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## **ABBREVIATIONS AND ACRONYMS**

AAEC	Appreciable Adverse Effect on Competition
AITB	Appendix to Instructions to Bidders (ITB, also named as BDS, sometimes, see below)
BC (selling)	Bill for Collection Selling (Foreign Exchange) Rate
BDS	Bid Data Sheet
BG	Bank Guarantee
BIS	Bureau of Indian Standards
BOQ	Bill of Quantities
BRO	Border Roads Organisation
C&AG	Comptroller and Auditor General (of India)
CA	Competent Authority
CCI	Competition Commission of India
CIPP	Code of Integrity for Public Procurement
CPO	Central Purchasing Organizations
CPPP	Central Public Procurement Portal
CPSE	Central Public Sector Enterprise, see PSU also
CPWD	Central Public Works Department
CVC	Central Vigilance Commission
CVO	Chief Vigilance Officer
DFPR	Delegation of Financial Power
DG	Director General
DGS&D	Directorate General of Supplies and Disposals
DLC	Defect Liability Certificate
DLP	Defect Liability Period
DoE	Department of Expenditure
DPR	Detailed Project Report
DSC	Digital Signature Certificate
DSPE	Delhi Special Police Establishment Act, 1946
EC	Evaluated Cost
ECs	Electronic Clearing System
EIA	Environmental impact assessment
EMD	Earnest Money Deposit
EOI	Expression of Interest (Tender)
EPC	Engineering, Procurement and Construction
EPF	Employee Provident Fund
ESI	Employee State Insurance
FA	Financial Advisor
FEMA	Foreign Exchange Management Act
FM	Force Majeure
GCC	General Conditions of Contract
GFR	General and Financial Rules, 2017
GOI	Government of India
GTE	Global Tender Enquiry
HOD	Head of the Department

HUF	Hindu Undivided Family
ICT	Information & Communications Technology
IEM	Independent External Monitor
IP	Integrity Pact
IT	Information Technology
ITB	Instructions to Bidders (may in some instance be called Instructions to Tenderers (ITT))
JV	Joint Venture
L1	Lowest Bidder
L2	Second Lowest Bidder
L3	Third Lowest Bidder
LCC	Life Cycle Cost
LCS	Least Cost System
LD	Liquidated Damages
LEC	Lowest Evaluated Cost
LOA	Letter of Acceptance
LOI	Letter of Invitation
LTE	Limited Tender Enquiry
MB	Measurement Book
MES	Military Engineering Service
MoF	Ministry of Finance
MOU	Memorandum of Understanding (of JV)
MoUD	Ministry of Urban Development
MSTC	Metal Scrap Trading Corporation
NGO	Non Government Organisation
NIC	National Informatics Centre
NIT	Notice Inviting Tender
OTE	Open Tender Enquiry
PAN	Personal Account Number
PBG	Performance Bank Guarantee
POL	Petroleum Oils and Lubricants
PPD	Procurement Policy Division
PPP	Public Private Partnership
PPP-MII	Public Procurement (Preference to Make in India), Order
PQB	Prequalification Bidding
PQC	Pre-qualification Criteria
(C)PSU/ PSE	(Central) Public Sector Undertaking/ Enterprise
PWO	Public Works Organisations
QA	Quality Assurance
QCBS	Quality and Cost Based Selection
(S)RFP	(Standard) Request for Proposals (Document)
RFQ	Request for Qualification
RTI	Right to Information (Act)
SBD	Standard Bidding Document
SCC	Special Conditions of Contract
SD	Security Deposit
SLA	Service Level Agreement

SoPP	Schedule of Procurement Powers
SOR	Schedule of Rates
SSS/ STE	Single Source Selection/ Single Tender Enquiry
STP	Simplified Technical proposal
TC	Tender Committee also called Tender Purchase or Evaluation Committee (TPC/TEC) or Tender Scrutiny Committee
TCO	Total Cost of Ownership
TOC	Taking Over Certificate
TOR	Terms of Reference
URDG	Uniform Rules for Demand Guarantees
VAT	Value Added Tax
VfM	(Best) Value for Money
WOL	Whole of Life (Cost) or Total Cost of Ownership TCO

\*\*\*\*\***End of Abbreviations and Acronyms**\*\*\*\*\*

## **PROCUREMENT GLOSSARY**

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

- 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 'bidder', '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) or incorporated Joint Venture (JV), participating in a procurement process with a Company;
- iii) "(Standard) Bid(ding) documents" (including the term 'tender (enquiry documents' or 'Request for Proposal Documents' - RfP or 'Request for Quotation' - RfQ documents in certain contexts) means a document issued by the Company, 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) "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.;
- v) "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;
- vi) "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;
- vii) "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;

- viii) "Competent authority" means the officer(s) who finally approves the decision.
- ix) "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;
- x) "C&P Department": For ease of reference Materials Department and Contracts Departments together is referred as C&P Department in this Manual.
- xi) "e-Procurement" means the use of information and communication technology (specially the internet) by the Company in conducting its procurement processes with bidders for the acquisition of goods (supplies), works and services with the aim of open, non-discriminatory and efficient procurement through transparent procedures;
- xii) "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 Company. 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;
- xiii) "Indent" [or the term 'Purchase Requisition' (PR) in certain contexts] is an internal document used by the Company to authorize the requisition of purchase of goods, services or works as needed by the Company.
- 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 Company 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) "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.
- xvii) "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;
- xviii) "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;
- xix) "Notice inviting tenders (NIT)" (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 Company, which informs the potential bidders that it intends to procure goods, services and/or works.;
- xx) "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;
- xxi) "Pre-qualification document" means the document including any amendment thereto issued by a Company, which sets out the terms and conditions of the pre-qualification bidding and includes the invitation to pre-qualify;
- xxii) "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 Company, 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;
- xxiii) "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 Company 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";

- xxiv) "(Public) Procurement Guidelines" means guidelines applicable to Public Procurement, consisting of under relevant context a set of –
- a) Statutory Provisions (The Constitution of India; Indian Contract Act, 1872; Sales of Goods Act, 1930; and other laws as relevant to the context);
  - b) Rules & Regulations (General Financial Rules, 2017; Delegation of Financial Power Rules and any other regulation so declared by the Government);
  - c) Manuals of Policies and Procedures for Procurement (of Goods; Works; Consultancy Services or any for other category) promulgated by the Ministry of Finance and
  - d) Company's Documents relevant to the context (Codes, Manuals and Standard/ Model Bidding Documents);
- xxv) "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;
- xxvi) "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.
- xxvii) "Company" means Oil India Limited;
- xxviii) "Prospective bidder" means anyone likely or desirous to be a bidder;
- xxix) "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 Serviceable Level agreements measurable by the public entity or its representative;
- xxx) "Rate contract" ( or the term 'framework agreement' in certain contexts) means an agreement between the Company 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;

- xxxi) "Registered Supplier" means any supplier who is on a list of registered suppliers of the Company;
- xxxii) "Reverse auction" (or the term 'Electronic reverse auction' in certain contexts) means an online real-time purchasing technique utilised by the Company 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;
- xxxiii) "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 Company but does not include appointment of an individual made under any law, rules, regulations or order issued in this behalf;
- xxxiv) "Subject matter of procurement" means any item of procurement whether in the form of goods, services or works or a combination thereof;
- xxxv) "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, 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.

\*\*\*\*\***End of Procurement Glossary**\*\*\*\*\*

## **INTRODUCTION**

Oil India Limited is a state-owned Government of India Enterprise engaged in the business of exploration, production and transportation of crude oil and natural gas. It is a Maharatna Company under the administrative control of the Ministry of Petroleum and Natural Gas and has its presence in the upstream, midstream and downstream sector. It has also selectively diversified into the Renewable & Alternate Energy sector with the installation and commissioning of Renewable Energy projects in the Wind and Solar domains. OIL is operating in various domestic and international blocks, having operation overseas as well as Participating Interest (PI) in the E&P business. To ensure uninterrupted operational activities in OIL, procurement of goods and services is of paramount requirement. The procurement system in OIL is de-centralized in a federal manner. While the requirement of goods and services at the Company's Field Headquarters is met through procurement at Duliajan, the other spheres / projects are doing procurement for materials, works, services and consultancy at their respective units.

### **C&P DEPARTMENT AT DULIAJAN**

All the requirements of the Company for its operation at Fields are met by the C&P Department situated at Duliajan. The requirement varies from the procurement of indigenous and imported goods to hiring of rigs, logging services, cementing services, vehicles and framing of works contracts, labour contracts, man management contract etc. In addition, requirement of other spheres are also met from this office from time to time as and when required against specific request.

### **CONTRACT & PURCHASE DEPARTMENT AT KOLKATA BRANCH**

Procurement from indigenous sources is also made by the Kolkata Branch situated at Kolkata. This Branch is responsible for procurement of the materials (from indigenous sources only) against requisitions raised by Duliajan C&P Department and other Spheres / Projects and transportation of goods to respective places.

Further, the Kolkata Branch arranges opening of Letter of Credit etc. to the foreign suppliers, Shipment of goods (by sea, air, courier etc.), Customs clearance of the goods and transportation of the same to Duliajan and other Spheres/Projects of the Company.

### **CONTRACT & PURCHASE DEPARTMENT AT PIPELINE HEAD QUARTER AND OTHER PROJECTS**

All the Project offices and the Pipeline Headquarters at Guwahati are having C&P set up primarily to cater for their needs for acquiring goods and services / works.

### **CONTRACT & PURCHASE DEPARTMENT AT CORPORATE OFFICE**

Procurement of goods and Hiring of services for the requirements of Corporate Office as well as E&D Directorate are processed by C&P Department at Corporate office, Noida.

In addition, this department also broadly deals with the following:

- i. Processing for obtaining approval of the Board/CBC/Concerned Functional Director.

- ii. Issuance of directives for implementation of policy guidelines circulated by various govt. bodies/ministries viz. DPE, DoE, DPIIT, MoPNG, etc.
- iii. Co-ordinating with Government E-Marketplace (GeM) authorities, various ministries & Govt. Offices for timely submission of requisite data/information and act as a nodal agency for resolving the issues faced by various spheres of OIL.
- iv. Assisting the cases of dispute raised for intervention/mediation of Independent External Monitors (IEMs).
- v. Liaising with DGH/MoPNG for procurement related activities like approval for Global Tender Enquiry (GTE), seeking information / clarifications related to Government guidelines etc.
- vi. Responsible for timely submission of data/information required by Ministry of Micro, Small & Medium Enterprises (MSME) and handling of grievances of MSMEs on designated Portals developed by Ministry of MSME.

**\*\*\*\*\*End of Introduction\*\*\*\*\***

## **CHAPTER 1**

### **INTRODUCTION TO PROCUREMENT OF WORKS**

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

The Company spends a sizeable amount of its budget on procurement of goods, works and services to discharge the duties and responsibilities assigned to it.

The Company has been delegated full powers to make its own arrangements for procurement of goods and services that are not available on Government e-Marketplace (GeM). These powers have to be exercised as per the Delegation of Power (DoP) 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 service providers, 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 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, Arbitration and Conciliation Act, 1996; Competition Act, 2002; Information Technology Act, 2000 etc (and amendments thereto) are major legislations governing contracts for procurement (both private and public) in general. 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 purchase preference like Public Procurement (Preference to Make in India), Order 2017 or other facilities to Micro and Small Enterprises etc. and the guidelines issued by the Central Vigilance Commission to increase transparency and objectivity in public procurement.

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**

##### **1.2.1 Modification / Amendment to the Manual:** This Manual has been prepared based on the manual published by Department of Expenditure, Ministry of

Commerce, Government of India and customized as per the requirement of the Company. The Manual may require modification/amendment with the passage of time due to certain changes in Government policy and Company's business requirements. In case such a request is generated, it needs a recommendation from Multi-disciplinary Committee and approval from Local Management Committee (LMC). After the approval from LMC, the request shall be forwarded to Corporate Contracts & Purchase (C&P) / Policy Monitoring Cell. The Corporate C&P Cell shall examine the necessity of such amendment, take reference of Government policies on the same, if any, and if the amendment is considered essential, a proposal shall be moved for approval by Executive Council (EC) which is the competent authority for approval of this Manual. On approval of such proposal the Corporate C&P cell shall issue an amendment to the procedure which shall be integral part of this manual and communicated to all Spheres / Projects of OIL. The same shall be uploaded on OIL's intranet portal also.

**1.2.2 Deviation to the Manual:** In case during processing a procurement case and before floating the tender, there is a necessity for a deviation to the procedure of the Manual, a recommendation must be made by a Tender Committee (TC) consisting of members from C&P, Finance, Indentor/User Department(s), wherein, the Tender Committee shall give complete justification as to why such deviation is unavoidable. If it is merely a procedural deviation, the same shall be approved by the LMC/Head of Sphere (Project). Such deviation should not be considered as precedence for future tenders. In case of deviation to the Policy itself, the same shall require the approval of Executive Council based on the recommendation of the Tender Committee to be routed through LMC.

**1.2.3 Clarification to the Procedure:** During the process of carrying out business of executing projects and operations, the provision provided in the procedure may require elaboration or more clarity. Such explanation / clarification shall be issued by the Corporate C&P department. Except Corporate C&P, no Sphere / Project or department should issue clarification to the provisions of this manual. The risk and mitigation provided here in the manual are only suggestive in nature to avoid pitfalls during procurement process and the same should not be considered as a part of the procedure.

**1.2.4 Applicability of this Manual:**

**1.2.4.1 Works:** This manual is applicable to procurement of Works is defined as "any activity, sufficient in itself to fulfil an economic or technical function, involving construction, fabrication, repair, overhaul, renovation, decoration, installation, erection, excavation, dredging, and so on, which make use of a combination of one or more of engineering design, architectural design, material and technology, labour, machinery and equipment. Supply of some materials or certain services may be incidental or consequential to and part of such works. The term "Works" includes (i) civil works for the purposes of roads, railway, airports, shipping-ports, bridges, buildings, irrigation systems, water supply, sewerage facilities, dams, tunnels and earthworks; and so on, and (ii) mechanical and electrical works involving fabrication, installation, erection, repair and maintenance of a mechanical or electrical nature relating to machinery and plants".

Department of Expenditure vide OM No. F.6/2/2023-PPD dated

13.01.2023 has clarified the following:

- (a) The construction, fabrication, repair, maintenance, overhaul, renovation, decoration, installation, erection, excavation, dredging, and so on, of Civil assets should be handled as procurement of Works.
- (b) Procurement of new product along with Installation, commissioning, training, AMC/CMC should be handled as procurement of Goods.
- (c) Procurement of Repair, Maintenance, Overhauling, AMC/CMC or similar work for existing Electrical or Mechanical assets should normally be handled as procurement of Services.
- (d) In case of composite contracts for Goods and Services, if the procurement value of Goods is substantial and rendering of Service is incidental then such procurement should be handled as procurement of Goods. Similarly, if the procurement value of Services is significant and supply of goods is incidental to the contract then such procurement can be handled as procurement of Services.

**1.2.4.2 Classification of Works:** The civil works are classified in GFR 2017 (Rule 130) into three categories: (a) Original Works (b) Minor Works and (c) Repairs Works. “Original works” means all new constructions, site preparation, additions and alterations to existing works. It also includes special repairs to newly purchased or previously abandoned buildings or structures, including remodelling or replacement. “Minor works” mean works which add capital value to existing assets but do not create new assets. “Repair works” means works undertaken to maintain building and fixtures. Expenditure on Repair Work does not add to the value of the asset and only restores the functionality of the asset. Repair Work can be further categorized as (i) Annual repairs covering routine and yearly operation and maintenance work on buildings and services (ii) Special repairs, which are undertaken as and when required, covering major repairs to existing buildings or services. Some types of the Special repairs may qualify to be categorised as ‘Original Work’ as mentioned earlier.

This manual would not apply to procurements by the Company for its own use from its subsidiary companies including Joint Ventures in which it has controlling share.

This Manual shall also not be applicable to any Society/Foundation formed by OIL or any Society/Foundation where OIL is a member.

This Manual will not be applicable for 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 GFR 2017. 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.

This manual will also not be applicable in case of procurement process by

OIL's overseas projects. However, they may seek guidance of this manual in formulating their own procurement guidelines. Further this manual shall also be not applicable for Procurement of Goods, Works and Services for E&P job under Production Sharing Contract (PSC) as the same are guided by the terms and conditions of the PSC.

### **1.3 Authorities competent to purchase Works and their Purchase Powers**

The approved Delegation of Power (DOP) is to be followed for procurement of Works.

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

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

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

For more details on basic aims of procurement, please refer to Chapter 1 of the Manual for Procurement of Goods.

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

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

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

*For more details on basic aims of procurement, please refer to Chapter 1 of the Manual for Procurement of Goods.*

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

Public Procurement like any other expenditure in Government must conform to the Standards (also called Canons) of Financial Propriety. It may be useful to refer to the relevant provisions in the General Financial Rules, 2017, Rule 21.

**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.*

#### **1.7 Preference to Make in India:**

To encourage 'Make in India' and promote manufacturing and production of goods, works and services in India with a view to enhancing income and employment, Public Procurement (Preference to Make in India), Order 2017 including any amendments thereof issued by Department of Promotion of Industry and Internal Trade (DPIIT), Ministry of Commerce and Industry, Government of India shall be applicable for procurement by the Company. Detail of the Policy is given in Appendix 3. Suitable clause(s) to be incorporated in the tenders for applicability of the policy.

#### **1.8 Government e-Marketplace (GeM):**

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

vendor-specific online retail stores.

Ministry of Commerce has developed an online Government e-Market Place for common use goods and services. The procurement process on GeM is end to end from placement of supply order to payment to suppliers. This is to ensure better transparency and higher efficiency. All the process will be electronic and online.

The procedure for procurements carried out through GeM shall be as per the GeM guidelines and Terms & Conditions mentioned therein, which can be accessed on its website [www.gem.gov.in](http://www.gem.gov.in). Company shall endeavor to procure through GeM all those Goods, Works and Services which are available in GeM. For updated GeM GTC following link may be referred: <https://gem.gov.in/page/gtc>.

### **1.9 Legal Aspects Governing Public Procurement of Works:**

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

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

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

### **1.10 The Law of Agency – applicable to Procurement of Works:**

In addition to Laws which are applicable to Public Procurement of Works mentioned above, the Law of Agency (Section 182 to section 238, of the Indian Contract Act, 1872) implies that Contractor would be an Agent of the Procuring Entity, to execute the works on its behalf. Hence, there exists a Principal/

Employer and Agent relationship between Procuring Entity and such Contractor. As per this law, the employer is vicariously legally and financially liable for actions of its Agents. For example, a violation of certain labour laws in deputing staff for Procuring Entity's contract by the agents may render the Procuring Entity legally and financially liable for such violations, under certain circumstances. The Procuring Entities need to be aware of such eventualities. Standard Bidding Documents should take care of this aspect.

#### **1.11 The Basic Principles of undertaking Works:**

- i) No new works should be sanctioned without-
  - a) Careful assessment of the assets or facilities already available and time and cost required to complete the new works.
  - b) A concept plan/preliminary drawing have been approved by the Authority competent to accord sanction. While designing projects to the extent possible, principles of Life Cycle Costing may also be considered;
- ii) As budgetary resources are limited and granted on annual basis, adequate provisions should be ensured for works and services already in progress before new works are undertaken.
- iii) No project or work will be split up to bring it within the sanctioning powers of a lower authority.
- iv) For purpose of approval and sanctions, a group of works which forms one project, shall be considered as one work. The approval or sanction of the higher authority for such a project which consists of such a group of work should not be circumvented by resorting to approval of individual works using the powers of approval or sanction of a lower authority. If the component parts of a project are mutually independent of each other and are not dependent on the execution of one or more such component parts, each such part should be treated as a separate project. In case the functioning of a project is dependent on the execution of one or more other projects, the entire group of such projects should be taken as a single scheme/ project and provision made accordingly. If however, a scheme consists of revenue component, capital expenditure and loan content, etc. the provision for which is required to be exhibited separately under respective Budget Head/Cost Center., there is no objection to the provision being made in the relevant Budget Head/Cost Center; but the authorities concerned should ensure that the sanction of the Competent Authority is obtained for the integrated scheme as a whole depending on the total cost of the scheme. It will not be permissible in such cases to split up a scheme treating each part as a scheme in order to avoid the sanction of a higher authority.
- v) Any anticipated or actual savings from a sanctioned estimate for a definite project, shall not, without special authorization, be applied to carry out additional work not contemplated in the original project.
- vi) Any development of a project considered necessary while a work is in progress, which is not contingent on the execution of work first sanctioned, shall have to be covered by a supplementary estimate.

- vii) The construction period and sanctioned cost stipulated in the sanction of Project will not be exceeded as far as possible.
- viii) As far as possible, project team should be constituted for large value projects and these teams should be tasked only with project execution and not given other operational duties.
- ix) The competent financial authority according administrative approval should be kept informed of the physical and financial progress of the work till their completion through regular periodical reports.
- x) Subject to the observance of these general rules (Rule 130 – 141, GFR, 2017), the initiation, authorization, procurement and execution of works shall be regulated by detailed rules and orders as per the Company's policy and by other Govt. orders/policies applicable to the Company.. The detailed procedure relating to expenditure on such works shall be prescribed by departmental regulations framed in consultation with the F&A Dept. generally based on the procedures and the principles underlying the financial and accounting rules prescribed for similar works carried out by the Central Public Works Department (CPWD) as a guideline.
- xi) For very high value projects no works shall be commenced or liability incurred in connection with it until:-
  - a) Feasibility Study Report/ Preliminary Project Report (PPR) has been beprepared in case of works of substantial value
  - b) A proper Detailed Project Report (DPR) has been prepared by a competentagency;
  - c) Administrative approval (A/A) has been obtained from the appropriateauthority, in each case;
  - d) Expenditure Sanction (E/S) to incur expenditure has been obtained from thecompetent authority;
  - e) Technical approval has been obtained of the detailed and coordinated design of all the Architectural, Civil, Electrical, Mechanical, Horticulture and any other services included in the scope of the sanction and of the Detailed Cost Estimates containing the detailed specifications and quantities of various items prepared on the basis of the schedule of rates maintained by CPWD or other Public Works Organizations.
  - f) Funds to cover the work, which will be executed, at least during the current year, have been provided by competent authority.
  - g) Tenders have been invited and processed in accordance with rules.
  - h) Award of work and execution of Contract Agreement;
  - i) A work order has been issued.
- xii) Time taken in grant of statutory and other clearances also contributes to the time and cost overrun in public projects. These clearances are required to achieve specific objectives like concern for the environment, aviation safety, preservation of national heritage, conservation of forest and wildlife etc. Public Authorities/ Project Executing Authorities should plan for obtaining all necessary clearances quickly and proper efforts be made for the same, which also should be duly recorded. The progress

regarding follow up of obtaining the statutory clearances should be closely monitored.

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

### **1.12 Processing of Public Works**

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

- i) Perspective Planning for works;
- ii) Preparation of Preliminary Project Report (PPR) or Rough Cost Estimate;
- iii) Acceptance of necessity and issue of in-Principle Approval;
- iv) Preparation of Detailed Project Report (DPR) or Preliminary Estimate (PE);
- v) Administrative Approval and Expenditure Sanction or 'Go ahead' Approval.
- vi) Detailed Design, Estimate and Technical Sanction;
- vii) Appropriation/ re-appropriation of funds;
- viii) Preparation of Bid documents, Publication, Receipt and Opening of Bids;
- ix) Evaluation of Bids and Award of Work;
- x) Execution and Monitoring of works and Quality Assurance.

### **1.13 Proactive Information Disclosures**

RTI Act lays down the information to be disclosed by public authorities on a suo motu or proactive basis as well as prescribes 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. The relevant guidelines relating to information disclosure pertaining 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 (and 05th March 2012) on Mandatory Publication of Tender Enquiries on the Central Public Procurement Portal and O.M. No. 10/3/2012- PPG 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.*

In accordance with the above guidelines, the Company shall publish the relevant disclosable information pertaining to procurement on its website as well as on any other web portal / forum as directed by the Government of India.

**\*\*\*\*\*End of Chapter-1\*\*\*\*\***

## **CHAPTER 2**

### **PREPARATION OF ESTIMATES**

The estimated cost in the indent/PR is a vital element in various procurement processes, approvals and establishing reasonableness of prices at the time of evaluation of the bids. Therefore, it should be worked out in a realistic and objective manner.

Cost estimation shall be done in accordance with the approved Company's Cost Estimation Manual.

**\*\*\*\*\*End of Chapter-2\*\*\*\*\***

## **CHAPTER 3**

### **AGENCY FOR PROCUREMENT; TYPES OF CONTRACT, BIDDING SYSTEMS AND MODES OF PROCUREMENT**

#### **3.1 Agency for Procurement:**

Company at its discretion may carry out execution of their original and repair works as follows:-

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

##### **3.1.1 Directly by the Company**

The company executes works after following due Company procedure either through Company registered contractor for regular requirement of miscellaneous maintenance works and/or through tendering process for other jobs/works.

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

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

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

As an alternative, Company may assign repair works or original works to:

- i) any Public Sector Undertaking set up by the Central or State Government to carry out civil or electrical works or
- ii) to any other Central/ State Government organisation/ PSU which may be notified by the Ministry of Urban Development (MoUD) for such purpose after evaluating their financial strength and technical competence.

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

- i) For the assignment of work under provisions of para 3.1.3 above to PSUs, the Company shall ensure competition among all such eligible PSUs/ organisations. This competition shall be essentially on the lump sum service charges to be claimed for execution of work. The award of work to a PSU should be taken as Project Management Consultancy (PMC) and the concerned PSU shall be treated as consultancy firm. Relevant methods (QCBS, LCS etc.) for procurement of consultancy will be applicable. For better understanding of selection methodology of

consultant(s), Manual for Procurement of Consultancy and Other Services, may be referred.

- ii) Company may also assign Works to Govt. Organizations / Departments / Agencies / Autonomous Bodies under control of State / Central Government as per Govt. policies / directives without calling for competitive bidding. However, for such cases the reasons for not resorting to competitive bidding should be recorded in writing. The work under these circumstances shall also be assigned only on the basis of lumpsum basis.
- iii) Depository works can be done through Govt. Organizations/ Departments/ Agencies / PSUs / Autonomous Bodies under control of State / Central Government. Depository works signify those jobs which are carried out through the above stated Govt. entities as per their procurement procedure and OIL is only financing the same.
- iv) For original works and repair works entrusted under the provisions of Para 3.1.2 and 3.1.3 above, the procuring officer shall ensure that expenditure sanction has been accorded and funds allotted as per DoP. The Public Works Organisation or the Public Sector Undertaking or any organisation allotted work shall then execute the work entrusted to it in accordance with the rules and procedures prescribed in that organisation.
- v) A Memorandum of Understanding (MoU) may be drawn with the Public Works Organisation or the Public Sector Undertaking for proper execution of work. The MoU should spell out the obligations on the part of Public Works Organization or PSU regarding execution of works as per proper specifications and for maintaining proper quality and speed of execution of works. Different stages at which funds shall be released to the Public Works Organization should also be clearly spelt out. Such MoU would normally be for a specific standalone work, but could also be for a Project consisting of a collection of related works. In case of MoU with Public work Organisations (PWOs) it could also be as a long-term framework MoU. Company may change the MOU format suiting to its requirement, and if felt necessary may also get the MOU document vetted by legal cell.
- vi) For execution of very high value work, under the provisions of Para 3.1.2 and 3.1.3 above, the Company shall constitute a “Works Committee”, whether on ad hoc or standing basis; comprising of representatives of Finance Officer and technical officer possessing technical skills and experience of framing estimates and execution of works. If need be, a member may be co-opted from CPWD/ Public Works Organization/ PSUs or any technically sound Government agency such as a relevant NIT/ IIT/Govt. Engineering College or a relevant National Research Institute etc. The Works Committee shall ensure observance of due process in the planning and execution of works, check the reasonability of the estimates and other technical details and monitor the execution of the works.

### **3.2 Types of Contract:**

There are different basis for linking payments to the performance of Contract (called types of contracts) – each having different risks and mitigation

measures. Bids are called and evaluated based on the type of contract. The choice of the type of contract should be based on Value-for-Money (VfM) with due regard to the nature of Work. Adoption of an inappropriate type of contract could lead to a situation of lack of competition, contractual disputes and non-performance/ failure of the contract.

Each type of contract is described briefly in subsequent paras, and criteria are suggested for their adoption mostly used types of contracts are:

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

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

activity, however such provisions must be stipulated in the tender/contract. The billing schedule shall commensurate with the actual work done, and the risk of front-loading strictly guarded against.

- vii) Detailed measurements of work done in a lump sum contract are not required to be recorded, except in respect of additions and omissions. No reference is made in the contract to the departmental estimate of the work, prevailing SOR or the quantities of work to be done. Payment of additions and omissions is regulated by prevailing SOR as agreed upon while approving the tender or the rates.

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

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

### **3.2.3 Percentage Rate Contract**

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

### **3.2.4 Engineering, Procurement and Construction (EPC) Contracts:**

- i) The Engineering, Procurement and Construction (EPC) (also called 'Design & Build' Contracts) approach relies on assigning the responsibility for investigations, design and construction to the contractor for a lump sum price determined through competitive bidding. The objective is to ensure implementation of the project to specified standards with a fair degree of certainty relating to costs and time while transferring the construction risks to the contractor.
- ii) Unlike the normal practice of construction specifications, the technical parameters in the EPC Agreement are based mainly on output specifications / performance standards. Company specifies only the core requirements of design and construction of the project that have a bearing on the quality durability, reliability, maintainability and safety of assets and enough room is left for the contractor to add value. The EPC Contractor has full freedom to design and plan the construction schedule using best practices to achieve quality, durability, reliability, maintainability, and safety as specified along with efficiency and economy. Projects risks such as soil conditions and weather or commercial and technical risks relating to design and construction are assigned to the EPC Contractor. The Company bears the risk for any delays in handing over the land, approvals from local authorities, environment clearances, shifting of utilities and approvals in respect of engineering plans.
- iii) Selection of the EPC contractor is based on open competitive bidding. All project parameters such as the contract period, price adjustments and technical parameters are to be clearly stated upfront, and short-listed bidders are required to specify only the lump sum price for the project. The bidder who seeks the lowest payment is awarded the contract. The contract price is subject to adjustment on account of price variation during the contract period as per a specified formula. To cater for any changes in the scope of the project, DoP contains provisions for accommodating such changes. However, the cost of such changes shall be borne by the Company.
- iv) The selected EPC Contractor carries out survey and investigations and also develops designs and drawings in conformity with the specifications and standards laid down in the Agreement. Company's engineer (Engineer in Charge) reviews the design and drawings to ensure that these conform to the scope of the project, design standards and specifications. Any comments by the Company on the design proposals submitted by the EPC contractor are to be communicated in totality and in a time bound manner.
- v) The EPC Contractor is liable to pay Liquidated Damages for each day of delay beyond the specified date of completion. However, the EPC Contractor is entitled to time extension arising out of delays on account of change of scope and force majeure or delays caused by or attributable to the Company.
- vi) Monitoring and supervision of construction are undertaken through Company's engineer, acting as a single window for coordination with the

EPC contractor.

- vii) Each item of work is further sub-divided into stages and payment based on output specifications and performance standard is to be made for each completed stage of work. Defects liability period may be specified in the Tender/Agreement in order to safeguard Company's interests.
- viii) The Consultant /Company's Engineer entrusted for monitoring and supervision should have good experience in design, project supervision and works management.
- ix) In EPC contracts, since primary responsibility to execute the work lies with the EPC contractor, success of the project also depends upon the quality of the tender document wherein enough clarity on the broad framework for execution of the work and the obligations of the contractor needs to be built in.
- x) Milestones for payment to the EPC contractor should be fixed in a manner that facilitates smooth cash flow for the EPC contractor as well as for progress of the work. Milestones fixed should avoid excessive front loading or back loading, i.e., amount of payment should be commensurate with stage-wise quantum of work/ cost incurred. Milestones for payment to the EPC contractor should also be linked with the deliverables.
- xi) In case of EPC contracts, only general arrangement drawings and architectural control parameters should be part of the EPC tender document. In case of EPC contracts, timelines for submission of drawings by the EPC contractors and approval thereof by the competent authority should be clearly prescribed in the tender document, wherein, damages for non-adherence of such timelines in this regard may also be incorporated.
- xii) EPC contracts shall specify broad technical specification and key output parameters. Over-specification of design may lead to increase in cost. Technical specifications shall be framed in such a manner to allow sufficient freedom to the contractor to optimize design. Provisions on the following should be included in commercial conditions:
  - a) Limitation of liability for the Company as well as contractor.
  - b) Deviation limits and procedure for change of scope.
  - c) Contract closing timelines and procedure to ensure timely closing of contract.
  - d) Performance parameters and liquidated damages for shortfall in performance
  - e) Risk matrix and responsibilities of the contractor and the Company.
- xiii) In addition, a latent defect period beyond the defect liability period may be included to protect the Company and public interest in case of any design/ engineering defect after the defect liability period is over, wherever appropriate.
- xiv) To mitigate the risk involved in the methodology proposed by the EPC contractor, the Company shall either have an in-house engineering, quality assurance and project management expert or alternatively hire an experienced engineer to intensively examine the proposal submitted by

the EPC contractor.

- xv) To ensure quality, regular inspection and quality checks must be carried out. The Company shall carry out stage inspections in manufacturing of critical equipment/critical activities of the project.

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

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

### **3.3 Bidding Systems**

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

#### **3.3.1. Single Stage Bidding System:**

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

#### **3.3.2. Single Stage Composite Bid System (up to Rs. 1 Crore for Works / Services)**

Where it is feasible to work out the schedule of quantities and to formulate detailed specifications for Works and value of procurement is low or moderate, the single stage composite bid system may be adopted, where eligibility, technical/ commercial and financial details are submitted together in the same bid. This is the simplest and the quickest bidding system. The lowest responsive priced bid that meets the eligibility criteria, technical and commercial requirements laid down in the bid documents is declared as successful and awarded the contract. Further details are given under Chapter 4 of Manual for Procurement of Goods.

### **3.3.3. Single Stage Two Bid Systems**

In technically complex requirements where value of procurement is not low, a two bid system may be followed:

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

### **3.3.4. Expression of Interest (Two Stage Bidding):**

There are instances where the work is of complex nature and the procuring organization may not possess the full knowledge of either the various technical solutions available or the likely sources in the market. To meet the desired objectives of a transparent procurement that ensures value for money simultaneously ensuring upgradation of technology & capacity building- it would be prudent to invite a two-stage Expression of Interest (EoI) Bids and proceed to explore the market and to finalize specifications based on technical discussions/presentations with the experienced contractors in a transparent manner. Expression of Interest (EoI) bids may be invited in following situations:

- i) It is not feasible for the Company to formulate detailed specifications or identify specific characteristics for the subject matter of procurement, without receiving inputs regarding its technical aspects from bidders;

- ii) The character of the subject matter of procurement is subject to rapid technological advances or market fluctuations or both;
- iii) The Company seeks to enter into a contract for the purpose of research, experiment, study or development; or
- iv) The bidder is expected to carry out a detailed survey or investigation and undertake a comprehensive assessment of risks, costs and obligations associated with the particular procurement.
- v) EOI may also be invited only for technology proposals/market surveys for new technologies/finalization of technical specifications etc. and the same may not be utilized to translate into tender and subsequent award of contract/order.

*Note: EOI for technical proposals/market survey for new technology/finalization of technical specifications etc. shall not fall under purview of DoP and can be processed by user department directly.*

- (a) The procedure for two stage bidding (EOI) shall include the following, namely:
  - i) In the first stage of the bidding process, the Company shall invite EoI bids containing the broad objectives, technical and financial eligibility criteria, terms and conditions of the proposed procurement etc without a price bid. On receipt of the Expressions of Interest, technical discussions/presentations may be held with the short-listed bidders, which are prima facie considered technically and financially capable of executing the proposed work, giving equal opportunity to all such bidders to participate in the discussions. During these technical discussions stage the procurement agency may also add those other stakeholders in the discussions who could add value to the decision making on the various technical aspects and evaluation criteria. Based on the discussions/ presentations so held, one or more acceptable technical solutions could be decided upon laying down detailed technical specifications for each acceptable technical solution, quality benchmarks, warranty requirements, delivery milestones etc. in a manner that is consistent with the objectives of the transparent procurement. At the same time care should be taken to make the specifications generic in nature so as to provide equitable opportunities to the prospective bidders. Proper record of discussions/presentations and the process of decision making should be kept;
  - ii) In revising the relevant terms and conditions of the procurement, if found necessary as a result of discussions with the shortlisted bidders, the Company shall not modify the fundamental nature of the procurement itself;
  - iii) In the second stage of the bidding process, the Company shall invite bids from all those bidders whose bids at the first stage

were not rejected, to present final bid with bid prices in response to a revised set of terms and conditions of the procurement; and

- iv) Any bidder, invited to bid but not in a position to execute the work due to modification in the specifications or terms and conditions, may withdraw from the bidding proceedings without forfeiting any bid security that he may have been required to provide or being penalised in any way, by declaring his intention to withdraw from the procurement proceedings with adequate justification.
- v) If the Company is of the view that after EoI stage, there is likelihood of further participation by many more bidders and to avoid getting trapped into a legacy technology, the second stage bidding may not be restricted only to the shortlisted bidders of EoI stage and it may be so declared in the EoI document ab-initio. Thereafter in the second stage, normal OTE/ GTE bidding may be done. Such variant of EoI is called 'Non-committal' EoI.

(b) **Invitation of EoI Tenders:** In EoI tenders, an advertisement inviting expression of interest should be published. The invitation to the EoI document should contain the following information:

- i) A copy of the advertisement;
- ii) **Objectives and scope of the requirement:** This may include a brief description of objectives and broad scope of the requirement. It may also include the validity period of empanelment;
- iii) **Instructions to the bidders:** This may include instructions regarding the nature of work, fees for empanelment (if any), last date of submission, place of submission and any other related instructions;
- iv) **Formats for submission:** This section should specify the format in which the bidders are expected to submit their EoI;
- v) The EoI document should be made available to the interested bidder on Company's website in a downloadable form;
- vi) **Eligibility criteria:** The invitation to EoI should clearly lay down the eligibility criteria, which should be applied for shortlisting. Supporting documents required need to be clearly mentioned. An appropriate eligibility criteria should be designed, keeping in mind the specific objectives of the EoI.

(c) **Evaluation of EoI:** The bidders should be evaluated for shortlisting, inter-alia, based on their past experience of performance in a similar context, financial strength and technical capabilities, among others. The EoI document may specify the minimum qualifying requirement for each of the criteria, such as minimum years of

experience, minimum number of assignments executed and minimum turnover. All bidders who meet the minimum requirement, as specified, should be shortlisted. The short list should normally comprise at least four firms.

### **3.4 Electronic Procurement (e-Procurement):**

It is preferable to receive all bids through e-procurement portals in respect of all procurements. E-Procurement is a web based application where apart from others, e-tendering and e-reverse auction are carried out through internet in an online environment in effective and transparent way. E - Tendering is the process of floating tender and receipt of bids from the bidders through internet portal. OIL is presently using MY SAP SRM for e-tendering. Threshold value for E-tender is presently fixed at Rs. 10 (Ten) Lakhs. Publications of tender in OIL's website/ Govt. portals are to be done in the same manner as in case of physical tenders.

For detailed procedure of e-procurement Appendix 5 may be referred.

### **3.5 Modes of Tendering**

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

The various modes of procurement that are followed for procurement of Works are as under –

- (i) Open Tender Enquiry
- (ii) Global tender Enquiry
- (iii) Limited Tender Enquiry (Upto Rs. 25 Lakhs)
- (iv) Special Limited Tender Enquiry (SLTE) for Procurements More than Rupees 25 (Twenty Five) Lakh
- (v) Direct procurement by Purchase Committee
- (vi) Single/Nomination Tender Enquiry

**Note:**

*(i) For details on OTE, GTE, LTE, SLTE and Direct procurement by Purchase Committee refer Chapter 4 of Manual for Procurement of Goods. For Single Tender Enquiry (STE) or Selection by Nomination refer para 3.5.1 below.*

*(ii) For value limit and modalities for Contract Relating to Civil Works at Field Headquarters for Maintenance & Day To Day Requirement, refer para 7.6 of this Manual.*

#### **3.5.1 Single Tender Enquiry (STE) or Selection by Nomination**

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

- a) There is an urgent need for the work and engaging in competitive tendering process would, therefore, be impractical, provided that the circumstances giving rise to the urgency were neither foreseeable by Company nor the result of dilatory conduct on its part.
  - b) Works that represent a natural continuation of previous work carried out by the firm when considering the limited size of the additional work in relation to the original procurement and the reasonableness of the price it will be cost effective to resort to single source procurement. However, the incremental work should not be more than 25 (twenty-five) percent of the original contract value;
  - c) In case of an emergency situation, situations arising after natural disasters, situations where timely completion of the work is of utmost importance subject to the reason for such decision being recorded and approval of the competent authority obtained.
  - d) Situations where execution of the work may involve use of proprietary techniques or only one contractor has requisite expertise.
  - e) The procurement entity engages in procurement involving national defence or national security and determines that single source procurement is the most appropriate method of procurement.
  - f) Under some special circumstances, it may become necessary to select a particular Agency where adequate justification is available for such single-source selection in the context of the overall interest of the Company.
- ii) The reasons for a STE and selection of a particular firm must be recorded and approved by the CA as per the DoP.
  - iii) The User Department shall ensure fairness and equity, and shall ensure that: the prices are reasonable and consistent with market rates for work of a similar nature; and the required work is not split into smaller sized procurements.

### **3.5.2 Award of works in stalled contracts:**

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

Wherever the work is abandoned by the contractor mid-way, notwithstanding anything in the GFR or the Manual, Company may carry out the remaining works through a fresh contract (awarded following any tendering mode including limited/ single tenders). However, for issuance of limited/single tenders in such cases, at least 20% of work should have been billed by the

contractor who has abandoned the work. Procurement approval of such limited/single tender should be at the next higher level, or such level as may be prescribed.

Necessary penal action on the contractor who has abandoned the contract shall be taken as per terms of contract.

### **3.5.3 Back to Back Tie Up by PSUs:**

Construction PSUs while awarding the work will take following points into consideration:

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

\*\*\*\*\***End of Chapter-3**\*\*\*\*\*

## **CHAPTER 4**

### **PREPARING BID DOCUMENTS, PUBLICATION, RECEIPT AND OPENING OF BIDS**

#### **4.1 Preparation of Tender Documents**

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

**4.1.2** Bid documents should be based on Standard Bidding Documents (SBDs) relevant for the value range and the category of procurement. SBD for e-procurement would be slightly different from the traditional SBD. To ensure uniformity, the standard provisions in most sections of the SBD are to be used unaltered. Any modification to suit a unique requirement of the specific procurement in these documents is to be done through variable sections such as Special Instructions to Bidders or special conditions of contract.

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

- i) Description of the subject matter of procurement, its specifications including the nature, quantity, time and location where the construction is to be effective, any incidental services to be performed.;
- ii) Limitation or preference for participation by bidders in terms of the Government policies;
- iii) The criteria for eligibility and qualification to be met by the bidder (the eligibility criteria should take care of the supplier's eligibility to receive a contract). The qualification criteria should take care of the supplier's past performance, experience, technical competence, financial strength to handle the contract successfully, compliance with environmental protection regulations / Environment Management System and so on;
- iv) Requirements as to documentary evidence, which must be submitted by contractors or contractors to demonstrate their qualifications.
- v) The procedure for preparation and submission of tenders by the bidders including date, time and place for obtaining, submitting and opening of the bids;
- vi) Suitable provisions for enabling a bidder to seek clarification/question/submit representation against the bidding conditions, bidding process and / or rejection of its bid. These provisions should include a time frame in which Company will address the bidder's questions.

- vii) Criteria for determining the responsiveness of bids, criteria as well as factors to be taken into account for evaluating the bids on a common platform and the criteria for awarding the contract to the responsive, most advantageous (lowest / highest as the case may be) bidder should be clearly indicated in the Tender documents.

A contract or order should not be finalized with zero consideration. Therefore, in order to take care of it, wherever required, tender documents should include a clause in the qualification as well as in price schedule of the tender that "if a firm quotes NIL charges / consideration, the bid shall be treated as unresponsive and will not be considered"..

- viii) Suitable provision for settlement of disputes, if any, emanating from the resultant contract, should be clearly stipulated in the tender document; and
- ix) Essential terms of the procurement contract including a suitable clause mentioning that the resultant contract will be interpreted under Indian laws.

x) **Tender Documents:**

- a) The tender document is the fundamental document in the public procurement process as after award of the contract it becomes part of the contract agreement. All necessary provisions governing the contract should be clearly provided in the tender document. Examples are technical specifications, drawings, commercial terms and conditions including payment terms, obligations of the procuring entity and the contractor timeframe/milestones for execution of the project, tax implications, compliance framework for statutory and other norms, reporting on progress/ quality of the work, dispute resolution. Provisions/ clauses in the tender document should be clear to avoid differences in interpretation and possible time overrun, cost overrun and quality compromises. Comprehensive survey & solid investigation report, area grading & mapping of underground facilities, where project is to be executed, may be made available and made part of tender document.
- b) In tenders containing General Conditions of Contract (GCC), additional / special conditions to be incorporated in the tender document, shall be need based and specific. The GCCs should not be altered and changes, if any, in conditions of contract should only be made through the Special Conditions of Contract.
- c) Identification of milestones may be done in an optimal and sequential manner and the same may be stipulated in the tender document along with enabling provisions.
- d) Payment terms prescribed in the tender document should be such that the payment made to contractors at every stage is commensurate to quantum of work done, subject to any

requirements for initial mobilisation.

- e) The tender documents should mention that the respective contract signing authority of the Company shall be the authority to issue instructions for variations and changes in scope of work against that contract.
- f) Provision of price variation, wherever considered appropriate, as well as methodology for calculation of the same shall be clearly stipulated in the tender document.
- g) Quality Assurance Plan (QAP) may be incorporated in the tender document/ contract. Schedule of visit by various levels of officials should also form part of the QAP.
- h) Technical and Financial eligibility Criteria for the bidders are important in the public procurement process. They shall be clear and fair, having regard to the specific circumstances of the procurement. Appropriate parameters should be prescribed in the eligibility criteria for bidders, to enable selection of the right type of bidders in public interest, balancing considerations of quality, time and cost.
- i) Open online tendering should be the default method to ensure efficiency of procurement. Experience Criteria should be kept broad based so that bidders with experience in similar nature of works can participate.
- j) Provision for Pre-bid conference should be kept based on the requirement. The Place and time of pre-bid conferences should be mentioned in the tender document.

#### **4.1.4 Contents of Tender Documents:**

The main sections of the Tender Documents are:

- i) Notice Inviting Tender (NIT);
- ii) Instructions to Bidders (ITB);
- iii) Appendix to Instructions to Bidders (AITB) (instead of modifying ITB, it is better to have information specific to a procurement as a separate section);
- iv) Eligibility and qualification criteria (Bid Evaluation Criteria / Bid Rejection Criteria);
- v) Schedule of work, units and quantities
- vi) Technical specifications (including Drawings) and Quality Assurance (Inspections and Tests);
- vii) General Conditions of Contract (GCC) / General Terms & Conditions (GTC);

- viii) Special Conditions of Contract (SCC)/Special Terms & Conditions (STC) (instead of modifying GCC/GTC every time, it is better to have it as a separate section); and
- ix) Standard formats, including Bid Cover letter, price schedules, bank guarantees and contract format.

Some broad guidelines for preparing bid documents are provided in the subsequent paragraphs.

#### **4.1.5 Notice Inviting Tender**

A standard NIT format should be used for publishing the tender notice. To ensure competition, preferably attention of all likely bidders, for example, registered contractors, past contractors and other known potential contractors, should be invited to the NIT through email / letters.

The Notice Inviting Tender (NIT) is crucial for attracting wide competition in the tender. The NIT should be brief but must contain sufficient detail for a prospective bidder to decide whether to participate in the tender or not and, if he decides to participate, how to go about it. NIT should be published as per the current policy of the Company.

In case of procurement through a limited tender above Rs. 2.5 lakhs, the NIT is to be uploaded on CPPP and Company's website.

#### **4.1.6 Information to Bidders (ITB) and AITB**

ITB contain all relevant information as well as guidance to the prospective bidders regarding all aspects of obtaining tender documents, and preparing and submitting a responsive bid. It also mentions the process of establishing the eligibility of the bidder as well as evaluation and comparison of tenders and award of contract. ITB should not contain information on processes after the announcement of the award which should be covered in GCC, for example, the arbitration clause, resolution of disputes, and so on. Instead of modifying ITB every time, any changes warranted by special circumstances may be indicated on a separate Appendix to ITB (AITB) and ITB may be included unchanged in every tender document. It should also to be indicated therein that the provisions in the AITB will supersede the corresponding provisions in the ITB.

Important clauses of ITB/ AITB which may require attention and action are:

##### **i) Purchase Preference Policies**

If the purchaser intends to give a purchase preference in line with current Government policies, this fact must be declared in the ITB/AITB and in NIT as well.

##### **ii) Clarification of Tender Documents**

A prospective bidder requiring clarification on the tender documents may notify to the Company in writing, well before the

due date of submission of bids, and a response should be sent in writing to the clarifications sought prior to the date of opening of the tenders.

iii) **Amendment of Tender Documents**

At any time prior to the date of submission of bids, the purchaser may, whether at his own initiative or in response to a clarification sought by a prospective bidder, amend bid documents by issuing a corrigendum. Amendments to the NIT after its issue will be published on OIL's website only.

When the amendment/modification changes the requirement significantly and /or when there is not much time left for the bidders to respond to such amendments, and prepare a revised tender, the time and date of submission of tenders are also to be extended suitably, along with suitable changes in the corresponding timeframes for receipt of the tender, validity period of the corresponding EMD/bid security etc.

iv) **Bid Validity**

A bid shall remain valid for the period mentioned in the ITB/ AITB as under;

Composite Bid System: 60 - 90 days

Two Bid System: 90 - 120 days

In exceptional circumstances, the consent of the bidder may be requested in writing for an extension to the period of bid validity. Such requests should preferably be made much before the expiry of the bid validity. The bid security provided shall also be suitably extended. A bidder accepting the request and granting extension shall not be permitted to modify his bid. Reasons for seeking extension of bid validity should be recorded by the procuring officers at the time of taking such decisions itself.

v) **Sealing and Marking of Tenders (applicable only for physical tender)**

Appendix-6 to be referred for Procedure for receipt and submission of physical tender.

vi) **Withdrawal, Substitution and Modification of Bid**

The bidder, after submitting the tender, is permitted to withdraw, substitute or modify the tenders in writing without forfeiture of Bid Security/ EMD, up to the bid closing date and time of the tender. Any such request received after the prescribed bid closing date and time will not be considered. No bid may be withdrawn in the interval between the deadline for submission of bids and expiration of the period of bid validity. Withdrawal of a bid during this period will result in forfeiture of the bidder's bid security (EMD) and other sanctions.

vii) **Conflict of Interest among Bidders**

A bidder shall not have conflict of interest with other bidders. Such conflict of interest can lead to anti-competitive practices to the detriment of Company's interests. The bidder found to have a conflict of interest shall be disqualified. A bidder may be considered to have a conflict of interest with one or more parties in a bidding process, if:

- a) they have controlling partner(s) in common; or
- b) they receive or have received any direct or indirect subsidy / financial stake from any of them; or
- c) they have the same legal representative / agent for purposes of this bid; or
- d) they have relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on the bid of another Bidder; or
- e) Bidder participates in more than one bid in the bidding process. Participation by a Bidder in more than one Bid will result in the disqualification of all bids in which the parties are involved.
- f) Offers made by agents / consultants / retainers / representative / associate of foreign principals are to be rejected.
- g) A bidder or any of its affiliates participated as a consultant in the preparation of the design or technical specifications/scope of work of the contract that is the subject of the Bid;

**4.1.7 Eligibility / Evaluation / Qualification Criteria (BEC-BRC)**

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

Amongst other the following eligibility criteria may form part of the ITB -

- (a) The applicant should be a private or government-owned legal entity.
- (b) Bidder should have valid registration with Employees Provident Fund organization under 'EPF and Miscellaneous Provisions Act, 1952'.
- (c) For package size exceeding Rs. 10 (ten) crore], Joint Venture/ Consortium/Subsidiary bidder may be allowed. However, in case of some specific nature of work, Joint

Venture/Consortium/ Subsidiary bidder may be allowed even for value less than Rs. 10 Crores also. Maximum number of partners in JV/Consortium shall be limited to three. In case of JV/Consortium, all the partners shall be jointly and severally liable for the successful completion of the work.

- (d) A firm that has been engaged by the Company to provide consultancy services for the preparation or implementation of a project, and any of its affiliates (associates, subsidiary, JV partner), shall not be eligible for subsequently providing goods or works (other than a continuation of the firm's earlier consultancy services) for the same project.
- (e) A firm determined non-performing by the Company shall not be eligible to bid during the period so determined.

The condition of financial qualification and prior experience may be relaxed for Startups (as defined by Department of Industrial Policy and Promotion) subject to meeting of quality & technical specifications and making suitable provisions in the bidding document. As per Department of Expenditure's OM No.F.20/2/2014-PPD dated 20.09.2016, relaxation regarding the financial qualification and prior experience is applicable only to all startups recognized by Department of Industry & Internal Trade (DPIIT) subject to meeting of quality and technical specifications. Startups may be MSMEs or otherwise.

Company has formulated a startup policy, as provided in Appendix - 8.

Prequalification / Post Qualification (PQ) shall be based entirely upon the capability and resources of prospective bidders to perform the particular contract satisfactorily, taking into account their experience and past performance, capabilities with respect to personnel, equipment capabilities and financial standing. The quantity, delivery and value requirement shall be kept in view, while fixing the PQ criteria. No bidder should be denied prequalification / post qualification for reasons unrelated to its capability and resources to successfully perform the contract.

- ii) Utmost care should be taken in formulating BEC / BRC so that the ultimate objective, i.e. procuring the required works as per required specifications, completion schedule at most competitive prices, is met.

The capability / eligibility of a bidder is assessed for technical competence based on the similar past experience of execution of work providing and availability of relevant facilities for performing the job as per relevant standard.

The financial strength of the bidder is assessed through a scrutiny of financial document such as profit & loss statement, balance sheet with reference to turnover, net worth and other financial parameters.

While the factors relating to experience and manufacturing / fabrication capability are more relevant and important for orders pertaining to supplies; experience and financial soundness assume relatively higher

importance and relevance while assessing capability of contractors for construction works, turnkey jobs and services to be provided by them.

The BEC and other relevant tender condition should be made in such a manner that the competent bidders participate in the tender and there is sufficient participation. The BEC should never be framed keeping in view a particular bidder / bidders. As far as possible the BEC should be general in nature meeting the job requirement ensuring adequate competition without compromising on quality / competence of the bidder.

- iii) The following financial & technical criteria may be included in open tender in order to ascertain financial & technical capability of the bidders.

**4.1.7.1 Financial Criteria:**

The applicant should have: (i) access to, or possess available liquid assets and other financial means (independent of any contractual advance payments) sufficient to meet the construction cash flow requirements for the subject contract, of the certain minimum amount specified; (ii) adequate sources of finance to meet the cash flow requirements of works currently in progress and for future contract commitments; and (iii) financial soundness as established by audited balance sheets and/ or financial statements.

Sl. No.	<b>Financial Criteria (to be considered from the original bid closing date)</b>	
1.	*Annual Turnover	
	Value	(i) 50% of the estimated value for all cases where execution period is less than one year.  (ii) 50% of the annualized estimated value for all cases where execution period is more than one year.
	For consortium	At least one member of the consortium to meet the above criteria of 50% turnover.  The other members of consortium should meet minimum 25% turnover requirement.
	Period for consideration	In any of preceding 3 financial years
2.	*Net worth	Positive for preceding financial / accounting year.

**\*Note:**

**Annual Financial Turnover** of the bidder from operations shall mean Aggregate value of the realisation of amount made from the sale, supply or distribution of goods or on account of work/services rendered, or both, by the company (i.e., bidding entity, as the case may be) during a financial year as per the Companies Act, 2013 Section 2 (91).

**Net worth shall mean** the aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited

*balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation.*

#### **4.1.7.2 Technical Criteria:**

This is a broad guideline for formulation of Technical Qualification Criteria.

In case of single job the following experience criteria may be used:

- i) **Past Experience:** The bidder must have successfully executed/completed similar Works over the last 7 (seven) years reckoned from the Original Bid Closing Date in Central/State Government/ PSUs/ Nationalised Banks/ Public Limited Company as under -
  1. One similar completed works each costing not less than the amount equal to 80% (eighty percent) of the estimated cost; or
  2. Two similar completed works each costing not less than the amount equal to 50% (fifty percent) of the estimated cost; or
  3. Three similar completed works each costing not less than the amount equal to 40% (forty percent) of the estimated cost.
- ii) "Similar Works" if specified in BEC must be clearly defined in the tender documents.
- iii) If the experience can be specified in terms of technical parameters, the criterion of similar works experience may not be necessary to be specified in terms of value.

If the prospective bidder is executing a contract which is still running and the contract value / quantity executed within the specified period prior to due date of bid submission is equal to or more than the minimum prescribed value in the BEC such experience may also be taken in to consideration provided that the bidder has submitted satisfactory work / supply / service execution certificate issued by end user.

The above regarding the BEC are the general guidelines to be considered while formulating bid evaluation criteria. The indenting department concerned, with due reasoning, may suitably formulate the BEC depending upon the job requirements and the same shall not be treated as deviation to the procedure. While making BEC, the prime objective is that only capable bidders are qualified. At the same time, there should be sufficient participation.

#### **Note:**

- a) *The Contract(s) / Purchase Order(s) date need not be within the period specified in the tender, preceding the original bid closing date of the tender, however, the execution of work should be within the specified period preceding original bid closing date of the tender.*
- b) *Original Bid Closing Date shall be considered for evaluation of BRC Criteria in case of any extension of the bid closing date.*
- c) *A job executed by a bidder for its own organization/subsidiary cannot be considered as experience for the purpose of meeting BEC.*

#### **4.1.7.3 Personnel Capabilities**

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

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

#### **4.1.7.4 Equipment Capabilities**

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

#### **4.1.7.5 Available Bid Capacity**

Wherever, the bidding capacity is called for in the tender, the bidder should possess the bidding capacity as calculated by a specified formula. The formula generally used is:

The bidding capacity of the contractor should be equal to or more than the annualized cost estimate of the work put to tender- The bidding capacity shall be worked out by the following formula:

$$\text{Bidding Capacity} = [A \times 1.5] - B$$

Where,

A = Maximum annual turnover in any one of the preceding three financial years

B = Commitments in next twelve months from the date of expiry of the bid validity.

#### **4.1.7.6 Working Capital:**

Wherever, Working Capital is called for in the tender, the Bidder should have minimum working capital equal to 15% of annualized estimated value of the work under tender, as per immediate preceding audited financial year result. In case the working capital is short the bidder can supplement the

same through line of credit from a scheduled commercial bank having net worth more than 100 Crores as per enclosed format.

In the event of award, the contractor shall open a project specific account in a nationalized bank located in the vicinity where the project is executed. The contractor shall deposit an amount equal to 10% of the annualized contract value within 15 days from the date of issue of LOA. All payments against the contract shall be remitted to the project specific account. Any withdrawal from this account shall be only after the first payment against the contract is made by OIL.

At any point of time the minimum balance after first remittance by OIL against invoice from the contractor shall remain 5% of the annualized contract value.

In addition to above the bidder should submit a financial resource/cash flow plan for execution of this contract.

Working Capital shall mean "Current Assets minus Current liabilities" as per latest year's audited consolidated annual Financial Statements.

**Net-worth of Bidder:**

It should be equal to +15% of annualized estimated value of the work under tender, as per immediate preceding audited financial year result.

Net worth shall mean: " Share capital + Reserves created out of profits and securities Premium - account (excluding revaluation reserves) – deferred expenditure - Miscellaneous Expenditure to the extent not written off and carried forward Loss - Reserves created out of write back of depreciation and amalgamation .

**Debt Equity Ratio**

Wherever, it is called for in the tender, the debt equity ratio of the bidder should not be more than 2:1.

Debt equity ratio shall mean long term borrowings/Net-worth.

**Note:** *In case the financial statements submitted by the bidder are in currencies other than INR, BC selling rate declared by State Bank of India prevailing on one day prior to bid closing date shall be considered for converting it into INR.*

**4.1.7.7 Pre-Qualification of JV**

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

**Technical Criteria:**

(i) In case the bidder is Joint Venture Company, they must be registered in India and incorporated under the Companies Act 1956 and any amendment thereunder. They should meet the technical qualification requirements as under:

(A) The JV on its own shall meet the experience criteria.

OR

(B) Any member of the JV having a stake of at least **26%** in the JV, on its own shall meet experience requirement and such member shall maintain the minimum shareholding (26%) in the JV during entire duration of the contract and extension (if any).

**Note:** *JV Bidder must submit relevant documents showing the existing shareholdings of their partners along with the bid.*

(ii) **Constitution of Joint Venture:** The members of the JV should not be more than three. There should not be any alterations/changes in the constitution or replacement or inclusion or expulsion of any partner(s)/member(s) of the Joint Venture (which had originally submitted the bid), at the tender or execution stage.

(iii) Members of the JV are not allowed to quote separately/independently in the same tender.

**Financial Criteria:** The JV by themselves should meet the financial criteria of the tender. However, if the Joint Venture (JV) Company does not meet financial criteria by itself, the financial strength of its JV member having more than 50% stake in the JV Company may also be considered provided such member maintains the requisite shareholding in the JV till execution of the contract or extension (if any).

**4.1.7.8 Disqualification:**

Even if an applicant meets the eligibility criteria and BEC/BRC, he shall be subject to disqualification if he or any of the constituent partners is found to have:

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

4. On account of currency of debarment by any Government agency.

**4.1.7.9 Approval of Bid Evaluation Criteria:** In case of tender being processed through open advertisement a suitable BEC needs to be formulated covering technical as well as commercial aspects. On recommendation of tender committee the competent authority as per Delegation of Power (DOP) shall approve the proposed BEC.

**4.1.7.10 Modification/Amendment to BEC:** Modification to BEC is not desirable and should be avoided. However, as a result of Pre-Bid Conference or any other valid reason, if modification to BEC is inevitable, on recommendation of Tender Committee, with full justification, the modification to be approved by the competent authority as per DoP. Modification to BEC is not permitted after the receipt of the bids.

**4.1.7.11** It is important to explicitly include all such terms and conditions which are considered absolutely necessary to be accepted by bidder without any deviation. Tender document should have a stipulation that deviation to such criteria shall make the bid liable for rejection. Broadly the following are to be included in the tender as rejection criteria:

Deviation to the following provision of the tender document:

- i. Firm price
- ii. EMD / Bid Bond / Bid Security Declaration
- iii. Scope of work
- iv. Specifications
- v. Price Schedule
- vi. Completion Schedule
- vii. Period of Validity of Bid
- viii. Liquidated Damages
- ix. Performance Bank Guarantee / Security deposit
- x. Guarantee of material / work
- xi. Arbitration / Resolution of Dispute
- xii. Force Majeure
- xiii. Applicable Laws
- xiv. Integrity Pact, if applicable
- xv. Any other condition specifically mentioned in the tender documents elsewhere that non-compliance of the clause lead to rejection of the bid.

**4.1.7.12 Loading Criteria:** In case there are certain foreseen acceptable deviations which can be loaded financially, the same need to be indicated in the tender document along with quantum / rate of loading.

For Example;

- i. In case OIL opts to supply cement, steel etc. to the contractor, the bidders are required to quote the consumption and OIL is to indicate in the tender upfront the rate for loading of price for such items in case of turnkey packages.
- ii. The stipulation in case of OIL providing steam, power and other such utilities for consumption by the contractor, the bidder to quote the consumption and the tender should have the rate for loading such

consumption.

In addition to above, if there are any other factors which impact the price evaluation, the same needs to be mentioned in the tender document. Further the tender document should contain the method of evaluation for such factors in unambiguous manner while evaluating the price bid.

#### **4.1.7.13 Standardization of BEC**

- i. There are certain works which are repeatedly in use. It is advised that for such works the bid evaluation criteria should be standardized. The standard BEC shall be used across OIL at all spheres / projects so as to maintain uniformity in procurement of similar works in OIL.
- ii. Wherever exists, standard BEC should be used. In case of exceptional situation, due to certain operational requirement, with reasons to be recorded, the standard BEC may be modified to the minimal extent to meet the operational requirement of the particular case. This shall be done with the approval of competent authority on recommendation of the committee.
- iii. The standardized BEC in OIL needs to be reviewed at least once in 2 (two) years to take care of subsequent development in terms of works.

#### **4.1.8 General and Special Conditions of the Contract**

GCC covers all information on aspects after the announcement of the tender award till the closure of the contract and dispute resolution. It should not cover any aspect up to announcement of award. Instead of modifying the GCC every time, any changes warranted by special circumstances may be indicated in a separate SCC and GCC may be included unchanged in every tender document. Reference of such changes of GCC must be indicated in the SCC. It is also to be indicated therein that the provisions in the SCC will supersede the corresponding provisions in the GCC.

While drafting SCC, the following, amongst others, should also be considered:

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

and giving the substitute clause or part, as applicable.

#### **4.1.9 Submission Formats**

This section contains the relevant forms for tender submission: various declarations by bidder, formats for the bank guarantee, price schedule forms, exception and deviation forms, contract forms and manufacture's authorisation form, and so on.

#### **4.1.10 Mandatory e-Publishing of Tenders**

It is mandatory to publish tender enquiries, corrigenda thereon on the Central Public Procurement Portal (CPPP) and Company's website. These instructions apply to all Tender Enquiries, Requests for Proposals, Requests for Expressions of Interest, Notice for pre-Qualification / Registration or any other notice inviting bids. These instructions would not apply to Procurement of works without quotations or procurement of works by purchase committee, as well as GeM tenders and in case of procurement through limited tender up to Rs. 2.5 lakhs.

### **4.2 Bid invitation and bid receipt**

#### **i. Enquiry register (applicable only for physical tenders) and tender intimation:**

- a) An enquiry register for all the physical tenders shall be maintained, either in system (SAP etc.) or physical record.
- b) In case of limited enquiries the name of the firms to whom the enquiries are to be addressed will be entered in that register/kept in respective tender file. This will be signed by the concerned officer issuing the enquiry.
- c) Tender intimation, preferably to be sent to prospective bidders (in case of open tender). As a proactive action tender intimations shall be sent to prospective bidders as soon as the tender is published. This shall enable the bidders to refer to the advertisement and submit their bid.

#### **ii. Time to be allowed to bidders to quote:**

The bidder should be given reasonable time period for studying the tender document and preparation of bid. Accordingly, depending upon the mode of tender like open tender, limited tender, ICB tenders, LSTK etc. the different time slab should be given for submission of bid. The following time period shall be allowed to bidder for submitting of bid:

##### Indigenous:-

Limited National Tender Enquiry: minimum 14 days  
*(in case of physical tender it shall be minimum 21 days)*

Open National Tender Enquiry  
(other than EPC / LSTK): minimum 21 days

Others:-

Limited Global Tender Enquiry: minimum 21 days

EPC / LSTK / Open Global Tender Enquiry: Minimum 28 days

However, a lesser bidding time may be given, keeping in view the urgency of the requirement expressed by User Department, with due approval of Head of Contracts Department, provided such time is adequately reasonable for bidders' participation. In case of proprietary procurement of works, procurement on nomination basis, a shorter bidding time can be given. However, the same should be adequate for the bidder to submit bid. Option of sending email enquiries for such tenders may be exercised.

The time allowed for bidding is to be reckoned from the date of publication of NIT.

If the due date of the submission and opening happens to be an unscheduled holiday / closure of OIL's office, the due date of opening shall be accordingly extended up to next working day.

**iii. Invitation to Bid:**

In regard to Invitation to bid, following points are to be kept in view:-

- a. The Invitation to bid will clearly indicate the place, date and time by which tenders will be received and the place, date and the time at which these will be opened. It will also provide a brief description of the tender along with details of tender number, Bid Security / EMD.
- b. The date and city of the pre-bid conference (if any envisaged) also must be clearly specified in the Invitation to Bid. The last date of receipt of queries from prospective bidders for pre-bid conference should also be mentioned.
- c. Invitation should include an instruction that the bid must be submitted well before the closing date and time. In case of e-tendering bidders are to submit the documents electronically through OIL's e-tender portal only. Where the bidders are required to submit their bid electronically, bids submitted manually shall be rejected. Bidders should upload copies of EMD/Bid Bond / Bank Guarantee etc. along with technical part and submit the original EMD (In case of EMD submitted in the form of BG / DD / Banker Cheque etc.) on or before the bid closing date and time at the designated C&P office as mentioned in the tender. In case of GeM tenders, provision for submission of Bid security shall be as per GeM terms & conditions.

In case of physical tender, Invitation should include an instruction that the bid sent by the bidder must reach the place of submission of bid well before the closing date and time.

- d. In case of physical tender, all bids received by the notified closing date and time either through post or through the tender box, will

be entered in tender opening register (*Not applicable in case of e-tenders / GeM Tenders*).

- e. Invitation to bid may be transmitted by e-mail also, wherever required.
- f. Invitation to bid should mention that bidders can visit OIL's tender website for further details on the tenders.
- g. In case of Invitation to bid pertaining to e-procurement tender it shall be mentioned that all the bidders have access to "Online help document" which is available on login page of the e-portal.
- h. Information regarding publishing of the tender should be shared with the concerned department. The Invitation to Bid must contain the official e-mail address of the Tendering Officer.
- i. The Invitation to bid for e-procurement tenders shall be signed (digital signature in case of e-tender) by the Tendering Officer.
- j. The complete set of bid documents shall be uploaded on OIL's website. The Tendering Officer will be responsible for ensuring the correctness of the content of the Invitation to Bid uploaded on the site.
- k. Bidders will have to download the tender document before the due date of submission and use the same for participating in the tender.
- l. Number of copies of offers / bids (in case of physical tenders) to be called from bidders will be as under:
  - Where in-house evaluation is involved- Copies in duplicate
  - Where bid evaluation is done by outside agency- Five Copies

**iv. Modification to the Scope of Work**

Any change in scope of work shall require the approval of competent authority, whoever approved the PR. Any specific and essential modifications of the scope of the work, subsequent to invitation of bids, may be done only with the approval of Competent Authority, whoever approved the PR. In order to provide reasonable time to the prospective bidders, for taking into account such amendment/addendum in preparing their bids, reasonable time as may be essential shall be allowed to the bidders for submission of bids after issuance of such amendment / addendum. This amendment / addendum shall be hosted on OIL's website and uploaded in e-tender portal (for e-tenders).

**Note:**

The following disclaimer to be included in all NITs:

*At any time prior to the deadline for submission of bids, the Company may, for any reason, whether at its own initiative or in response to a clarification requested by a prospective Bidder, modify the Bid Documents through issuance of an Addendum(s)/Corrigendum(s)/Amendment(s) and such Addendum(s)/Corrigendum(s)/Amendment(s) will be published in the tender portal and hosted on OIL website only. No separate intimation shall be sent to the Bidders. Prospective bidders are requested to visit website regularly to keep themselves updated. Bidders are expected to take the Addendum(s)/Corrigendum(s)/ Amendment(s) into account in preparation and submission of their bid.*

**v. Receipt of offers from firms with whom business has been banned / suspended:**

It may be specified in INVITATION TO BID that firm(s) to whom no further business is to be given or dealings with whom have been banned / suspended are not eligible to participate in the tender and any bid received from such firm(s) shall not be considered.

**vi. Pre-bid Conference**

- a) In case of complex jobs/LSTK/works, it is preferred to have pre-bid conference with the prospective bidders so as to have clarity with respect to specification, scope of work, services covered under the tender. This exercise minimizes the instances of raising technical and commercial queries to the bidders after receipt of the bid. The Head of Indenting Department/Head of Project is competent to decide considering nature of work, complex tenders regarding holding the pre-bid conference.
- b) The tender document should clearly indicate the city / location & date for the pre-bid conference. The bidder should be given reasonable time for bidding after the pre-bid conference. Accordingly, the pre-bid conference should be scheduled in such a way as to allow the bidders to get sufficient bidding time (at least 2 weeks) for submission of their bids after publication of the amendment / minutes of the pre-bid conference.
- c) Bidder should be advised to submit their queries in relation to the tender document atleast 5 (five) working days before the scheduled date of pre-bid conference. This shall enable OIL to analyze their query and to make suitable response during pre-bid conference. However, bidders can also raise the query during the pre-bid conference.
- d) The pre-bid conference shall be organized by C&P department and shall be attended by the indenter and F&A Department as well. However necessary budget for the same shall be arranged by Indenting Department. The pre-bid conference shall preferably be organized at the place from where the tender has been floated / published. The tender committee members or their authorized representatives should necessarily attend the pre-bid conference.

- e) Person(s) carrying due authorization letter from the bidder shall only be allowed to attend the pre-bid. The bidder who does not attend the pre-bid conference is also free to submit the bid.
- f) The record note of the pre-bid conference shall be prepared by official from C&P department which shall be signed by the representatives of all the departments who attended the pre-bid.
- g) As a result of such pre-bid conference if there is any change in BEC / BRC, necessary approval shall be obtained as per DoP. Any change in Scope of Work / SCC required as a result of pre-bid conference shall be approved by the concerned PR Approving authority. The minutes of the pre-bid meeting and all amendments to the tender document owing to the pre-bid conference shall be published / issued as a corrigendum to the tender. Such corrigendum should be published in OIL website also. Further, suitable time extension shall also be given in such amendment to NIT for due date for bid submission, if considered necessary.

**vii. Extension of Due Date for Submission of Bid**

- a) Extension of due date for bid submission shall be avoided. However, where the corrigendum/modification to the tender document is issued, suitable time extension may be given if required. In other circumstances, a valid reason should be recorded and put up to the Head of the department (Materials/Contracts) for approval prior to issuing the extension.
- b) There shall be normally no extension of due date after bid closing even if there is insufficient participation (say 1 to 2 bids received). In case of receipt of single offer also, such tenders can be opened and evaluated and processed further without resorting to due date extension.
- c) However, in special circumstances like procurement of sophisticated works, where technology is limited, with due deliberation and on recommendation, the competent authority may approve minimum required extension. At this stage the bidders who have already submitted the bid have option either to withdraw/revise/resubmit the bid without the forfeiture of bid security.
- d) If the original tender is substantially modified affecting the important tender condition like scope of work / specification / delivery period / mobilization period / completion period, for better transparency and participation by maximum prospective bidders, it shall be prudent to extend the due date of submission so as to provide required time for bidder to take care of the changes.
- e) The due date may be subsequently extended with the approval of the HoD of Materials / Contracts with concurrence of user

department to promote better competition and also considering delivery requirement. However, where no offer is received, approval is not required up to the third extension of bid closing date.

**4.3 Sealing, and Marking of Bids by Bidders (applicable only for physical tender)**

Appendix-6 to be referred for Procedure for receipt and submission of physical tender.

**4.4 Submission, Receipt and Custody of Tenders (applicable only for physical tender)**

Appendix-6 to be referred for Procedure for receipt and submission of physical tender.

**4.5 Withdraw / Amendments / Modifications to Bids by Bidders**

The bidder, after submitting its tender, is permitted to withdraw / alter / modify its tender so long such withdrawal / alterations / modifications are received duly sealed and marked like original tender (only for physical tender), up to the date & time of receipt of tender. Any withdrawal / amendment / modification received after the prescribed date & time of receipt of tenders are not to be considered.

**4.6 Procedures to be followed during Bid Opening:**

Immediately after the deadline for bid submission, Company shall proceed to the bid opening. Detail procedure of bid opening in case of e-tender and Physical tender have been given in Appendix 5 & 6 respectively.

The procedure for bid opening in GeM shall be as per the GeM procedure, guidelines and Terms & Conditions mentioned therein, which can be accessed on its website [www.gem.gov.in](http://www.gem.gov.in).

**4.7 Bidding Process- Risks and Mitigations**

Risk	Mitigation
<b>Exceptions to an open bidding</b> process are abused, leading to single source processes.	<b>Rigorously follow the conditions</b> under which open tendering can be dispensed with.
<b>When short lists are used,</b> the process of preparation of short lists may be non- transparent and all eligible firms may not be included and some ineligible firms may get included.	<b>Registration of bidders / contractors:</b> A list of registered bidders must be kept for use in restricted bidding. Publicize even restricted bids on Company's website. Bidders for LTE / SLTE may be transparently selected with the approval of CA.

<p><b>Pre-qualification criteria:</b> PQB has the potential of getting misused or being applied without considering the restrictive nature of competition. PQC should be relevant to the quality requirements and neither be very stringent nor very lax to restrict / facilitate the entry of bidders. These criteria should be clear, unambiguous, exhaustive and yet specific. Also, there should be fair competition.</p>	<p><b>Standard laid down</b> criteria when two stage bidding is warranted. Also laid down model PQC criteria for different types of Procurements may be used.</p>
<p><b>Invitation to tender</b> (an open bid) is not well publicized or gives insufficient time, thereby restricting the number of bidders that participate.</p>	<p><b>Publicity and adequate time for bid submission</b> must be ensured. Require a higher level approval for short bid submission period.</p>
<p><b>Evaluation criteria</b> are not set from the beginning or are not objective or not clearly stated in the bid documents, thereby making them prone to being abused.</p>	<p><b>Objective, relevant and clearly</b> stated evaluation criteria must be specified in the bid document.</p>

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

QCBS method of selection may be used for procurement of works wherever applicable. Detailed procedure shall be guided as per Company's internal circular issued vide OIL 62/C&P/79 dated 23.03.2022 attached as Appendix 9.

#### 4.9 **Earnest Money Deposit / Bid Security / Bid Bond**

EMD / Bid security / Bid Bond is obtained from the bidders as an instrument so that the bidder does not withdraw/modify the bids within the validity period thereby causing inconvenience to the Company. The amount of bid security shall be determined in accordance with the PR estimate of the items / works / services procured under the subject tender.

In exceptional cases, tender may be floated with the provision for submission of Bid Securing Declaration instead of Bid Security, after seeking approval of the competent authority. The competent authority in such cases shall be the same authority empowered to approve the BEC/BRC of the tender as per the DoP.

However, for open tenders with estimated value above Rs. 25 Lakhs and upto Rs. 50 Lakhs, only Bid Security Declaration is to be obtained in place of Bid Security/EMD. The bidder in the Bid Security Declaration shall clearly state and accept that if they withdraw or modify their Bids during the period of validity, or if they are awarded the contract and they fail to sign the contract, or to submit a performance security before the deadline defined in the tender document, they will be suspended for the period of time specified in the

tender document from being eligible to submit Bids/Proposals for contracts with the Company. This is in addition to the other penal actions to be taken against such bidder as per provisions of Company's Banning Policy.

**4.10 Exemption from submission of Bid Security:**

- i) No Earnest Money Deposit / Bid Security / Bid Security Declaration will be necessary for the following:
  - a. procurement up to Rs. 25.00 lakhs,
  - b. Procurement from State Govt. Department, Central Govt. department, Central Public Sector Undertaking and State Public Sector Undertaking
  - c. proprietary works,
  - d. procurement on nomination basis.

For GeM tenders, bid security exemption shall be as mentioned in GeM General Terms and Conditions.

- ii) Public Procurement Policy for Micro and Small Enterprises (MSEs) is not applicable in Works contracts.
- iii) Generally, bid security is not required for limited tender. However, for limited tenders of value Rs. 25 (twenty five) lakhs to Rs. 50 Lakhs Bid Security Declaration may be obtained. For all limited tenders above Rs. 50 Lakhs EMD/Bid Security Declaration may be obtained, if considered necessary.

**4.11 Amount of Bid Security:**

Estimated tender value	Amount of EMD /Bid Security
Upto Rs. 25 Lakh	Nil
Above Rs. 25 Lakh and upto Rs. 50 Lakhs	Bid Security Declaration to be submitted in lieu of Bid Security.
Above Rs. 50 Lakh	@2% of total estimated cost put to tender

The amount of bid security, rounded off to the nearest thousands of Rupees, is to be indicated in the bidding documents

While working out the EMD the closing B.C. selling market rates of exchange declared by the State Bank of India as applicable on the date of approval of BEC by competent authority will be taken into account for conversion of Indian Rupees to foreign currency. In case approved BEC or standard BEC exists, the exchange rate of date of PR approval shall be taken. However, the maximum limit of EMD/Bid Security for a tender shall be US \$ One million for foreign bidders and Rs. 8 Crores for Indian bidders.

**4.12 Mode of Submission of Bid Security:**

All the bids must be accompanied by Bid Security (if applicable) for the amount as mentioned in the NIT or an equivalent amount in freely convertible currency and shall be in the form of Insurance Surety Bonds/DD/FDR (account OIL INDIA LIMITED)/NEFT/RTGS/Electronic fund

transfer to designated account of OIL/online payment through OIL's e-portal/Bank Guarantee (BG) (including e-Bank Guarantee) in OIL's prescribed format or as an irrevocable Letter of Credit (L/C) from any of the following Banks –

- a) Any schedule Indian Bank or Any Branch of an International bank situated in India and registered with Reserve Bank of India as scheduled foreign bank in case of domestic bidder, or
- b) In case of foreign bidder, the bank guarantee can be accepted from any scheduled bank in India or from International bank who has its branch in India registered with Reserve Bank of India, or
- c) Any foreign Bank which is not a Scheduled Bank in India, provided the Bank Guarantee issued by such Bank is counter-guaranteed by any Branch situated in India of any Scheduled Bank incorporated in India,

Bid security shall also be acceptable through online payment modes.

Bank Guarantee issued by a Scheduled Bank in India at the request of some other Non-Schedule Bank of India shall not be acceptable.

The Bank Guarantee / LC shall be valid for the time as asked for in the Bid Document. The bid security is normally to remain valid for a period of 45 (forty five) days beyond the bid validity period. Bank Guarantees issued by Banks in India should be on non-judicial stamp paper of requisite value, as per Indian Stamp Act, purchased in the name of the Banker.

The Bank Guarantee issued by the bank must be routed through SFMS.

**Note:** *In case of GeM tenders the BG format for Bid Security as per GeM may also be accepted.*

#### **4.13 Submission of EMD / Bid Security in case of e-Tendering:**

In case of electronic bidding, the scanned copy of the original Bid Security submitted in the form of either Bank Guarantee or LC must be uploaded by bidder along with the Technical bid. However, original of the bid security must be received on or before the due date and time of bid submission at the designated C&P department office. In case of GeM tenders, provision for submission of bid security shall be as per GeM terms and conditions.

#### **4.14 Examination / Verification of Bid Security:**

All bid security received against a tender, after comparing the tender no., amount of the bid security, validity of bid security and name of the party on whose behalf it has been issued, the C&P department shall send a copy of the same to F&A Department. The F&A Department will check the following:

- i) Whether the language of the BG is verbatim as per prescribed format.
- ii) In case of any discrepancy with regard to the value of non-judicial stamp and change / modification in the language by bank, the bank

guarantee shall be examined by Legal law department for its acceptance.

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

In order to know the authenticity of the bid security submitted by the bidder, the F&A Department shall ensure confirmation of BG through SMFS or else take up the matter with the issuing bank for verification of the BG.

#### **4.15 Return of EMD/Bid Security:**

- i) EMD/Bid Security, when submitted in the form of BG, shall remain in safe custody of C&P Department till return. For rest of the mode of submission of EMD/Bid Security, F&A Department shall be custodian.
- ii) The bid security/EMD should be returned to the bidders as below –
  - (a) In case of two bid or two stage bidding, bid security/EMD of techno-commercially rejected bidders should be returned within 30 days of the final rejection (after evaluation against representation, if any).
  - (b) Bid Security/EMD of the unsuccessful bidders should be returned within 30 days of issue of LOA/PO.
  - (c) During the process of evaluation, if OIL seeks validity extension, bidder has option either to extend the bid validity on the terms and conditions and corresponding extension of bid bond. In case the bidder opts for not extending the validity, his EMD cannot be forfeited and the same shall be returned within 15 days after the expiry of his bid.
  - (d) The bid security/EMD of the successful bidder shall be returned only after receipt of Performance Security and bank verification wherever required.

While returning bid securities/EMDs, C&P should ensure release of E-BGs/online EMDs by intimating F&A Department of the same.

#### **4.16 Forfeiture or encashment of Bid Security/EMD:**

The bid security can be forfeited in the following condition:

- (a) The bidder withdraws the bid within its original/extended validity.
- (b) The bidder modifies/revises their bid suo motu.
- (c) Bidder does not accept the order/contract.
- (d) Bidder does not furnish Performance Security Deposit within the stipulated time as per tender/order/contract.

- (e) If it is established that the bidder has submitted fraudulent documents or has indulged into corrupt and fraudulent practice, the bid security shall be forfeited after due process in addition to other action against the bidder as specified in OIL's banning Policy.

In case of Sl. No. a) to d), approval of Head-Materials / Head-Contracts is required. In case of Sl. No. e) approval of competent authority is required as specified in the OIL's Banning Policy.

#### **4.17 Performance Security:**

The successful bidders are required to furnish performance guarantee through security deposit called performance security. This is for securing the performance of contracts/purchase order. Performance guarantee is to be submitted by the successful contractor within the stipulated time as per contract.

##### **4.17.1 Submission of Performance Security:**

<b>Type of Contract</b>	<b>Performance Security Amount</b>
Procurement of works up to an individual contract value of Rs. 10 Lakhs.	Nil
Works above Rs. 10 Lakhs	10% of contract value
LSTK contract	10% of order value
Depository works/ proprietary works	Nil

- **For Civil Contracts: Refer to Para 7.6.3.**

The percentage of performance security is to be indicated in the bidding document.

Note: For the purpose of determining the amount of Performance Security amount, the contract / order value shall be considered excluding taxes and duties which are paid extra by OIL.

Performance Security is to be furnished within 30 days from the date of notification of the award and it should remain valid for a period of 03 (three) months beyond the date of completion of all contractual obligations of the supplier, including warranty / guarantee / defect liability period (if any). However, in case of operational exigency, contract agreement may be signed prior to receipt of Performance Security, with due approval from Head of Contracts Department.

Time extension for submission of Performance Bank Guarantee at the time of award of contracts / PO, can be granted by HoDs of Contracts / Materials at FHQ as well as other Spheres / Projects, up to 30 days beyond the originally specified period in the LOI / LOA / Contract / PO. Any extension beyond this period can be granted by minimum L4 level of C&P /

Project / Sphere Heads, as the case may be.

#### **4.17.2 Mode of submission of performance security:**

The Performance Security shall be in the form of, Insurance Surety Bonds, account payee Bank Draft/Cashier's cheque/Banker's cheque\*/ NEFT/RTGS/ Electronic fund transfer to designated account of OIL or Fixed Deposit Receipt (FDR) (account OIL INDIA LIMITED) or Bank Guarantee (including e-Bank Guarantee) or irrevocable Letter of Credit (LC) from:

- a) Any schedule Indian Bank or Any Branch of an International bank situated in India and registered with Reserve Bank of India as scheduled foreign bank in case of domestic bidder, or
- b) In case of foreign bidder, the bank guarantee can be accepted from any scheduled bank in India or from International bank who has its branch in India registered with Reserve Bank of India, or
- c) Any foreign Bank which is not a Scheduled Bank in India, provided the Bank Guarantee issued by such Bank is counter-guaranteed by any Branch situated in India of any Scheduled Bank incorporated in India.
- d) Bank Guarantee issued by a Bank, amongst others, must contain the following particulars of such bank:
  - Full address.
  - Branch Code.
  - Code Nos. of the authorized signatory with full name and designation.
  - Phone Nos., Fax Nos., E-mail address.
- e) The domestic bidders will have to submit the Bank Guarantee from any of the scheduled banks and on non-judicial stamp paper of requisite value as per the Indian Stamp Act, purchased in the name of the issuing banker.
- f) The Bank Guarantee issued by the Bank must be routed through SFMS platform as per following details:
  - (i) MT 760 / MT 760 COV for issuance of Bank Guarantee
  - (ii) MT 760 / MT 767 COV for amendment of Bank GuaranteeThe above message/intimation indicating the Contract No. shall be sent through SFMS by the BG issuing bank branch to the designated bank of OIL.
- g) The foreign bidder will submit the Bank Guarantee from Banks of Indian origin situated in their country. In case no such bank of Indian origin is situated in their country, the Bank Guarantee may be submitted from the bankers as specified above.
- h) In case of GTE tenders, the performance security should be in the same currency as the contract and must conform to Uniform Rules

for Demand Guarantees (URDG 758) - an international convention regulating international securities.

**Note:** *In case of GeM tenders the BG format for performance security as per GeM may also be accepted.*

#### **4.17.3 Examination / verification of performance security:**

All performance bank guarantees received against a contract/order, after comparing the order no., amount of the bank guarantee and name of the party on whose behalf it has been issued, the C&P department shall send the same to F&A Department for checking/vetting the following:

- (i) Whether the language of the BG is verbatim as per the prescribed format.
- (ii) In case of any discrepancy with regard to the value of non-judicial stamp and change / modification in the language by bank, the bank guarantee shall be examined by Legal department for its acceptance.
- (iii) The BG contains the name, designation and code number of the Bank officer(s) signing the guarantee(s).
- (iv) The address and other details (including telephone no.) of the controlling officer of the bank are obtained from the branch of the bank issuing the BG (this should be included in all BGs).

In order to know the authenticity of the bank guarantee submitted by the bidder, the F&A Department shall obtain Structured Financial Messaging Solutions (SFMS) confirmation from the designated bank of the Company.

**Note:** *Performance securities should be forwarded to the F&A Department for their safe custody.*

#### **4.17.4 Management of performance security and claim settlement, if any:**

- (i) Finance and Accounts Department shall be the custodian of performance security and is responsible for its management. Finance and Accounts department shall take all necessary actions on time for extension or encashment or refund of performance securities. Monitoring should also include a monthly review of all bank guarantees and other instruments expiring in next three months. Extension of bank guarantees and other instruments, where warranted, should be sought immediately and implemented within their validity period. Bank Guarantee should never be handed over to the supplier for purpose of extension of validity.

Performance Security shall be released in accordance with the terms of the contract / purchase order. In case there is no claim, concerned Head of the user department shall have full powers in this regard, irrespective of the type of tender or value of tender / order / contract, including for cases falling within the powers of

Directors and CBC to certify release of the Performance Security. Accordingly user department with the approval of their HoD shall advice to the concerned section of F&A Department, for release of Performance Security with a “No Demand/Claim Certificate”.

- (ii) In case of claim, all concerned authorities shall ensure that details of all claims which are to be recovered from the contractor are promptly intimated to the respective payment authority, without any loss of time, so that the claim can be recovered before releasing the pending payment(s).
  - (a) In case of outstanding claims (if any, which could not be recovered from the regular payments) and are to be recovered from the Performance Security, the user department shall forward complete details of the claims to C&P well before the expiry of the validity of Performance Security.
  - (b) On receipt of intimation regarding claims for recovery (if any), C&P shall verify whether the claims are tenable as per terms of contract/purchase order.
  - (c) Thereafter, in cases where claim amount are to be recovered from Performance Security, approval shall be obtained from the CA (who has approved award of contract) for recovery against such claim, prior to release of the Performance Security. CA shall have full powers to approve such recovery and/or release of the Performance Security.
  - (d) Under exceptional circumstances if all obligations of the Contract are not completed within the stipulated contractual period, the indenting department with due justification for the delay shall inform F&A Department to obtain suitable extension of validity of the performance security.

#### **4.18 Security Deposit/Retention Money**

In addition to Performance Security, Contracts for works usually provide for a percentage of each running bill (periodic/ interim payment) to be withheld as Security Deposit/retention money until final acceptance. The contractor may, at his option, replace the retention amount with an unconditional BG from a bank acceptable to the Company at the following stages:

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

liability periods being applicable to different sections or parts, the expiration of defect liability period shall be the latest of such periods.

**4.19 Risks and Mitigations- Preparing Bid Documents, Publication, Receipt and Opening of Bids:**

<b>Risk</b>	<b>Mitigation</b>
<b>Exceptions to an open bidding</b> process are abused, leading to single source processes.	<b>Rigorously follow the conditions</b> underwhich open tendering can be dispensed with.
<b>When short lists are used</b> , the process of preparation of short lists may be non- transparent and all eligible firms may not be included and some ineligible firms may get included.	<b>Enlistment of bidders/ contractors:</b> All major procuring departments must keep a list of enlisted bidders for use in restricted bidding. Publicise even restricted bids on your website. Bidders for LTE may be transparently selected with the approval ofCA.
<b>Pre-qualification criteria:</b> PQC should be relevant to the quality requirements and neither be very stringent nor very lax to restrict/facilitate the entry of bidders. These criteria should be clear, unambiguous, exhaustive and yet specific. Also, there should be fair competition.	<b>Lay down</b> criteria when two stage biddingis warranted. Also lay down model PQC criteria for different types of works.
<b>Invitation to tender</b> (an open bid) is not well publicised or gives insufficient time, thereby restricting the number of bidders that participate.	<b>Publicity and adequate time for bid submission</b> must be ensured. Require a higher level approval for short bid submission period.
<b>Evaluation criteria</b> are not set from the beginning or are not objective or not clearlystated in the bid documents, thereby making them prone to being abused.	<b>Objective, relevant and clearly</b> stated evaluation criteria must be specified in thebid document.

\*\*\*\*\***End of Chapter-4**\*\*\*\*\*

## **CHAPTER 5**

### **EVALUATION OF BIDS AND AWARD OF WORK**

#### **5.1 Tender Evaluation**

**5.1.1** The evaluation of tenders is one of the most significant areas of purchase management and the process must be transparent. All tenders are to be evaluated strictly on the basis of the terms and conditions incorporated in the tender document and those stipulated by the tenderers in their tenders. The Contracting Authority may include quality, price, technical merit, aesthetic and functional characteristics, environmental characteristics, running costs, cost-effectiveness, after-sales service and technical assistance, delivery date and delivery period or period of completion etc. No criteria shall be used for evaluation of tenders that cannot be verified. No hearsay information or hitherto undeclared condition should be brought in while evaluating the tenders. Care should be taken that preferences provided to any category of bidders on certain specified grounds should not result in single vendor selection. Similarly, no tender enquiry condition (especially the significant/essential ones) should be overlooked/ relaxed while evaluating the tenders. The aim should be ensure that no tenderer gets undue advantage at the cost of other tenderers and/or at the cost of Procuring Entity. Information relating to evaluation of tenders and the Tender Committee's (TC's) deliberations should be confidential and not be shared with persons not officially connected with the process. The representative of the C&P Department will work as a convenor of the TC. As per Rule 173 (xxii) of GFR 2017 no member of the tender committee should be reporting directly to any other member of such committee in case estimated value of the procurement exceeds Rs. 25 lakh. Though the GFR stipulates this provision only when the estimated value of procurement exceeds Rs 25 lakh, it is desirable that the same provision should be followed in the constitution of all purchase committees irrespective of the value of procurement. The process of tender evaluation proceeds is described in the subsequent paras.

#### **5.1.2 Tender committee:**

- i) **Formation of Tender Committee:** The Tender Committee will consist of 3(three) members one each from C&P, Indenter / User and F&A Department. Wherever there is technical complexity or user and indenter are different, the member from User Department can be co-opted for advice to the indenter. However, the total number of tender committee will not exceed 3(three).

Tender committee will not be necessary for procurement when orders are placed against OIL's rate contract. The bid will be examined technically and commercially by user department, F&A Department and C&P Department. Thereafter, C&P Department will prepare a proposal and route the same for approval by Competent Authority as per provisions of DoP.

ii) **Level of tender committee:**

The member of the tender committee from three departments as mentioned above shall be one level below the Competent Approving Authority. However, in the event no officer of requisite level is posted then officer of next lower level available from that department will be included in the tender committee.

- a) In case officer to approve the proposal as per DOP is not available at the station the officer available at higher level shall approve the recommendation. In case Head of the Sphere / Project being the approving authority and not available at station, the officer in charge shall approve such proposal. However, the level of tender committee shall not change and continue corresponding to competent authority in accordance with DOP.
- b) There may be cases that regular member of the tender committee is not available due to valid reasons, in such cases the officer next lower level available in that department shall be included in the tender committee so as to avoid delays in holding the committee meeting.
- c) The cases where competent authority to approve the proposal is Director / CBC / Board, tender committee shall be held at the level of senior most officer available in the respective departments.
- d) The level of tender committee will be decided considering the estimated value provided in the PR for the tender. During the course of evaluation, on the basis of number of the techno-commercially acceptable bids and the lowest evaluated bid for award, the level of the tender committee may be changed according to the corresponding approving authority.

iii) **Convening of tender committee meeting:**

The C&P Department will convene the tender committee meeting in case of difference of any opinion amongst the members of the tender committee or to resolve any matter that may arise during the processing of the tender.

Tender Committee meetings will be convened in the office of department responsible for processing of tenders, i.e. C&P.

**5.1.3 Time schedule for various activities for evaluation and award**

The time schedule for evaluation and processing of cases after receipt of bids till award for different activities is mentioned hereunder:

**i) Single envelope composite bid (consisting of technical as well as price):**

<b>Sl. No.</b>	<b>Activity</b>	<b>Maximum Period</b>
<b>1</b>	Opening of Bids	0
<b>2</b>	Scrutiny of bids and issuance of Technical / Commercial queries (if any)	10 days
<b>3</b>	Vendor response to Technical / Commercial queries	10 days
<b>4</b>	Evaluation of response to Technical / Commercial queries and Finalization of Technical / Commercial Evaluation / Summary of Techno-commercial Scrutiny	15 days
<b>5</b>	Preparation of Comparative statement, examination by F&A Department and tender committee recommendation for award	15 days
<b>6</b>	Approval of Competent Authority and award	2 days
Total Period allowed (maximum)		52 days

**ii) Single stage two bid system:**

<b>Sl. No.</b>	<b>Activity</b>	<b>Maximum Period</b>
<b>1</b>	Opening of Bids	0
<b>2</b>	Scrutiny of bids and issuance of Technical / Commercial queries (if any)	10 days
<b>3</b>	Vendor response to Technical / Commercial queries	10 days
<b>4</b>	Evaluation of response to Technical / Commercial queries and Finalization of Technical / Commercial Evaluation	15 days
<b>5</b>	Preparation and Finalization of Committee recommendation for price bid opening	7 days
<b>6</b>	Approval of Competent Authority	3 days
<b>7</b>	Price Bid opening	7 days
<b>8</b>	Preparation of Comparative Statement	5 days
<b>9</b>	Vetting of Comparative Statement by F&A Department	3 days
<b>10</b>	Preparation and Finalization of Tender Committee Recommendation for award	7 days
<b>11</b>	Approval of Competent Authority and award (Cases which requires approval by Director) [Cases which requires CBC]	3 days (5 days) [10 days]
Total Period allowed (maximum)		70 days (75 days) [80 days]

**Note:**

- a) *For proprietary and nomination cases, contract/order is to be awarded/placed ideally within 30 days.*
- b) *Tender to be floated ideally within 7-10 days from the date of approval of BEC-BRC or finalization of terms and conditions, whichever is later.*
- c) *Additional time may be needed for cases involving negotiation, representation, IEM, court cases etc.*
- d) *For proposal requiring approval from Board additional time will be needed.*
- e) *In case a particular tender is not finalized within the above targeted period for valid reason, it should not be treated as deviation to procedure.*

**5.1.4 Evaluation of bids:**

The responsiveness of the bids shall be ascertained based on the contents of the bid itself without recourse to extrinsic evidence. Evaluation must be based only on the conditions included in the tender document and any other condition should not form the basis of the evaluation. A substantially responsive bid is one which conforms to the terms and conditions of tender without deviations. A bid determined as substantially not responsive shall be rejected and may not be subsequently made responsive by correction/new submission as it will change the substance of the bid.

**Discrepancies between Original and Additional/ Scanned Copies of a Tender:** In case discrepancies are observed in responsive tenders between the original copy and other copies of the same tender set, the text, and so on, of the original copy will prevail. In e-Procurement also there could be discrepancies between the uploaded scanned copies and the originals submitted by the bidder (where such original documents are called for in the tender). In such case the original document submitted by the bidder shall prevail. Physical copies of only those documents sought in the tender shall be considered for evaluation.

**Minor Infirmary/Irregularity/Non-conformity:** During evaluation some minor infirmity and/or irregularity and/or non-conformity may also be found in some tenders. Such minor issues may be waived provided they do not constitute any scope deviation and financial impact and, also, do not prejudice or affect the relative ranking of the bidders. Wherever necessary, clarification on observations on such 'minor' issues may be obtained from the bidder in the manner prescribed under para 5.1.7.

**Note:** *Deviation, reservation, or omission should not be waived which –*

- a) *Affects, in any substantial way, the scope, quality or performance work specified in the contract;*
- b) *Limits, in any substantial way, inconsistent with the tendering documents, the procuring entity's rights or the tenderer's obligations under the contract; or*

- c) *If rectified, would unfairly affect the competitive position of other tenderers quoting substantially responsive tenders.*

**Exception/Deviation in bid:** While evaluating the bids the exceptions/ deviation form, if submitted, must be taken into account. The exceptions/deviations may be considered provided they do not have financial impact and, also, would not prejudice or affect the ranking order of the price bid. Exceptions/deviations should not grant the bidder any undue advantage vis-a-vis other bids.

#### **5.1.5 Evaluation of Composite Bid:**

In case of single stage single envelop bidding (Composite Bid), the evaluation of qualification of bidders, technical, commercial and financial aspect is done simultaneously. As a principle, clarifications from bidders after opening of tenders are to be avoided to the extent possible in single stage composite bid system. However, clarifications on the bids shall be sought wherever necessary without affecting the quoted prices.

#### **5.1.6 Evaluation of Bids Under Two Bid System:**

The Techno Commercial-Unpriced Bids shall be opened first and scrutinised by Indenting/User department for compliance of technical requirement/Scope of Work. The Technical scrutiny report shall be prepared in a tabular form with reference to Bid Evaluation Criteria and other technical compliance as per tender condition, clearly indicating that the bidder has met/not met a particular criterion. Technical queries (TQ), if any, shall be prepared by user department and forwarded to C&P for further taking up with the bidder. The C&P department immediately after opening of the bids shall arrange, Commercial scrutiny in consultation with F&A Department and prepare commercial queries (CQ) if required. It must be ensured that the queries asked for shall not have any bearing on the price.

The C&P department shall forward the technical and commercial queries seeking clarifications from the bidders. On receipt of response from the bidders on TQ and CQ, the replies to the technical queries will be forwarded to the user department who will prepare the final Technical Scrutiny Report regarding acceptance or rejection of the offers. The final Technical Scrutiny Report for tenders under Two-Bid system should be submitted by user department in accordance with the provisions of the DoP. The technical scrutiny report shall clearly mention the detailed reason of rejection of any bid. The C&P department shall simultaneously carry out the commercial scrutiny of the bids and prepare the final report vetted by F&A. The rejection of any bid on commercial ground should clearly specify the reason for rejection.

Once the technical and commercial evaluation is complete, price bid opening of techno-commercially acceptable bidders shall be processed as per provisions of DoP. All techno-commercially acceptable bidders, whose price bids are to be opened shall be notified of the date of price bid opening giving up to 5 (five) working days to attend the price bid opening (in case of e-tender). The failed bidders shall also be informed about rejection of their offers.

In case of physical tenders, Price bids of unacceptable bidders, which remain unopened, are to be returned to bidder after finalization of tender and award of contract.

#### **5.1.7 Clarification of Bids / Shortfall Documents**

During evaluation and comparison of bids, the Company may, at its discretion, ask the bidder for clarifications on the bid. The request for clarification shall be given in writing by email/registered/speed post, asking the bidder to respond by a specified date, and also mentioning therein that, if the bidder does not comply or respond by the date, his bid will be evaluated based on the submission. Depending on the outcome, such bids are to be ignored or considered further. No change in prices or substance of the bid shall be sought, offered or permitted. No post-bid clarification at the initiative of the bidder shall be entertained. The shortfall information/documents should be sought only in case of historical documents which pre-existed at the time of the tender opening and which have not undergone change since then. (Example: if the Permanent Account Number, registration with GST has been asked to be submitted and the tenderer has not provided them, these documents may be asked for with a target date as above). So far as the submission of documents is concerned with regard to qualification criteria, after submission of the tender, only related shortfall documents should be asked for and considered. For example, if the bidder has submitted a Contract copy without its completion/performance certificate, the certificate can be asked for and considered. However, no new contract copy should be asked for so as to qualify the bidder.

#### **Procedure for seeking clarification from Bidders:**

- i) As a principle, the bid should be evaluated and processed based on the information, details, documents etc. submitted by the bidder without resorting to any communication with the bidder.
- ii) During the techno-commercial evaluation of the bids, if it is considered necessary to seek clarifications from bidders in relation to their original submission, technical and commercial queries based on the scrutiny of the bids may be addressed to the bidders giving a reasonable time for response. Such clarifications from the bidder should not be in contradiction to their original submission and should never change the substance of their original bid.
- iii) It is not allowed that bidder should submit new documents which are not mentioned in the original submission.
- iv) While seeking clarification from the bidder and giving a reasonable time for response a cut-off date should be indicated with a stipulation that in case no response is received from the bidder, his bid will be evaluated based on the submission.
- v) No change in prices or substance of the bid shall be sought, offered or permitted. No post-bid clarification at the initiative of the bidder shall be entertained. The shortfall information/documents should be sought only in case of historical documents which pre-existed at the time of the tender opening and which have not undergone change since then. So

far as the submission of documents is concerned with regard to qualification criteria, after submission of the bid, only related shortfall documents should be asked for and considered. For example,

- (a) If the bidder has submitted a contract copy without its completion/performance certificate, the certificate can be asked for and considered. However, no new contract copy should be asked for so as to qualify the bidder and in case bidder on its own submits such document, same should not be considered for evaluation.
- (b) If the Permanent Account Number, GST registration has been asked to be submitted and the tenderer has not provided them, these documents may be asked for with a target date as above.
- (c) Clarifications may be sought if the bidder has brought in by reference any relevant pre-existed information / document in their original bid but based on which Company may not be in a position to take a conclusive decision.

For example, if the bidder mentions any PO/ Contract/Work order no. of any organization (other than OIL) in their original bid but documents are not submitted, the PO/ Contract/Work order no. etc. shall be considered as pre-existed and hence PO/ Contract/Work order documents against the pre-existed reference should be asked along with pre-existed documents which can establish successful job completion.

- vi) If any bidder having successfully executed PO /Contract with OIL for the tendered items/similar items or services or work within the applicable time period as specified to qualify against the tender and mentions such PO /Contract No. in their bid, further clarifications /documents may be sought for if required.
- vii) The subsequent document submitted consequent to post-bid clarifications should be dated prior to bid opening for consideration. However, document as per tender like undertaking/affidavit/ self-certification / CA certificate with UDIN No. and issuing date etc. required as per tender may be considered post-dated.
- viii) Notwithstanding above, where cancellation of the tender and re-floating the requirement may not be a prudent / feasible option considering operational urgency etc., the matter may be deliberated suitably in the Tender Committee meeting or LMC meeting for a decision to seek clarifications as deemed fit. However, seeking clarifications in such scenario should be fair, just and transparent and equal opportunity should be given to all the participating bidders.
- ix) No post bid clarification at the initiative of the bidder shall be entertained.

### **5.1.8 Post Tender Modification of Bids:**

No unsolicited correspondence after submission of offer shall be taken cognizance of or responded to. Post tender modification of bid is not allowed.

### **5.1.9 Withdrawal of Offer By Bidder:**

In case bidder withdraws its bid within the bid validity period, Bid Security will be forfeited and the party shall be debarred as per OIL's Banning Policy.

### **5.1.10 Furnishing Fraudulent Information / Document:**

If it is found during the evaluation of the tender that a Bidder has furnished fraudulent document/information, the Bid Security shall be forfeited and the party debarred as per OIL's Banning Policy.

### **5.1.11 Right of Bidder To Question Rejection At Techno-Commercial Stage:**

- i) For all tenders processed through e-tender portal, the rejection of bids, if any, shall be intimated to the concerned bidder (s) in line with the procedure adopted in GeM portal. The reason (s) of rejection of bid (s) shall be intimated through a written communication viz. email etc.
- ii) In line with GeM policy, a cut off time period of 48 hours is to be given for representation(s) to the unsuccessful bidder (s), if any, prior to opening of price bid in case of two bid tenders and award of contract/P.O. in case of composite bid tenders.
- iii) In case of two bid tenders, if there is rejection of bid (s) after opening of price bid for any reason, the reason (s) of rejection to be communicated to the bidder (s) for information to maintain transparency.
- iv) A bidder shall have the right to be heard in case he feels that a proper procurement process is not being followed and/or his Techno-commercial bid has been rejected wrongly. On receipt of representation it may be decided whether to withhold opening of the financial bids and bidder may be expeditiously replied. Following decisions of the Company, listed below, in accordance with the provision of internal guidelines shall not be subject to review.
  - a) Determination of the need for procurement;
  - b) Selection of the mode of procurement or bidding system;
  - c) Choice of selection procedure;
  - d) Provisions limiting participation of bidders in the procurement process;
  - e) The decision to enter into negotiations with the L1 bidder;
  - f) Cancellation of the procurement process except where it is intended to subsequently re-tender the same requirements;
  - g) Issues related to ambiguity in contract terms may not be taken up after a contract has been signed, all such issues should be highlighted before consummation of the contract by the vendor/contractor; and

- h) Complaints against specifications except under the premise that they are either vague or too specific so as to limit competition may be permissible.
- v) The representation (s) received from rejected bidder (s), if any, shall be reviewed with respect to the original scrutiny report to arrive at a judicious conclusion. In this regard, procedure for submission of post tender documents as mentioned in Para 5.1.7 above may be followed.

**5.1.12 Evaluation of Financial Bids and Ranking of Tenders in general:**

- i) Once the prices bids are opened, a comparative statement of the bids shall be prepared. The bids shall be evaluated considering prevailing guidelines regarding applicability of duties and taxes, exemption of duties, purchase preference, the basis of price for the purpose of evaluation for deciding interse ranking. The price evaluation shall be done strictly in accordance with the conditions mentioned in the tender document which may include certain loading as specified in the tender.
- ii) Sometime certain bidders offer suo motu discounts and rebates after opening of the tender (techno-commercial or financial). Such rebates/discounts should not be considered for the purpose of ranking the offer but if such a firm does become L1 at its original offer, such suo motu rebates can be incorporated in the contracts. This also applies to conditional rebates, for example, rebate for faster payments, and so on;
- iii) Unless announced beforehand explicitly in the tender documents, the quoted price should not be loaded on the basis of deviations in the commercial conditions. If it is decided to incorporate such clauses, these should be unambiguous and clear - and thereafter there should be no relaxation during evaluation.
- iv) The comparison of the responsive tenders shall be as per evaluation criteria stipulated in the tender.
  - a) Price/Purchase preference policies as notified by Government of India from time to time is to be indicated in the tender document
  - b) In case the list of requirements contains more than one schedule, the responsive, technically suitable tenders will be evaluated and compared separately for each schedule, if specified in the tender. A bid will not be considered if the complete requirements prescribed in that schedule are not included in the bid.
  - c) Prices should be quoted net of discount and no discount should be shown separately. Discount, if any should be merged with the quoted prices. Discount of any type, indicated separately as well as conditional discount, should not be taken into account for evaluation purpose. However, if an offer is found to be the lowest even without considering discount, OIL shall avail such discount at the time of placement of order.

- d) If the tenders have been invited on a variable price basis, the tenders will be evaluated, compared and ranked on the basis of the position prevailing on the day of tender (Technical Bid) opening date and not on the basis of any future date.
- v) Final comparative statement of the price bids shall be vetted by F&A Department.
- vi) In case where a Tender cannot be finalized after Price Bid opening for whatever reason, such tender shall be cancelled and fresh Tender may be floated, if requirement exists, after taking care of the root cause/anomalies/discrepancies. Under no circumstances, fresh Price Bids shall be re-invited.

**5.1.13 Correspondence with Bidders:** All correspondence before award of contract seeking clarification (technical, financial and commercial) must be done by C&P department. After the contract is awarded, if considered necessary, indenter can correspond with suppliers. In case of LSTK and other complex contracts, the indenter can correspond regarding day to day execution of the contract and issues arising during the execution of the contract, with a copy of the correspondence for information of C&P department.

## **5.2 Timely Processing of Tenders:**

Delays in finalising procurement deprive the public of the intended benefits and results in lost revenues and cost over-run. To enable timely decision making, an indicative time schedule for various activities upto finalization of tender/contract is mentioned earlier in this chapter. As a check, the proposed schedule of tender process may be printed on the inside cover of the Procurement File, where actual date of completion of various stages may be recorded.

## **5.3 Tender committee recommendation and its acceptance:**

### **5.3.1 Tender Committee Recommendation:**

Tender Committee duties are to be discharged personally by the nominated officers. They may take help of their subordinate officers by way of reports/evaluations, but they would still be answerable for such decisions.

The tender committee shall make final recommendation for award of job. The tender committee recommendation shall be unambiguous for consideration and acceptance by Competent Authority.

### **5.3.2 Acceptance of Recommendation of Tender Committee:**

- i) Tender committee recommendations shall be put up for the approval of competent authority as per DoP.
- ii) Competent authority can either approve the recommendation of tender committee or give written directives to TC for reconsideration of its recommendation with specific observation.

- iii) When the recommendation of tender committee is unanimous, and the Competent Approving Authority does not agree with recommendation, he / she will refer the case for a decision to the next higher competent authority along with his / her recommendation and giving reason for not agreeing with TC recommendation.
- iv) In case there is dissenting view in the tender committee recommendation, the Competent Approving Authority will be empowered to accept the majority recommendation of the tender committee. If the majority recommendation of the TC is not acceptable, the Competent Approving Authority with his / her views along with his / her recommendations shall refer the matter to next higher Competent Approving Authority, empowered to take decision and approve the majority recommendations with vetting from Finance.
- v) In cases where there is recorded difference of opinion amongst the tender committee members and there is no majority view within the tender committee, the matter shall be put up to the Competent Approving Authority for decision.
- vi) In any procurement decision, the responsibility of the CA is not discharged merely by selecting the cheapest offer or accepting TC recommendations but ensuring whether:
  - a) Offers have been invited in accordance with this manual and after following fair and reasonable procedures in prevailing circumstances.
  - b) He/She is satisfied that the selected offer will adequately meet the requirement for which it is being procured.
  - c) The price of the offer is reasonable and consistent with the quality required; and
  - d) The accepted offer is the most appropriate taking all relevant factors into account in keeping with the standards of financial propriety.

After the acceptance of the recommendations of Tender Committee by the competent authority, the Letter (Notification) of Award (LoA) can be issued.

#### **5.4 Proposal to Corporate Business Committee (CBC):**

- i) In all procurement cases exceeding delegated powers of Director as competent authority, approval of CBC will be obtained, as the case may be, after endorsement by LMC.
- ii) The procurement cases which exceed the power of CBC shall require the approval of Board of Directors and the agenda for consideration and approval by Board of Directors shall be put up as per guideline.
- iii) For CBC approval, the CBC Note, duly signed by Head of C&P (for FHQ) or authorised signatory along with relevant documents including LMC approval shall be sent to Head of C&P at Corporate office.

- iv) Such note shall be sent well in advance having sufficient bid validity. Head of C&P and Head-F&A at Corporate office shall examine the proposal(s) and put up for approval of CBC. In the process of examination, if necessary, Corporate office may seek clarification(s) from the LMC / Head of the Sphere / Project.
- v) The agenda containing all details of the case with a self-contained note shall be circulated to all Functional Directors as well as to CMD in advance for perusal.
- vi) For other spheres/projects, the concerned Head of sphere/project will sign the CBC Note.

**5.4.1 Decision of Corporate Business Committee (CBC):** Based on deliberation in the CBC, the Corporate C&P department which convenes the CBC meeting shall prepare minutes of CBC meeting which contains the deliberation and the decision taken by the Corporate Business Committee. The minutes of meeting shall be put up in circulation to all CBC members for approval of the minutes. Once the minutes of CBC meeting are approved the Head of C&P at Corporate Office shall communicate the decision to the concerned Sphere / Project for further action like placement of order.

## **5.5 Extension of Bid Validity Period**

The entire process of scrutiny and evaluation of tenders, preparation of ranking statement and notification of award must be done expeditiously and within the original tender validity period. The validity period should not be unreasonably long as keeping the tender unconditionally valid for acceptance for a longer period entails the risk of getting higher prices from the bidders.

If, however, due to some exceptional and unforeseen reasons, decision for placement of the contract within the original validity period could not be made, before expiry of the original validity period, all the responsive bidders shall be requested to extend their tenders up to a specified period. While asking for such extension, the bidders are also to be asked to extend their offers as it is, without any changes therein. They may also be told to extend the validity of the EMD for the corresponding additional period, if required (which is to be specified in the request). A bidder may not agree to such a request and this will not be tantamount to forfeiture of its EMD. But the bidders, who agree to extend the validity, are to do so without changing any terms, conditions, and so on, of their original tenders.

## **5.6 Reasonableness of Prices**

In every recommendation of the TC for award of contract, it must be declared that the rates recommended are reasonable.

Where there is no estimated cost, a comparison with Last Contract Price (the price paid in the latest successful contract) is the basis for judging reasonableness of rates. The following points may be kept in mind before last contract price is relied upon as a basis for justifying rate reasonableness:

- i) The basic price and taxes & duties should be indicated separately.

- ii) Where the firm holding the last contract has defaulted, the fact should be highlighted and the price paid against the latest contract placed prior to the defaulting last contract, where work have been completed, should be used.
- iii) Where the work against the last contract is yet to commence and completion period is not yet due, it should be taken as last contract with caution, especially if the contractor is new, the price paid against the previous contract may also be kept in view.
- iv) Where the price indicated in the last contract is subject to variation or if it is more than a year old, the updated price or as computed in case of the Price Variation Clause (PVC) may also be indicated.
- v) It is natural to have marginal differences in prices obtained at different cities/offices for the same work, due to their different circumstances. The prices obtained are greatly influenced by terms of the contract which may be kept in view; and
- vi) Prices paid in emergencies or prices offered in a distress situation are not accurate guidelines for future use. Such contracts and TC proceedings should indicate that "these prices are not valid last contract for comparison in future procurement."
- vii) Review of estimate needs to be done exhaustively where the price of the lowest evaluated bid price is more than 10% of the cost estimate. This analysis is required to arrive at proper decision for entering into contract also keeping in view the other aspects like project schedule / operation etc. Such review of cost estimate shall be done by indenter. The indenter shall obtain additional financial sanction for increased amount and revise the requisition for further processing of the case for award. Alternatively, if the procurement is for project, it should be confirmed that the increased amount is covered under overall project.

#### **5.7 Insufficient Acceptable Bids**

- i) In case after inviting open/limited tenders, a single offer is found techno-commercially acceptable, the contract should be awarded to the single bidder as per the Delegation of Power provided the following conditions are satisfied:
  - a) The procurement was satisfactorily advertised and sufficient time was given for submission of bids.
  - b) The qualification criteria were not unduly restrictive (*to be confirmed by User*); and
  - c) Prices are reasonable in comparison to market values (*to be confirmed by User*).

However, in case of urgency, contract may be awarded to the single techno-commercially acceptable bidder, even if any or all the above three conditions are not satisfied. Such urgency should be certified by the indenter.

While making recommendation or proposal for such cases, the applicable situation(s) as per above provisions shall be clearly indicated in the recommendation.

### **5.8 Consideration of Abnormally Low Bids**

An Abnormally Low Bid is one in which the Bid price, in combination with other elements of the Bid, appears so low that it raises concerns as to the capability of the Bidder to perform the contract at the offered price. In such cases written clarifications may be sought from the Bidder, including detailed price analysis of its Bid price in relation to scope, schedule, allocation of risks and responsibilities, and any other requirements of the bid document. If, after evaluating the price analysis, it is determined that the Bidder has substantially failed to demonstrate its capability to deliver the contract at the offered price, the Bid/Proposal may be rejected and tender to be cancelled. However, it would not be advisable to fix a normative percentage below the estimated cost, which would be automatically be considered as an abnormally low bid. Due care should be taken while formulating the specifications at the time of preparation of bid document so as to have a safeguard against the submission of abnormally low bid from the bidder.

In the case of predatory pricing as well, the above consideration of Abnormally Low Bids may be referred for assistance in finalization of tenders.

### **5.9 Abnormally High Rate (AHR)/Abnormally Low Rate (ALR) Items:**

In case of Tenders for Works/Services (other than Lumpsum/company offered rates/percentage bid), containing multiple line-item rates where the successful bidder is decided on overall L1 basis considering all the line items of SOR together, individual line items with a difference of more than 50% (Fifty Percent) with the in-house estimated rates are considered as Abnormally High Rate (AHR)/Abnormally Low Rate (ALR) items. In such multiple line-item contracts, AHR/ALH items are required to be identified at the time of Bid Evaluation in order to restrict their impact to the advantage of contractor during actual execution. AHR/ALR items must be declared in the contract agreement.

There could also be situations wherein the bidder who emerged overall L1 against the tender might not ultimately remain L1 on account of variation in quantity against such AHR/ALR line items depending upon job requirement and site conditions during actual execution. Therefore, the following pre-cautions need to be exercised:

- a. Price negotiation with L1 Bidder for the identified AHR items to match their quoted rates with company estimated rates.
- b. Following negotiation, if the bidder does not agree to reconsider his offer for AHR items but provides analysis of quoted AHR/ALR rates to justify reasonableness, these items will be kept under serious watch of Engineer in-charge/Project Manager during execution of work to ensure that those items are consumed as per Schedule of Rates (SOR)/Bill of Quantity (BOQ) of the tender as far as possible.

A suitable clause as given below, in this regard, should be included in the SCC of Tender Document based upon confirmation by User Department regarding applicability of the same -

**“ABNORMALLY HIGH UNIT RATES/ABNORMALLY LOW UNIT RATES (AHR/ALR ITEMS):**

*Against tender for item-rate contracts where the quoted rate is above (+)/below (-) 50% (Fifty Percent) of Company’s estimated rate, such items quoted by the successful bidder shall be considered as Abnormally High Rate/Abnormally Low Rate (AHR/ALR) items. Company reserves the right to negotiate rates of all such AHR items, in addition to any other items of the tender as may be considered appropriate, before award of contract. Also, the successful bidder shall provide the analysis of rates quoted for AHR/ALR items to justify the reasonability, if requested by Company. Bidder shall confirm acceptance to the reduced item rates agreed during negotiation and payment shall be based on the agreed rates.*

*The Contractor shall obtain prior permission from Company’s Engineer in-charge/Project Manager (Company’s designated officer for job supervision during execution) before executing any quantity in excess, in case the quantities against such AHR items exceed the specified quantities provisioned in the Scheduled of Rate (SOR)/Bill of Quantity (BOQ).*

*Payment of AHR items in excess of quantities stipulated in SOR/BOQ shall be made at the least/lowest of the following rates:*

- (a) Rates as per SOR (quoted/agreed by the contractor)*
- (b) Rate of the item which shall be derived as follows:*
  - (i) Based on rates of machine and labour as available from the contract (which includes contractor’s supervision, profit, overheads and other expenses).*
  - (ii) In case above rates are not available in the contract, rates will be calculated based on prevailing market rates of machine, materials and labour plus 15% (max) to cover contractor’s supervision, profit, overhead & other expenses.”*

**5.10 Cartel Formation / Pool Rates**

It is possible that sometimes a group of bidders quote the same rate against a tender. Such pool/cartel formation is against the basic principle of competitive bidding and defeats the very purpose of an open and competitive tendering system. Such and similar tactics to avoid/control true competition in a tender leading to "Appreciable Adverse Effect on Competition" (AAEC) have been declared as an offence under the Competition Act, 2002, as amended by the Competition (Amendment) Act, 2007. In case of evidence of cartel formation, detailed cost analysis may be done, if necessary. Besides, suitable administrative actions can be resorted to, such as rejecting the offers, reporting the matter to trade associations, the Competition Commission or NSIC, etc., and requesting them, inter- alia, to take suitable strong actions against such firms. New firms may also be encouraged to get

themselves registered for the subject goods to break the monopolistic attitude of the firms forming a cartel. Changes in the mode of procurement (GTE instead of OTE) and packaging/slicing of the tendered quantity and items may also be tried. A warning clause may also be included in the bid documents to discourage the bidders from indulging in such practices.

## **5.11 Negotiations:**

- 5.11.1** Normally, there should be no negotiation. Negotiations should be an exception rather than the rule and may be resorted to only in exceptional circumstances. If it is decided to hold negotiations for reduction of prices, the negotiation can be held only with L1 bidder with the approval of competent authority.
- 5.11.2** The exceptional circumstances where negotiations may be considered would include the following:
- i) Procurement of works from single source;
  - ii) Limited source;
  - iii) Where there is suspicion of cartel formation.
- 5.11.3** Justification and details of such negotiation shall be duly recorded and documented without any loss of time.
- 5.11.4** In cases where a decision is taken to go for re-tendering due to the unreasonableness of the quoted rates, but the requirements are urgent and a re-tender for the entire requirement would delay the work, jeopardizing the essential operations, maintenance and safety, negotiations would be permitted with L-1 bidder(s) for the supply of a bare minimum quantum of requirement. The balance requirement shall, however, be procured expeditiously through a re-tender, following the normal tendering process.
- 5.11.5** Negotiations shall not be misused as a tool for bargaining with L-1 with dubious intentions or lead to delays in decision-making. Convincing reasons must be recorded by the authority recommending negotiations. Competent Purchase Authority should exercise due diligence while accepting a tender or ordering negotiations or calling for a re-tender and the time taken for according requisite approvals for the entire process of negotiation and award of order should not exceed 30 days from the date of submission of recommendations. In no case shall the overall timeframe exceed the validity period of the tender and it should be ensured that tenders are invariably finalised within their validity period.
- 5.11.6** Counter offers tantamount to negotiations and the principles of negotiations should apply to such counter offers. For example, a counter offer to L1, in order to arrive at an acceptable rate, shall amount to a negotiation. However, any counter offer to L2, L3, and so on (at the rates accepted by L1) in case of splitting of quantities shall not be deemed to be a negotiation.
- 5.11.7** After the CA has decided to call the L1 bidder for negotiation, the following procedure should be adopted:
- i) It must be understood that, if the period of validity of the original offer expires before the close of negotiations, the original offer will not be

available for acceptance. The period of validity of the original offer must, therefore, be extended, wherever necessary, before negotiations.

- ii) The bidder to be called in for negotiations should be addressed as per the format of letter laid down in Annexure 4(A), so that the rates originally quoted by him shall remain open for acceptance in the event of failure of the contemplated negotiation;
- iii) A negotiations meeting should be started only after obtaining a signed declaration from the negotiating supplier as per Annexure 4 (A); and
- iv) Revised bids should be obtained in writing from the selected bidders at the end of the negotiations in the format of letter laid down in Annexure 4 (B). If necessary, the negotiating party may be given some time to submit its revised offer. In case, however, the selected bidder prefers to send a revised bid instead of being present at the negotiation, the offer should be taken into account. In case a bidder does not submit the revised bid, its original bid shall be considered.

**5.11.8** In case negotiation is carried out physically or through electronic medium, same shall be done by the Tender Committee (TC). For cases where competent authority for approving the procurement is CBC/Board, negotiation shall be carried out by LMC. Negotiation in GeM shall be as per the provision available in GeM portal.

**5.12 Approving authority for negotiation:**

The approval for negotiation shall be accorded by the competent authority as per DoP. Competent authority for the cases falling under the power of Director / CBC will be the Head of Fields / Projects / Spheres.

**5.13 Cancellation of Procurement Process / Rejection of All Bids / Re-tender**

Cancellation of tender for any reason and re-invitation whether on limited or open basis shall require an approval of competent authority as per DoP.

- i) The process of procurement may be cancelled at any time prior to finalization of the tender. In case where responsive bids are available, the aim should be to finalize the tender by taking mitigating measures. If it is decided to re-float the tender, the justification should balance the perceived risks in finalization of tender (marginally higher rates) against the certainty of resultant delays, cost escalations, loss of transparency in re-invited tender. After such decision, all participating bidders would be informed and bids if not opened would not be opened and in case of manual tenders be returned unopened. Some of the situations which may necessitate cancellation of a procurement process inter-alia may include the following:
  - a) If the quantity and quality of requirements have changed substantially or there is an un-rectifiable infirmity in the bidding process;

- b) when none of the offers are substantially responsive to the requirements of the tender Documents;
  - c) none of the technical Proposals meets the minimum technical qualifying Criteria;
  - d) If effective competition is lacking. However, lack of competition shall not be determined solely on the basis of the number of Bidders.
  - e) The Bids'/Proposals' prices are substantially higher than the updated cost estimate or available budget;
  - f) If the bidder, whose bid has been found to be the lowest evaluated bid withdraws or whose bid has been accepted, fails to accept the procurement contract as may be required, or fails to provide the performance security as may be required for the performance of the contract or otherwise withdraws from the procurement process, the tender shall be re-floated.
- ii) Approval for cancellation of a tender should be accorded from the CA as per DoP, after recording the reasons/proper justification for the cancellation. The decision of the Company to cancel the procurement and reasons for such a decision shall be immediately communicated to all bidders that participated in the procurement process. Before retendering, the Company should rectify the deficiencies of previous tender, if any.

**5.14 Independence, Impartiality, Confidentiality and 'No Conflict of Interest' at all Stages of Evaluation of Bids**

All technical, commercial and finance officials who have contributed to the techno-commercial or financial evaluation of bids, should deal with the procurement in an independent, impartial manner and should have no conflict of interest with any of the bidder involved in the procurement. They should also maintain confidentiality of the information processed during the evaluation process and not allow it to reach any unauthorized person. They should sign a declaration at the end of their reports/notings stating that,

*"I declare that I have no conflict of interest with any of the bidder in this tender".*

TC members may make such a declaration at the end of their reports.

**5.15 LoA to Successful Bidder**

Once the proposal for award is approved by the Competent Authority and Prior to the expiry of the period of bid validity, the successful bidder will be notified (briefly indicating therein relevant details of scope of work, prices, and so on) vide a formal LOA that his bid has been accepted. In the same communication, the successful bidder is to be instructed to furnish the required performance security within a specified period. Subsequent to the issue of LOA, contract is to be signed in a time bound

manner.

#### **5.16 Acknowledgement of LOA by Successful Bidder**

After the successful bidder is issued LOA, the Contractor should confirm their acceptance to the LOA. Such acceptance may not be required in low value contracts, below Rupees 50 Lakh.

It should be made known to the successful bidder that in case they do not accept the LOA or/and do not furnish the required performance security within the time stipulated in the LOA, such non-compliance will constitute sufficient ground for forfeiture of their EMD and processing the case for further action against them (the successful bidder) as per the provision of Company's banning policy.

#### **5.17 Publication of Tender Results and Return of EMD of Unsuccessful Bidders**

The details of award of contract and name of the successful bidder should be mentioned mandatorily on the CPPP and OIL website (except GeM Tenders). The bid securities of unsuccessful bidders should be returned as detailed in para 4.15.

#### **5.18 Performance Security**

The supplier receiving the LoA is required to furnish the applicable performance security, if it is part of tender conditions, in the prescribed form by the specified date; failing this necessary action including forfeiture of EMD will be taken against the supplier. Please refer para 4.17 under Chapter 4.

#### **5.19 Framing of Contract**

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

Any agreement shall be issued strictly as per approved TC recommendations. The terms of contract must be precise, definite and without any ambiguities. The terms should not involve an uncertain or indefinite liability, except in the case of a cost plus contract or where there is PVC in the contract. In other words, no contract involving an uncertain or indefinite liability or any condition of an unusual character should be entered into without the previous consent of the F&A Department.

- i) All contracts shall contain a provision for
  - a) Recovery of liquidated damages (LD) for delay in performance of the contract on the part of the contractor;
  - b) A warranty/defect liability clause should be incorporated in contract for workmanship requiring the contractor to, without charge, replace, repair or rectify the defective works;
- ii) All contracts for works should reserve the right of the Company to reject

works which do not conform to the specifications;

iii) Payment of all applicable taxes by the contractor or supplier; and

iv) How the date of commencement or day of starting of the contract shall be determined.

## 5.20 Signing of Contract

Once the Performance Security is submitted by the successful bidder signing of the formal contract should be done. However, for contracts valuing less than Rs. 50 Lakhs, the LOA may be considered as the binding document between the Company and the Contractor. No formal contract for such cases may be signed.

## 5.21 Evaluation of Bids and Award of Contract - Risks and Mitigations

<i><b>Risk</b></i>	<i><b>Mitigation</b></i>
<b>Evaluation of bids</b> is subjective or leaves room for manipulation and biased assessments.	Evaluation criteria should be objective without leaving any room for ambiguity.
<b>Discriminating against a Best Value Bid:</b> In case a bidder's bid (not in the good books of the Company) becomes the best value bid as per the evaluation criteria, some of the following actions may have risks of misuse. There is also a reverse risk in these actions if a favourite becomes best value bid:	Mitigation for each type of risk is mentioned below.
<b>Sudden quantity reduction/increase or splitting of quantity work at the time of award:</b> Many organisations have provisions for change/ splitting in the bid quantity at the time of award. Some organisations vary quantity even without such provisions.	<b>Bid conditions must specify a limit</b> beyond which originally announced quantity / scope cannot be reduced / increased. If parallel contracts are envisaged, clear criteria for the splitting may be specified in the bid documents beforehand.
<b>Unwarranted negotiations:</b> Negotiations are called without justification. Sometimes a counter-offer is made to discourage lowest acceptable bidder.	Normally, there should be no post-tender negotiations. In certain exceptional situations, for example, procurement of proprietary items, items with limited sources of supply, and items where there is suspicion of a cartel formation, negotiations may be held with L-1. In case of L-1 backing out, there should be re-tendering.

<p><b>Unwarranted delays in finalizing or varying the terms of pre-announce contract agreement:</b> Even after the TC recommendations are accepted, signing of the contract is delayed on one pretext or the other. Although there is a standard contract form in the bid documents, the contract may be drafted in a fashion to favour or discourage the successful bidder.</p>	<p><b>A target timeline of</b> finalization of procurement should be laid down.</p> <p>Delays and reasons thereof should be brought out before the CA on the file at the time of TC's acceptance or contract signing. The contract should be strictly as per the bid conditions and accepted offer.</p>
<p><b>Anti-competitive practices:</b> Bidders, that would otherwise be expected to compete, secretly conspire to frustrate the buyer's attempts to get VfM in a bidding process. Anti-competitive conspiracies can take many forms. Sometimes the officers involved in procurement may be part of such collusion.</p> <p><b>Bid coordination:</b> The bidders collude to the quote same or similar rates that are much higher than the reasonable price to force the buyer to settle the procurement at exorbitant prices.</p> <p><b>Cover bidding:</b> Cover bidding is designed to give the appearance of genuine competition by way of supporting bids for the leading bid-rigger.</p> <p><b>Bid suppression:</b> Bid suppression means that a company does not submit a bid for final consideration in support of the leading bid-rigger.</p> <p><b>Bid rotation:</b> In bid-rotation schemes, conspiring firms continue to bid but they agree to take turns being the winning (i.e., lowest qualifying) bidder in a group of tenders of a similar nature.</p> <p><b>Market allocation:</b> Competitors carve up the market and agree not to give competitive bids for certain customers or in certain geographic areas.</p>	<p>These strategies, in turn, may result in patterns that procurement officials can detect and steps can be taken to thwart such attempts. Such anti-competitive activities come under the purview of the competition law, where there is provision of stringent penalties. Regular training should be held for officers involved in procurement to detect and mitigate such practices and also use of the competition law against such bidders.</p>

**5.22 Handling of Complaint / Representation**

In case any complaint / representation in respect of ongoing tender, complaints / representations related to technical issues shall be handled by the technical department and complaints / representations related to commercial issues shall be handled by C&P department. In case, if required, the matter may be referred to the tender committee for further deliberation / advice.

**\*\*\*\*\*End of Chapter 5\*\*\*\*\***

## **CHAPTER 6**

### **EXECUTION AND MONITORING OF WORKS AND QUALITY ASSURANCE**

To provide guidance on the management of the Contract and also how to deal in respect of the issues like deviations, sub-letting, off-loading, extra work, new / substituted items, abnormally high rate (AHR) items Company should have Internal Control Mechanism for Contract Monitoring. This document should also deal with provisional / final extension of contract period, procurement at risk and cost of the contractor, suspension of work and termination of contract and provides mechanism for closing the issues generally arising during the execution of contract on a periodical basis. This mechanism shall help in resolving any issues with the contractor while the job is in progress as per provision of the contract in accordance with OIL's procurement procedure and Delegation of Power (DoP).

**\*\*\*\*\*End of Chapter 6\*\*\*\*\***

## CHAPTER 7

### REGISTRATION/ ENLISTMENT OF CONTRACTORS AND GOVERNANCEISSUES

#### 7.1 Contractor Relationship Management

**Contractor** Relationship Management comprises of the following functions:

- i. Ensuring compliance of **Contractors** to the Code of Integrity for Public Procurement (CIPP) and Integrity Pact (IP) if stipulated in Bid Documents;
- ii. Holiday listing; removal from the list of registered contractors and banning / debarment of firms; and
- iii. Development of new sources and registration of contractors.

#### 7.2 Code of Integrity for Public Procurement (CIPP)

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

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

- i. "Corrupt practice": making offers, solicitation or acceptance of bribe, rewards or gifts or any material benefit, in exchange for an unfair advantage in the procurement process or to otherwise influence the procurement process or contract execution;
- ii. "Fraudulent practice": any omission or misrepresentation that may mislead or attempt to mislead so that financial or other benefits may be obtained or an obligation avoided. This includes making false declaration or providing false information for participation in a tender process or to secure a contract or in execution of the contract;
- iii. "Anti-competitive practice": any collusion, bid rigging or anti-competitive arrangement, or any other practice coming under the purview of The Competition Act, 2002, between two or more bidders, with or without the knowledge of the Company, that may impair the

transparency, fairness and the progress of the procurement process or to establish bid prices at artificial, non-competitive levels;

- iv. "Coercive practice": harming or threatening to harm, persons or their property to influence their participation in the procurement process or affect the execution of a contract;
- v. "Conflict of interest": participation by a bidding firm or any of its affiliates that are either involved in the consultancy contract to which this procurement is linked; or if they are part of more than one bid in the procurement; or improper use of information obtained by the (prospective) bidder from the Company with an intent to gain unfair advantage in the procurement process or for personal gain; and
- vi. "Obstructive practice": materially impede the Company's investigation into allegations of one or more of the above mentioned prohibited practices either by deliberately destroying, falsifying, altering; or by concealing of evidence material to the investigation; or by making false statements to investigators and / or by threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or by impeding the Company's rights of audit or access to information;

### **7.2.3 Obligations for Proactive Disclosures**

- i. Procuring authorities as well as bidders, suppliers, contractors and consultants, are obliged under Code of Integrity for Public Procurement to suo-moto proactively declare any conflicts of interest (coming under the definition mentioned above - pre-existing or as and as soon as these arise at any stage) in any procurement process or execution of contract. Failure to do so would amount to violation of code of integrity; and
- ii. Any bidder must declare, whether asked or not in a bid document, any previous transgressions of such a code of integrity with any entity in any country during the last three years or of being debarred by any other Company. Failure to do so would amount to violation of code of integrity.
- iii. To encourage voluntary disclosures, such declarations would not mean automatic disqualification for the bidder making such declarations. The declared conflict of interest may be evaluated and mitigation steps, if possible, may be taken by the Company. Similarly voluntary reporting of previous transgressions of Code of Integrity elsewhere may be evaluated and barring cases of various grades of debarment, an alert watch may be kept on the bidder's actions in the tender and subsequent contract.

**7.2.4 Punitive Provisions:** Without prejudice to and in addition to the rights of the Company to other penal provisions as per the bid documents or contract, if the Company comes to a conclusion that a (prospective) bidder / supplier, directly or through an agent, has violated this code of integrity in competing for the contract or in executing a contract, the Company may take appropriate measures as per the provisions of Company's Banning Policy in addition to one or more of the following:

i. **If the bid is under consideration in any procurement:**

- a) Forfeiture or encashment of bid security
- b) calling off of any pre-contract negotiations, and;
- c) rejection and exclusion of the bidder from the procurement process

ii. **If a contract has already been awarded:**

- a) Cancellation of the relevant contract and recovery of compensation for loss incurred by the Company,;
- b) Forfeiture or encashment of any other security or bond relating to the procurement;
- c) Recovery of payments including advance payments, if any, made by the Company along with interest thereon at the prevailing rate;

iii. **Provisions in addition to above:**

- a) Removal from the list of registered suppliers and banning/debarment of the bidder from participation in future procurements of the Company in accordance with banning policy;
- b) In case of anti-competitive practices, information on the same should be conveyed to the Competition Commission of India;
- c) Initiation of suitable disciplinary or criminal proceedings against any individual or staff found responsible.

**7.2.5 Conduct of Public Servants Mitigations in Public Procurement - Risks and Mitigation.**

<b>Risk</b>	<b>Mitigation</b>
<p><b>Hospitality:</b> Hospitality (including facilitation of travel, lodging, boarding and entertainment during official or unofficial programs) from suppliers may tend to cross the limits of ethical / occasional / routine / modest / normal business practice. Officials sent to firm's premises for inspections/ meetings may mistakenly presume entitlement to hospitality from the firm, even if other arrangements are available at the location.</p>	<p>Hospitality must never be solicited, directly or indirectly. The frequency, scale and number of officials availing hospitality should not be allowed to identify the recipient in a public way with any particular contractor, supplier or service provider or raise doubts about its neutrality. It should not involve significant travel, overnight accommodation or trips abroad. Particular care should be taken in relation to offers of hospitality from firms (say participating in current or imminent tenders or its execution) who stand to derive a personal or commercial benefit from their relationship with the recipient.</p>
<p><b>Gifts:</b> Gifts from suppliers may tend to cross the limits of ethical / occasional / routine / modest / normal business practice, especially on festive season. Since the value of the gift may not be known to the recipient, it may cause inadvertent violation of Conduct rules.</p>	<p>Gifts must never be solicited, directly or indirectly. An official should not accept and retain gifts more valuable than the limit as laid down in the conduct rules. Cash, gift cheques or any vouchers that may be exchanged for cash may not be accepted regardless of the amount. Particular care should be taken in relation to gifts from firms (say participating in current or imminent tenders or its execution) who stand to derive a personal or commercial benefit from their relationship with the recipient. Any gift received inadvertently in violation of above, must immediately either be returned or else bring to the notice of the HoD of the Department.</p>
<p><b>Private Purchases from Official Suppliers:</b> Officials may mistakenly consider it innocuous to seek discounts in private procurements from suppliers having official dealings or its associates (especially from Rate Contract holders).</p>	<p>Officials must never indulge in any non-official pecuniary transaction with the contractors, suppliers or service providers with whom they have official dealings; including seeking or accepting special facilities or discounts on private purchases (particularly same items which are being ordered officially on rate contracts).</p>

**Sponsorship of Events:** Officials may mistakenly consider it innocuous to seek financial favours (donations, advertisements for souvenirs, and contributions in cash or kind) in relation to sponsoring of cultural, social, charitable, religious, or sporting events, in the false belief that since he/she is personally not benefitted, it would not be a violation of CIPP.

Officials must never indulge in any non-official pecuniary transaction with the contractors, suppliers or service providers with whom they have official dealings; including soliciting of sponsorship for unofficial and private cultural, social, sporting, religious, charitable or similar organisations or events.

### 7.3 Integrity Pact (IP)

The Pre-bid Integrity Pact is a tool to help Governments, businesses and civil society to fight corruption in public contracting. It binds both buyers and sellers to ethical conduct and transparency in all activities from pre-selection of bidders, bidding and contracting, implementation, completion and operation related to the contract. This removes insecurity of Bidders, that while they themselves may abjure Bribery, but their competitors may resort to it and win contract by unfair means.

The threshold value for incorporating IP in tenders shall be Rs. 50.00 Lakhs or as decided by the competent authority from time to time. Bidder shall be required to sign the Integrity Pact as per prescribed format, to be part of the tender document. The proforma duly signed by OIL's competent signatory (tendering/procuring officer) shall be issued along with the tender document. The proforma has to be returned by the bidder along with the bid (along with the "Techno Commercial-Unpriced Bid" in case of two bid single stage / two stage bidding) duly signed by the same signatory who signed the bid.

Incomplete submission / Non-submission of IP documents with the bid should not lead to disqualification of a bidder, who otherwise qualifies and agrees to abide to IP. However, if any bidder refuses to sign the IP or refuses to accept the provisions of IP, their offers shall be rejected.

The pact essentially envisages an agreement between the prospective contractor/vendors / bidders and the buyer, committing the persons / officials of both sides, not to resort to any corrupt practices in any aspect / stage of the contract. Only those contractor/ vendors / bidders, who commit themselves to such a Pact with the Company, would be considered competent to participate in the bidding process. In other words, entering into this Pact would be a preliminary qualification. The essential ingredients of the Pact include:

- i. Promise on the part of the Company to treat all bidders with equity and reason and not to seek or accept any benefit, which is not legally available;
- ii. Promise on the part of bidders not to offer any benefit to the employees of the Company not available legally and also not to

commit any offence under Prevention of Corruption Act, 1988 or Indian Penal Code 1860;

- iii. Promise on the part of Bidders not to enter into any undisclosed agreement or understanding with other bidders with respect to prices, specifications, certifications, subsidiary contracts, etc;
- iv. Foreign bidders to disclose the name and address of agents and representatives in India and Indian Bidders to disclose their foreign principals or associates;
- v. Bidders to disclose the payments to be made by them to agents / brokers or any other intermediary;
- vi. Bidders to disclose any past transgressions committed over the specified period with any other company in India or Abroad that may impinge on the anti-corruption principle;
- vii. Integrity Pact lays down the punitive actions for any violation;
- viii. Integrity Pact (IP) would be implemented through a panel of Independent External Monitors (IEMs): IEM shall be appointed by the organization in consultation with Central Vigilance Commission. Names and contact details of the Independent External Monitor(s) should be listed in Notice Inviting Tender (NIT). The IEM would review independently and objectively, whether and to what extent parties have complied with their obligations under the Pact. The Company is required to select at most three persons (below the age of 70 (seventy) years) of high integrity and reputation as Independent External Monitors (IEM) after due diligence and forward to the CVC for its approval. Only those officers of Government of India Departments or Public Sector Undertakings, who have retired from top management positions, would be considered for appointment as IEM, provided they are neither serving or retired from the same organization. Eminent persons, retired judges of High / Supreme Courts, executives of private sector of considerable eminence could also be considered for functioning as Independent External Monitors. The appointment of Independent External Monitors would be for an initial period of three years and could be extended for another term of two years (maximum tenure of five years).
- ix. In tenders meeting the criteria of threshold value of procurement: Integrity Pact clause and format should be included in the Bid Documents. Each page of such Integrity pact proforma would be duly signed by Purchaser's competent signatory. All pages of the Integrity Pact are to be returned by the bidder (along with the technical bid) duly signed by the same signatory who signed the bid, i.e. who is duly authorized to sign the bid and to make binding commitments on behalf of his company. The offer of any bidder not accepting the Integrity Pact shall be rejected.
- x. Role/ Functions of IEMs: The Monitors would not be subject to instructions by the representatives of the parties and should perform

their functions neutrally and independently. They would review independently and objectively, whether and to what extent parties have complied with their obligations under the Integrity Pact. For this purpose, they would have access to all contract documents / books of accounts of the bidders in case of any allegation of violation of any provisions of the Integrity Pact or payment of commission, whenever required. The IEMs will have the option to participate in such meetings among the parties related to the project provided such meetings could have an impact on the contractual relations between the parties. Ideally all IEMs of an organization should meet once every two months to take stock of ongoing tendering process. The IEMs would examine all complaints received by them and give their recommendations / views to the Company, at the earliest. The Monitors would also inform the Company, if they notice or have reason to believe, a violation of the Integrity Pact. They may also send their report directly to the Central Vigilance Commission, in case of suspicion of serious irregularities requiring legal / administrative action. For ensuring the desired transparency and objectivity in dealing with the complaints arising out of any tendering process, the matter should be examined by the full panel of IEMs, who would look into the records, conduct an investigation, and submit their joint recommendations. The recommendations of IEMs would be in the nature of advice and would not be legally binding. IEMs may not be equated with consultants in the Company. Their role is independent in nature and the advice once tendered would not be subject to review. The role of the Chief Vigilance Officer (CVO) of Company shall remain unaffected by the presence of IEMs. A matter being examined by the IEMs can be separately investigated by the CVO, if a complaint is received by him or directed to him by the CVC. In the event of any dispute between the Company and the bidder / contractor relating to those contracts where Integrity Pact is applicable, in case, both the parties are agreeable, they may try to settle dispute through mediation before the panel of IEMs in a time bound manner. If required, the Company may adopt any mediation rules for this purpose. In case, the dispute remains unresolved even after mediation by the panel of IEMs, the organization may take further action as per the terms & conditions of the contract.

#### **7.4 Empanelment of Contractors**

For works which are required regularly, Empanelment of contractors may be carried out in a fair, transparent and equitable manner through EoI route. In case of empanelment for frame work agreement through open tender, such empanelment shall be valid for a period of 03 (three) years. Performance of such empaneled contractors should be reviewed periodically. The list of registered contractors shall be updated on a regular basis.

#### **7.5 Debarment**

Action against defaulting bidder(s)/contractor(s) shall be as per the Company's approved Banning policy.

### **7.5.1 Safeguarding Procuring Entity's Interests during debarment of suppliers**

Suppliers are important assets for the procuring entities and punishing delinquent suppliers should be the last resort. It takes lot of time and effort to develop, register and mature a new supplier. In case of shortage of suppliers in a particular group of materials/equipment, such punishment may also hurt the interest of Procuring Entity. Therefore, views of the concerned Department may always be sought about the repercussions of such punitive action on the continuity of procurements. Past records of performance of the supplier may also be given due weightage. In case of shortage of suppliers and in cases of less serious misdemeanours, the endeavour should be to pragmatically analyse the circumstances, reform the supplier and get a written commitment from the supplier that his performance will improve. If this fails, provision as per Company's Banning Policy should be followed.

### **7.6 Contract Relating to Civil Works at Field Headquarters for Maintenance & Day to Day Requirement:**

Keeping in view the socio-economic scenario in proximity of Field Headquarters, the Company has been practicing certain relaxation / dispensation in case of works and services which can be provided by agencies situated on regional basis. In view of the above, as a shift to the normal procedure the under mentioned guideline may be followed:

#### **7.6.1 Classification of Civil Contractors for Small Value Jobs:**

Company has been following class wise registered contractors for the civil engineering related jobs. The class-wise tendering limits and the amounts of one time security deposit are revised time to time and accordingly the contractors deposit the one time security deposit to OIL. Presently, the tendering limits and the one time security deposit amounts are as follows:

<b>Class of Contractor</b>	<b>Maximum amount Of Tender value</b>	<b>Onetime Security Deposit</b>
A -Class	Above Rs. <b>90</b> to <b>150</b> Lakhs	Rs. 2,00,000.00
B -Class	Above Rs. <b>55</b> to <b>90</b> Lakhs	Rs. 77,000.00
C -Class	Above Rs. <b>25</b> to <b>55</b> Lakhs	Rs. 44,000.00
D -Class	Above Rs. <b>8</b> to <b>25</b> Lakhs	Rs. 18,000.00

#### **7.6.2 Miscellaneous / Maintenance Civil Job:**

The Company is maintaining hitherto a list of a number of contractors situated in proximity of Field Headquarter, Duliajan. The regular requirement of miscellaneous maintenance job is carried out by allotment of work in following manner:

- i. Once in four years OIL enter into contracts with registered bidder for different category of work in different zones.
- ii. Through display on OIL website, all registered contractors are given opportunity to offer for category of work and the zone.
- iii. These contractors can be awarded work at a time maximum to a

value of Rs. 8 Lakhs.

- iv. Out of the contractors, zone and category wise, with whom the Company has entered into a contract, shall be allotted work by civil engineering department as and when there is requirement in fair, transparent and equitable manner.
- v. These contractors are exempted from giving any bid security or performance security.

### **7.6.3 Reservations Of Tenders:**

- i. Jobs having tender value more than Rs. 8 Lakhs and upto Rs. 150 Lakhs.

The Civil Engineering jobs having estimated tender value more than Rs. 8 Lakh & upto Rs. 150 Lakh shall be floated on limited tender basis through e-tendering portal amongst OIL's registered Civil Contractors as per their class-wise break-up shown in para 7.6.1.

- ii. The Civil Engineering jobs having estimated tender value above Rs. 150 Lakh shall be floated as open e-tender. The Bid Security against such tenders shall be 0.5% (half percent) of the tender value, unless otherwise exempted. OIL's registered A-Class civil Contractors shall however be exempted from submitting Bid Security and supporting documents towards technical & financial qualifying criteria up to tender value of Rs. 200 Lakh.
  - a) Against open tenders having estimated tender value from Rs. 200 Lakh to Rs. 500 Lakh for construction of Roads and Drilling Locations only, OIL's registered A-Class civil Contractors shall be exempted from submitting Bid Security and supporting documents towards technical qualifying criteria. However, they are not exempted from submission of supporting documents pertaining to Financial or any other qualifying criteria of such tenders.
  - b) For all other type of Civil Engineering Works (other than Roads and Drilling Locations) covered under open tenders having estimated tender value more than Rs. 200 Lakh, OIL's registered A-Class civil Contractors shall not be exempted from any of the tender qualifying criteria, but to be treated at par with any other bidder.
- iii. Performance guarantee shall be up to 10% of the contract value for which Contractor shall submit a Performance Security amounting to 2.5% of the contract value at the time of award of contract and remaining 7.5% shall be deducted from their running bill(s).

In case against a tender for a given job, there are more than one L1 bidders, the tender shall be decided through draw of lots.

\*\*\*\*\***End of Chapter-7**\*\*\*\*\*

## **APPENDICES**

## APPENDIX-1: ADVANCE CONCEPT OF VALUE FOR MONEY

### 1.0 The Concept of Value

Value is a management and economics concept. It represents the extent of satiation of a hierarchy of needs of a person by a product bought for this purpose. This is subjective and difficult to quantify. This is because different persons (or the same persons under different circumstances) would have different hierarchy of needs and would perceive different extents of satiation or value from the same product. There are three sources of the value of a product. The first source of value is from the functional usage of the product (known as use value) and the second source comes from the social status associated with the ownership of the product (esteem value). This can be shown as the difference between a luxury branded gold-plated, diamond encrusted pen and a disposable non-descript functional pen, though both fulfil the broadly same function and have the same use value. The luxury branded pen, in addition to the use value, also has additional esteem value. The third source of value comes from the price that one can get by exchanging or scrapping the product at the end of the useful life of the product. This is called the disposal value. Normally, when people buy a car, they do consider the estimated disposal value of different choices of models. Value is the sum total of all the three values.

### 2.0 Total Cost of Ownership

While the value of a product covers all components of value over the "Whole-Of-Life" (WOL), the costs incurred on the product should also take into consideration the total of various elements of costs incurred over WOL of the product. For this purpose, future costs are discounted to present value (not to be confused with the value we are discussing - this is a financial discounting concept). For example, it would not be prudent to buy a cheap car, which has a very high cost of operating. This is called variously as WOL or "Life-Time-Cost" (LCC) or "Total Cost of Ownership" (TCO). The last is a preferred nomenclature in procurement and is defined as the total of all costs associated with a product, service, or capital equipment that are incurred over its expected life. Typically, these costs can be broken into four broad categories:

- i) **Procurement price.** The amount paid to the vendor/ contractor for the product, service, or capital equipment;
- ii) **Acquisition costs.** All costs associated with bringing the product, service, or capital equipment into operation at the customer's location. Examples of acquisition costs are sourcing, administration, freight, taxes, and so on;
- iii) **Usage costs.** In the case of a product, all costs associated with converting the procured part/material into the finished product and supporting it through its usable life. In the case of a service, all costs associated with the performance of the service that is not included in the procurement price. In the case of capital equipment, all costs associated with operating the equipment through its life. Examples of usage costs are inventory, conversion, wastage, lost productivity, lost sales, warranty, installation, training, downtime, and so on;and
- iv) **End-of-life costs.** All costs incurred when a product, service, or capital equipment reaches the end of its usable life, net of amounts received from the sale of the remaining product or the equipment (disposal value) as the case may be. Examples of end-of-life costs are obsolescence, disposal, clean-up, and project termination costs

### **3.0 Value for Money**

Besides value of a product or service, the customer also has his own notion of "value" of a particular sum of money. This is different for different people or even for the same person in different circumstances. When the perceived value of a product matches the perceived value of the amount of money (cost of the product), the customer feels he got the full value for his money. This is called the VfM. In procurement, Total Cost of Ownership is taken to evaluate value for money. Given the limited resources available to the Government, ensuring VfM in procurement is the key to ensuring the optimum utilisation of scarce budgetary resources. It usually means buying the product or service with the lowest WOL costs that is 'fit for purpose' and just meets the specification. VfM also incorporates affordability; clearly, goods or services that are unaffordable cannot be bought. