expenditure amended Rule 144 of GFR, 2017 and introduced a sub-rule (xi) imposing restrictions under the rule [as mentioned under (ii) above]. The detailed provisions were notified through Order (Public Procurement No.1)<sup>10</sup> which are as follows:

**1. Requirement of registration**

- a) Any bidder from a country which shares a land border with India will be eligible to bid in any procurement whether of goods, services (including consultancy services and non-consultancy services) or works (including turnkey projects) only if the bidder is registered with the Competent Authority, specified in Para 12(c) below.

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<sup>10</sup>Inserted vide Department of Expenditure (DoE), Ministry of Finance (MoF) OM No. F,6/18/2019-PPD dated 23.07.2020.

- b) The Order shall not apply to (i) cases where orders have been placed or contract has been concluded or letter/notice of award/ acceptance (LoA) has been issued on or before the date of the order (23<sup>rd</sup> July 2020); and (ii) cases falling under para 13 below.

## 2. **Transitional cases**

Tenders where no contract has been concluded or no LoA has been issued so far shall be handled in the following manner: -

- a) In tenders which are yet to be opened, or where evaluation of technical bid or the first exclusionary qualificatory stage (i.e. the first stage at which the qualifications of tenderers are evaluated and unqualified bidders are excluded) has not been completed: No contracts shall be placed on bidders from such countries. Tenders received from bidders from such countries shall be dealt with as if they are non-compliant with the tender conditions and the tender shall be processed accordingly.
- b) If the tendering process has crossed the first exclusionary qualificatory stage, if the qualified bidders include bidders from such countries, the entire process shall be scrapped and initiated *de novo*. The *de novo* process shall adhere to the conditions prescribed in the Order.
- c) As far as practicable, and in cases of doubt about whether a bidder falls under paragraph (1) above, a certificate shall be obtained from the bidder whose bid is proposed to be considered or accepted, in terms of paras 5(c), 5(d) and 6 read with para (1).

## 3. **Incorporation in tender conditions**

In tenders to be issued after the date (23<sup>rd</sup> July 2020) of the order, the provisions of paragraph (1) above and of other relevant provisions of the Order shall be incorporated in the tender conditions.

## 4. **Applicability**

- a) Apart from Ministries/Departments, attached and subordinate bodies, notwithstanding anything contained in Rule 1 of the GFRs 2017, the Order shall also be applicable:to all Autonomous Bodies;
- b) to public sector banks and public sector financial institutions; and
- c) subject to any orders of the Department of Public Enterprises, to all Central Public Sector Enterprises; and

- d) to procurement in Public Private Partnership projects receiving financial support from the Government or public sector enterprises/ undertakings.
- e) Union Territories, National Capital Territory of Delhi and all agencies/ undertakings thereof

**5. Definitions**

- a) “Bidder” for the purpose of the Order (including the term ‘tenderer’, ‘consultant’ ‘vendor’ or ‘service provider’ in certain contexts) means any person or firm or company, including any member of a consortium or joint venture (that is an association of several persons, or firms or companies), every artificial juridical person not falling in any of the descriptions of bidders stated hereinbefore, including any agency, branch or office controlled by such person, participating in a procurement process.
- b) “Tender” for the purpose of the Order will include other forms of procurement, except where the context requires otherwise.
- c) “Bidder from a country which shares a land border with India” for the purpose of the Order means
  - i. An entity incorporated, established or registered in such a country; or
  - ii. A subsidiary of an entity incorporated, established or registered in such a country; or
  - iii. An entity substantially controlled through entities incorporated, established or registered in such a country; or
  - iv. An entity whose beneficial owner is situated in such a country; or
  - v. An Indian (or other) agent of such an entity; or
  - vi. A natural person who is a citizen of such a country; or
  - vii. A consortium or joint venture where any member of the consortium or joint venture falls under any of the above
- d) “Agent” for the purpose of the Order is a person employed to do any act for another, or to represent another in dealings with third persons.

**6. Beneficial owner for the purposes of point (c) (iv) will be as under:**

- a) In case of a company or Limited Liability Partnership, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person(s), has a controlling ownership interest or who exercises control through other means. Explanation:-

- b) In case of a partnership firm, the beneficial owner is the natural person(s) who, whether acting alone or together, or through one or more juridical person, has ownership of entitlement to more than fifteen percent of capital or profits of the partnership;
- c) In case of an unincorporated association or body of individuals, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has ownership of or entitlement to more than fifteen percent of the property or capital or profits of such association or body of individuals;
- d) Where no natural person is identified under (6) (a) or (6) (b) or (6) (c) above, the beneficial owner is the relevant natural person who holds the position of senior managing official;
- e) In case of a trust, the identification of beneficial owner(s) shall include identification of the author of the trust, the trustee, the beneficiaries with fifteen percent or more interest in the trust and any other natural person exercising ultimate effective control over the trust through a chain of control or ownership.

**7. Sub-contracting in works contracts**

In works contracts, including turnkey contracts, contractors shall not be allowed to sub-contract works to any contractor from a country which shares a land border with India unless such contractor is registered with the Competent Authority. The definition of “contractor from a country which shares a land border with India” shall be as in paragraph (5) (c) above. This shall not apply to sub-contracts already awarded on or before the date of the Order (i.e. 23<sup>rd</sup> July, 2020).

**8. Certificate regarding compliance**

A certificate shall be taken from bidders in the tender documents regarding their compliance with the Order. If such certificate given by a bidder whose bid is accepted is found to be false, this would be a ground for immediate termination and further legal action in accordance with law.

**9. Validity of registration**

In respect of tenders, registration should be valid at the time of submission of bids and at the time of acceptance of bids. In respect of supply otherwise than by tender, registration should be valid at the time of placement of order. If the bidder was validly

registered at the time of acceptance / placement of order, registration shall not be a relevant consideration during contract execution.

**10. Government e-Marketplace**

The Government E-Marketplace shall, as soon as possible, require all vendors/ bidders registered with GeM to give a certificate regarding compliance with the Order, and after the date fixed by it, shall remove non-compliant entities from GeM unless/ until they are registered in accordance with this Order.

**11. Model Clauses/ Certificates**

Model Clauses and Model Certificates which may be inserted in tenders / obtained from Bidders are given at Annexure-2F. While adhering to the substance of the Order, procuring entities are free to appropriately modify the wording of these clauses based on their past experience, local needs etc. without making any reference to Department of Expenditure.

**12. Competent Authority and Procedure for Registration**

- a) The Competent Authority for the purpose of registration under this Order shall be the Registration Committee constituted by the Department for Promotion of Industry and Internal Trade (DPIIT)<sup>11</sup>.
- b) The Registration Committee shall have the following members<sup>10</sup>
  - i. An officer, not below the rank of Joint Secretary, designated for this purpose by DPIIT, who shall be the Chairman;
  - ii. Officers (ordinarily not below the rank of Joint Secretary) representing the Ministry of Home Affairs, Ministry of External Affairs, and of those Departments whose sectors are covered by applications under consideration;
  - iii. Any other officer whose presence is deemed necessary by the Chairman of the Committee.

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<sup>11</sup>(i)In respect of application of the Order to procurement by/ under State Governments, all functions assigned to DPIIT shall be carried out by the State Government concerned through a specific department or authority designated by it. The composition of the Registration Committee shall be as decided by the State Government and paragraph G above shall not apply. However, the requirement of political and security clearance as per para D shall remain and no registration shall be granted without such clearance.

(ii) Registration granted by State Governments shall be valid only for procurement by the State Government and its agencies/ public enterprises etc. and shall not be valid for procurement in other states or by the Government of India and their agencies/ public enterprises etc.

- c) DPIIT has laid down the method of application, format etc. for such bidders as stated in para (1) (a) above<sup>12</sup>. On receipt of an application seeking registration from a bidder from a country covered by para (1) (a) above the Competent Authority shall first seek political and security clearances from the Ministry of External Affairs and Ministry of Home Affairs, as per guidelines issued from time to time. Registration shall not be given unless political and security clearance have both been received.
- d) The Ministry of External Affairs and Ministry of Home Affairs may issue guidelines for internal use regarding the procedure for scrutiny of such applications by them.
- e) The decision of the Competent Authority, to register such bidder may be for all kinds of tenders or for a specified type(s) of goods or services, and may be for as specified or unspecified duration of time, as deemed fit. The decision of the Competent Authority shall be final.
- f) Registration shall not be granted unless the representatives of the Ministries of Home Affairs and External Affairs on the Committee concur<sup>13</sup>.
- g) Registration granted by the Competent Authority of the Government of India shall be valid not only for procurement by Central Government and its agencies/ public enterprises etc. but also for procurement by State Governments and their agencies/ public enterprises etc. No fresh registration at the State level shall be required.
- h) The Competent Authority is empowered to cancel the registration already granted if it determines that there is sufficient cause. Such cancellation by itself, however, will not affect the execution of contracts already awarded. Pending cancellation, it may also suspend the registration of a bidder, and the bidder shall not be eligible to bid in any further tenders during the period of suspension.

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<sup>12</sup>Notified vide OM No.P-45021/112/2020-PP (BE-II) (E-43780) issued by DPIIT dated 30.03.2021

<sup>13</sup>(i)In respect of application of the Order to procurement by/ under State Governments, all functions assigned to DPIIT shall be carried out by the State Government concerned through a specific department or authority designated by it. The composition of the Registration Committee shall be as decided by the State Government and paragraph G above shall not apply. However, the requirement of political and security clearance as per para D shall remain and no registration shall be granted without such clearance.

(ii) Registration granted by State Governments shall be valid only for procurement by the State Government and its agencies/ public enterprises etc. and shall not be valid for procurement in other states or by the Government of India and their agencies/ public enterprises etc.



- i) For national security reasons, the Competent Authority shall not be required to give reasons for rejection/cancellation of registration of a bidder.
- j) In transitional cases falling under para (2) above, where it is felt that it will not be practicable to exclude bidders from a country which shares a land border with India, a reference seeking permission to consider such bidders shall be made by the procuring entity to the Competent Authority, giving full information and detailed reasons. The Competent Authority shall decide whether such bidders may be considered, and if so shall follow the procedure laid down in the above paras.
- k) Periodic reports on the acceptance/ refusal of registration during the preceding period may be required to be sent to the Cabinet Secretariat. Details will be issued separately in due course by DPIIT.

**13. Special Cases [In reference to para (1) (b) above]**

- a) Bona fide procurements made through GeM without knowing the country of the bidder till the date fixed by GeM for this purpose, shall not be invalidated by the Order.
- b) Bona fide small procurements, made without knowing the country of the bidder, shall not be invalidated by the Order.
- c) In projects which receive international funding with the approval of the Department of Economic Affairs (DEA), Ministry of Finance, the procurement guidelines applicable to the project shall normally be followed, notwithstanding anything contained in the Order and without reference to the Competent Authority. Exceptions to this shall be decided in consultation with DEA.
- d) The Order shall not apply to procurement by Indian missions and by offices of government agencies/ undertakings located outside India.
- e) The Order will not apply to bidders from those countries (even if sharing a land border with India) to which the Government of India has extended lines of credit or in which the Government of India is engaged in development projects. Updated lists of countries to which lines of credit have been

extended or in which development projects are undertaken are given in the website of the Ministry of External Affairs<sup>14</sup>.

- f) A bidder is permitted to procure raw material, components, sub-assemblies etc. from the vendors from countries which shares a land border with India. Such vendors will not be required to be registered with the Competent Authority, as it is not regarded as “sub-contracting”. However, in case a bidder has proposed to supply finished goods procured directly/ indirectly from the vendors from the countries sharing land border with India, such vendor will be required to be registered with the Competent Authority<sup>15</sup>.
- g) Procurement of spare parts and other essential service support like Annual Maintenance Contract (AMC)/ Comprehensive Maintenance Contract (CMC), including consumables for closed systems, from Original Equipment Manufacturers (OEMs) or their authorized agents, shall be exempted from the requirement of registration as mandated under Rule 144(xi) of GFR, 2017 and Public Procurement orders issued in this regard<sup>16</sup>.

14. Clarification to Order (Public Procurement No.1) dated 23<sup>rd</sup> July 2020<sup>17</sup>

- a) For the purpose of (2)(b) above, “qualified bidders” means only those bidders would otherwise have been qualified for award of the tender after considering all factors including price, if the Order (Public Procurement No.1) dated 23<sup>rd</sup> July 2020 had not been issued.
- b) If bidders from such countries would not have qualified for award for reasons unconnected with the said Orders (for example, because they do not meet tender criteria or their price bid is higher or because of the provisions of purchase preference under any other order or rule or any other reason) then there is no need to scrap the tender/ start the process *de novo*.
- c) The following examples are given to assist in implementation of the Order
  - 1. Example I: Four bids are received in a tender. One of them is from a country which shares a land border with India. The bidder from such

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<sup>14</sup>Notified through Order (Public Procurement No. 2) vide F.No.6/18/2019-PPD issued by Department of Expenditure dated 23.07.2020

<sup>15</sup>Notified vide OM No. F.18/37/2020-PPD issued by Department of Expenditure dated 08.02.2021

<sup>16</sup>Notified vide OM No. F.12/1/2021-PPD(Pt.) issued by Department of Expenditure dated 02.03.2021

<sup>17</sup>Notified through Order (Public Procurement No. 3) vide F.No.6/18/2019-PPD issued by Department of Expenditure dated 24.07.2020

country is found to be qualified technically by meeting all prescribed criteria and is also the lowest bidder. In this case, the bidder is qualified for award of the tender, except for the provisions of the Order (Public Procurement No. 1) dated 23rd July. In this case, the tender should be scrapped and fresh tender initiated.

2. Example 2: The facts are as in Example 1, but the bidder from such country, though technically qualified is not the lowest because there are other technically qualified bidders whose price is lower. Hence the bidder from such country would not be qualified for award of the tender irrespective of the Order (Public Procurement No. 1) dated 23rd July 2020. In such a case, there is no need to scrap the tender.
3. Example 3: The facts are as in Example 1, but the bidder from a country which shares a land border with India, though technically qualified, is not eligible for award due to the application of price preference as per other orders/ rules. In such a case, there is no need to scrap the tender.
4. Example 4: Three bids are received in a tender. One of them is a bidder from a country sharing a land border with India. The bidder from such a country does not meet the technical requirements and hence is not qualified. There is no need to scrap the tender.

iv) **Extended Legal Responsibilities Principle**

Procuring authorities must fulfil additional legal obligations in public procurement, over and above mere conformity to the mercantile laws (which even private sector procurements have to comply with). The Constitution of India has certain provisions regarding fundamental rights and public procurement. Courts have, over a time, taking a broader view of Public Procurement as a function of 'State', interpreted these to extend the responsibility and accountability of public procurement Authorities. Courts in India thus exercise additional judicial review (beyond contractual issues) over public procurement in relation to the manner of decision making in respect of fundamental rights, fair play and legality. Similarly, procuring authorities have also the responsibility and accountability to comply with the laws relating to Governance Issues like Right to Information (RTI) Act and Prevention of

Corruption Act, and so on. Details of such extended legal obligations are given in Appendix 2.

v) **Public Accountability Principle**

Procuring authorities are accountable for all the above principles to several statutory and official bodies in the Country – the Legislature and its Committees, Central Vigilance Commission, Comptroller and Auditor General of India, Central Bureau of Investigations and so on– in addition to administrative accountability. As a result, each individual public procurement transaction is liable to be scrutinised independently, in isolation, besides judging the overall outcomes of procurement process over a period of time. Procuring authorities thus have responsibility and accountability for compliance of rules and procedures in each individual procurement transaction besides the achievement of overall procurement outcomes. The procuring authority, at each stage of procurement, must therefore place on record, in precise terms, the considerations which weighed with it while making the procurement decision from need assessment to fulfilment of need. Such records must be preserved, retained in easily retrievable form and made available to such oversight agencies. The procuring entity shall therefore maintain and retain audit trails, records and documents generated or received during its procurement proceedings, in chronological order, the files will be stored in an identified place and retrievable for scrutiny whenever needed without wastage of time. The documents and record will include:

- a) documents pertaining to determination of need for procurement;
- b) description of the subject matter of the procurement;
- c) Statement of the justification for choice of a procurement method other than open competitive bidding;
- d) Documents relating to pre-qualification and registration of bidders, if applicable;
- e) Particulars of issue, receipt, opening of the bids and the participating bidders at each stage;
- f) Requests for clarifications and any reply thereof including the clarifications given during pre-bid conferences;
- g) Bids evaluated, and documents relating to their evaluation; and
- h) Contracts and Contract Amendments

- i) Complaint handling, correspondences with clients, consultants, banks.

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

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

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

- i) Every officer is expected to exercise the same vigilance in respect of expenditure incurred from public moneys as a person of ordinary prudence would exercise in respect of expenditure of his own money.
- ii) The expenditure should not be prima facie more than the occasion demands.
- iii) No authority should exercise its powers of sanctioning expenditure to pass an order which will be directly or indirectly to its own advantage.
- iv) Expenditure from public moneys should not be incurred for the benefit of a particular person or a section of the people, unless -
  - a) a claim for the amount could be enforced in a Court of Law, or b) the expenditure is in pursuance of a recognized policy or custom.
- v) The amount of allowances granted to meet expenditure of a particular type should be so regulated that the allowances are not on the whole a source of profit to the recipients.
- vi) While discharging the duties of financial concurrence of any public expenditure, such authorities subsequent to such decision, shall not be involved in any future financial/audit/payment responsibilities which may create conflict of interest.

## **1.9 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 dissemination of best practices, provision of 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' registration, Bidding documents; details of bidders, their pre-qualification, registration, exclusions/debarments; decisions taken regarding prequalification and selection of successful bid. It is also now mandatory to implement end-to-end e-Procurement for all procurements either through CPPP portal or any other suitable portal.

## **1.10 Product Reservation and Preferential/Mandatory Purchase from certain sources**

The Central Government may, by notification, provide for mandatory procurement of any goods or services from any category of bidders, or provide for preference to bidders on the grounds of promotion of locally manufactured goods or locally provided services.

**Note:** Before considering any Purchase Preference/ product reservation mentioned below, the Procuring Entity should check the latest directives in this regard for necessary action. Product Reservation/ Purchase Preference provision shall invariably be part of the Notice Inviting Tender (NIT) and Instructions to Bidders (ITB).

#### **1.10.1 Reservation of Procurement of certain class of Products from certain agencies- Khadi Goods/Handloom Textiles**

The Central Government has reserved<sup>18</sup> all items of hand-spun and hand-woven textiles (Khadi goods) for exclusive purchase from Khadi & Village Industries Commission (KVIC). Of all items of textiles required by the Central Government departments, it shall be mandatory to make procurement of at least 20% from amongst items of handloom origin, for exclusive purchase from KVIC and/ or Handloom Clusters such as Co-Operative Societies, Self Help Group (SHG) Federations, Joint Liability Group (JLG), Producer Companies (PC), Corporations etc. including Weavers having Pehchan Cards<sup>19</sup>.

#### **1.10.2 Reservation of Procurement of certain class of Products from certain agencies-**

##### **Pharmaceuticals from Pharmaceutical CPSEs**

The pharmaceuticals Purchase Policy<sup>20</sup>, 2013 is intended to ensure

- 1) Optimum utilization of the installed capacity and to provide necessary fillip in reviving these ailing pharmaceuticals CPSEs
- 2) Availability of quality medicines at low prices to the masses
- 3) Drug security of the nation.

The salient features of this policy are as follows:

- a) Pharmaceuticals Purchase Policy in respect of 103 (one hundred and three) medicines would be valid for a period of five years from the date of issue (30/10/2013) of orders by Department of Pharmaceuticals.

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<sup>18</sup>Ministry of Textiles O. M. No. 4/2/88-DCH/M & E dated 17th February 1992

<sup>19</sup>Notified vide OM No. F.10/2/2019-PPD(Pt.) issued by Department of Expenditure dated 17.02.2020

<sup>20</sup>Department of Pharmaceuticals, Ministry of Chemicals and Fertilizers, OM 50(9)/ 2010-PI-IV Dtd 10/12/2013

- b) Pharmaceuticals Purchase Policy will extend only to Central Public Sector Enterprises (CPSEs) under the administrative control of Department of Pharmaceuticals such as Indian Drugs and Pharmaceuticals Limited (IDPL), Hindustan Antibiotics Limited (HAL), Bengal Chemicals and Pharmaceuticals Limited (BCPL), Karnataka Antibiotics and Pharmaceuticals Limited (KAPL) and Rajasthan Drugs and Pharmaceuticals Limited (RDPL) and their subsidiaries where Government of India owns 51% (fifty one percent) or above shares.
- c) This would be applicable to purchases by Central Government Departments, their Public Sector Undertakings, and Autonomous Bodies, etc. This would also be applicable to purchase of medicines by State Governments under Health Programmes funded by Government of India such as the National Rural Health Mission etc.
- d) The pricing of the products would be done by National Pharmaceutical Pricing Authority (NPPA) using the cost based formula, as mentioned in the Drugs Price Control Order, 1995. A uniform discount of 16% (Sixteen percent) would be extended to all products. All the taxes, whatsoever, would have to be passed on to buyers.
- e) Annual revision of prices would be linked to Wholesale Price Index as per provisions contained in Drugs Prices Control Order, 2013.
- f) The procuring entity would purchase from pharma CPSEs and their subsidiaries subject to their meeting Good Manufacturing Practices (GMP) norms as per Schedule 'M' of the Drugs & Cosmetic Rules.
- g) In case pharma CPSEs and their subsidiaries fail to supply the medicines, the procuring entity would be at liberty to make purchases from other manufacturers. If the pharma CPSEs or their subsidiaries fail to perform as per the purchase order, they would also be subject to payment of liquidated damages or any other penalty as per the terms of the contract.
- h) The list of medicines (please refer to Annexure 27) may be reviewed and revised by the Department of Pharmaceuticals as per requirement.

#### **1.10.3 Reservation of specific items for procurement from Micro and Small Enterprises (MSE)**

To enable wider dispersal of enterprises in the country, particularly in rural areas, the Central Government Ministries or Departments or Public Sector Undertakings shall



continue to procure items reserved for procurement exclusively from MSE (presently 358 (three hundred and fifty-eight) items including eight items of Handicrafts) from Micro and Small Enterprises, which have been reserved for exclusive purchase from them. The latest list may be seen from the website of the MSME Ministry<sup>21</sup>. Ministry of MSME has clarified that the laminated paper Gr.I,II and III are not covered under the paper conversion product (SI.No.202) of the Public Procurement Policy<sup>22</sup>. For locating the sources of such reserved items, NSIC may be contacted.

#### 1.10.4 Public Procurement Policy for Micro and Small Enterprises (MSEs)

- i) From time to time, the Government of India (Procuring Entity) lays down procurement policies to help inclusive national economic growth by providing long-term support to micro, small and medium enterprises and disadvantaged sections of society . The Procurement Policy for Micro and Small Enterprises, 2012 [amended 2018 and 2021] has been notified by the Government in exercise of the powers conferred in Section 11 of the Micro, Small and Medium Enterprises Development (MSMED) Act, 2006. Details of the policy along with the amendments issued in 2018 and 2021 are available on the MSME website<sup>23</sup>.
- ii) Micro and Small Enterprises (MSEs) registered under Udyam Registration are eligible to avail the benefits under the policy.
- iii) The Policy is applicable to all the Central Government Ministries/ Departments/ CPSUs. However, the policy is not applicable to State Government Ministries/ Departments/ PSUs.
  - 1) To reduce transaction cost of doing business, MSEs will be facilitated by providing them tender documents free of cost, exempting MSEs from payment of earnest money deposit, adopting e-procurement to bring transparency in tendering process. However, exemption from paying Performance Bank Guarantee is not covered under the policy. MSEs may also be given relaxation in prior turnover and prior experience criteria during the tender process, subject to meeting of quality and technical specifications. However, there may be

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<sup>21</sup> <http://www.dcmsme.gov.in/schemes/Listof358itemsReserved.pdf>

<sup>22</sup> Policy Circular No. 21(6)/2016-MA dated 26.05.2016

<sup>23</sup> <http://dcmsme.gov.in/pppm.htm.aspx>

circumstances (like procurement of items related to public safety, health, critical security operations and equipment, etc.) where procuring entity may prefer the vendor to have prior experience rather than giving orders to new entities<sup>24</sup>.

- 2) Chapter V of the MSMED Act, 2006 also has provision for ensuring timely payments to the MSE suppliers. The period agreed upon for payment must not exceed forty-five days after the supplies. For delays in payment the buyer shall be liable to pay compound interest to the supplier on the delayed amount at three times of the bank rate notified by the Reserve Bank. For arbitration and conciliation regarding recovery of such payments and interests, Micro and Small Enterprises Facilitation Council has been setup in states.
- 3) In tender, participating Micro and Small Enterprises (MSE) quoting price within price band of L1+15 (fifteen) per cent shall also be allowed to supply a portion of requirement by bringing down their price to L1 price in a situation where L1 price is from someone other than a MSE and such MSE shall be allowed to supply up to 25(twenty five) per cent of total tendered value. The 25(twenty five) per cent quantity is to be distributed proportionately among these bidders, in case there are more than one MSEs within such price band.
- 4) Within this 25% (Twenty Five Percent) quantity, a purchase preference of four (4) per cent s reserved for MSEs owned by Scheduled Caste (SC)/ Scheduled Tribe (ST) entrepreneurs and three (3) percent is reserved for MSEs owned by women entrepreneur (if they participate in the tender process and match the L1 price).However, in event of failure of such MSEs to participate in tender process or meet tender requirements and L1 price, four percent sub-target for procurement earmarked for MSEs owned by SC/ST entrepreneurs and three (3) percent earmarked to women entrepreneur will be met from other MSEs. . MSEs would be treated as owned by SC/ ST entrepreneurs:
  - a) In case of proprietary MSE, proprietor(s) shall be SC /ST;

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<sup>24</sup>Notified vide OM No.F.20/2/2014-PPD(Pt.) issued by Department of Expenditure dated 29.09.2016.

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- b) In case of partnership MSE, the SC/ ST partners shall be holding at least 51% (fifty-one percent) shares in the unit;
- c) In case of Private Limited Companies, at least 51% (fifty-one percent) share shall be held by SC/ ST promoters.
- iv) If subcontract is given to MSEs, it will be considered as procurement from MSEs.
- v) In case of tender item cannot be split or divided, etc. the MSE quoting a price within the band L1+15% may be awarded for full/ complete supply of total tendered value to MSE, considering the spirit of the Policy for enhancing Govt. Procurement from MSEs.
- vi) To develop MSE vendors so as to achieve their targets for MSEs procurement, Central Government Ministries /Departments /PSUs shall take necessary steps to develop appropriate vendors by organizing Vendor Development Programmes (VDPs) or Buyer-Seller Meets focused on developing MSEs for procurement through the Government e-Marketplace (GeM) portal. In order to develop vendors belonging to MSEs for Public Procurement Policy, the Ministry of MSME is regularly organizing State Level VDPs and National Level VDPs under the Procurement and Marketing Support Scheme. For enhancing participation of MSEs owned by SCs /STs/ Women in Government procurement, Central Government Ministries/ Departments/ CPSUs have to take the following steps:
  - a) Special Vendor Development Programmes/ Buyer-Seller Meets would be conducted by Departments/ CPSUs for SC/STs and Women.
  - b) Outreach programmes will be conducted by National Small Industries Corporation (NSIC) to cover more and more MSEs from SC/STs under its schemes of consortia formation; and
  - c) NSIC would open a special window for SCs/ STs under its Single Point Registration Scheme (SPRS).
  - d) A National SC/ST hub scheme was launched in October, 2016, for providing handholding support to SC/ST entrepreneur which is being coordinated / implemented by the NSIC under this Ministry.
- vii) Where any Aggregator has been appointed by the Ministry of MSME, themselves quote on behalf of some MSE units, such offers will be considered as offers from MSE units and all such facilities would be extended to these also.

- viii) This Policy is meant for procurement of only goods produced and services rendered by MSEs. Traders/ distributors/ sole agent/ Works Contract are excluded from the purview of the policy.
- ix) **Exemptions from the policy:** Given their unique nature, defence armament imports shall not be included in computing 25(twenty five) per cent goal for Ministry of Defence. In addition, defence equipments like weapon systems, missiles, etc. shall remain out of purview of such Policy of reservation. Monitoring of goals set under the policy will be done, in so far as they related to Defense sector, by Ministry of Defense itself in accordance with suitable procedures to be established by them.
- x) To monitor the progress of procurement by Central Government Ministries/ Departments and CPSUs from MSEs, Ministry of MSME has launched the MSME 'Sambandh'<sup>25</sup> Portal on 8<sup>th</sup> December, 2017 for uploading procurement details by all CPSUs on a monthly and an annual basis which is regularly monitored by the Ministry.
- xi) To redress the grievances of MSEs related to non-compliance of the Policy a Grievance cell named "CHAMPION Portal" has been set up in the Ministry of MSME.

#### **1.10.5 Procurement Preference for Domestically Manufactured Electronic Products (Deleted)<sup>26</sup>**

#### **1.10.6 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>27</sup>. The order is issued pursuant to Rule 153 (iii) of GFR, 2017.

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<sup>25</sup>[https://sambandh.msme.gov.in/PPP\\_Index.aspx](https://sambandh.msme.gov.in/PPP_Index.aspx)

<sup>26</sup>Superseded by Public Procurement (Preference to Make in India) Order issued by DPIIT dated 16.09.2020

<sup>27</sup>Latest revision to the Order notified vide OM No. P-45021/2/2017-PP (BE-II) issued by DPIIT, dated 16.09.2020

The Order is applicable on the procurement of Goods, Works and Services. For the purpose of this Order:-

- a) '*L1*' means the lowest tender or lowest bid or the lowest quotation received in a tender, bidding process or other procurement solicitation as adjudged in the evaluation process as per the tender or other procurement solicitation.
  - b) '*Margin of purchase preference*' means the maximum extent to which the price quoted by a "Class-I local supplier" may be above the L1 for the purpose of purchase preference. It has been fixed as 20 (twenty) percent.
  - c) '*Nodal Ministry*' means the Ministry or Department identified pursuant to this order in respect of a particular item of goods or services or works.
  - d) '*Procuring entity*' means a Ministry or department or attached or subordinate office of, or autonomous body controlled by, the Government of India and includes Government companies as defined in the Companies Act.
  - e) '*Works*' means all works as per Rule 130 of GFR- 2017, and will also include '*turnkey works*'.
- i) **Eligibility of 'Class-I local supplier'/ 'Class-II local supplier'/ 'Non-local suppliers' for different types of procurement**
- a) In procurement of all goods, services or works in respect of which the Nodal Ministry/ Department has communicated that there is sufficient local capacity and local competition, only 'Class-I local supplier', shall be eligible to bid irrespective of purchase value.
  - b) Only 'Class-I local supplier' and 'Class-II local supplier', shall be eligible to bid in procurements undertaken by procuring entities, except when Global tender enquiry has been issued. In global tender enquiries, 'Non-local suppliers' shall also be eligible to bid along with 'Class-I local suppliers' and 'Class-II local suppliers'. In procurement of all goods, services or works, not covered by sub-para (i)(a) above, and with estimated value of purchases less than Rs. 200 Crore, in accordance with Rule 161(iv) of GFR, 2017, Global tender enquiry shall not be issued except with the approval of competent authority as designated by Department of Expenditure.

- c) For the purpose of this Order, works includes Engineering, Procurement and Construction (EPC) contracts and services include System Integrator (SI) contracts.

ii) **Purchase Preference**

- a) Subject to the provisions of the Order and to any specific instructions issued by the Nodal Ministry or in pursuance of the Order, purchase preference shall be given to 'Class-I local supplier' in procurements undertaken by procuring entities in the manner specified here under.
- 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.
- viii) **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.

ix) **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."
- x) **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.
- xi) **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.
- xii) **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.

xiii) **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.

xiv) **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.

xv) **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.

xvi) **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.

xvii) **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.

xviii) **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.

xix) **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)

## 1.11 Proactive Information Disclosures

Section 4(1) (b) of the RTI Act lays down the information to be disclosed by public authorities on a suo motu or proactive basis and Section 4(2) and Section 4(3) prescribe the method of its dissemination to enhance transparency and also to reduce the need for filing individual RTI applications. The Department of Personnel & Training, Ministry of Personnel, Public Grievances & Pensions, Government of India, has issued “Guidelines on suo motu disclosure under Section 4 of the RTI Act” vide their OM No.1/6/2011-IR dated April 15, 2013.<sup>28</sup> The relevant guidelines relating to information disclosure relating to procurement are reproduced below:

*“Information relating to procurement made by public authorities including publication of notice/tender enquiries, corrigenda thereon, and details of bid awards detailing the name of the Vendor/ Contractor of goods/services being procured or the works contracts entered or any such combination of these and the rate and total amount at which such procurement or works contract is to be done should be disclosed. All information disclosable as per Ministry of Finance, Department of Expenditure’s O.M. No 10/1/2011-PPC dated 30th November, 2011<sup>29</sup> (and 05th March 2012<sup>30</sup>) on Mandatory Publication of Tender Enquiries on the Central Public Procurement Portal and O.M. No. 10/3/2012- PPC dated 09th January 2014 on implementation of comprehensive end-to-end e-procurement should be disclosed under Section 4 of the Right to Information Act.*

## 1.12 Public Procurement Cycle

The procurement process for goods, works and/or services typically involves the following cycle of activities, undertaken in the order stated below.

- i) **Need Assessment:** Need assessment, formulation of Specifications and Procurement Planning
- ii) **Bid Invitation:** Preparing bid documents, publication, receipt and opening of bids;
- iii) **Bid Evaluation:** Evaluation of bids and award of contract; and

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<sup>28</sup> <http://cic.gov.in/GuidelinesOnProActive.pdf>

<sup>29</sup> [http://finmin.nic.in/the\\_ministry/dept\\_expenditure/gfrs/pub\\_tender\\_enq\\_cpportal.pdf](http://finmin.nic.in/the_ministry/dept_expenditure/gfrs/pub_tender_enq_cpportal.pdf)

<sup>30</sup> [http://eprocure.gov.in/cppp/sites/default/files/instruction\\_contents/INST\\_DOC\\_NO\\_7/OM\\_DoE\\_5thMarch2012.pdf](http://eprocure.gov.in/cppp/sites/default/files/instruction_contents/INST_DOC_NO_7/OM_DoE_5thMarch2012.pdf)

iv) **Contract Execution:** Contract management and closure.

v) **Disposal of Scrap:** Disposal of Scrap through various modes of disposal.

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



## Chapter 2: Need assessment, formulation of Specifications and Procurement Planning

### 2.1 Need Assessment

2.1.1 Procurements should be initiated only based on an indent from the user Department. The authority in the user Department initiating the indent for procurement shall first determine the need (including anticipated requirement) for the subject matter of the procurement. Description and Specification of Need assessment is of fundamental importance in ensuring value for money, transparency, competition and level playing field in procurement. The user Department shall maintain all documents relating to the determination and technical/financial/budgetary approvals of the need for procurement. During need assessments, the following matters are decided to comply with the 'Procurement Guidelines':

- i) **The expression/description of the need** keeping in view the Value for Money (VfM) and to ensure wide competition. Therefore to the extent practicable it should be:
  - a) Unambiguous, complete, using common terminology prevalent in relevant trade;
  - b) In accordance with the guidelines prescribed if any in this regard;
  - c) Except in case of proprietary purchase from a selected single source, reference to brand names, catalogue numbers or other details that limit any materials or items to specific manufacturer(s) should be avoided as far as possible. Where unavoidable, such item descriptions should always be followed by the words "or substantially equivalent".
- ii) **Method of satisfying it** (owning/leasing/hiring/outsourcing or through Public Private Partnership (PPP), and so on) may be determined as per policies declared in this regard or based on a techno-economic evaluation (using life cycle cost, if feasible) of various alternative methods of satisfaction of the need and compatibility and inter-operability with existing infrastructure or systems.
- iii) The quantity of the subject matter of procurement, commensurate with economy: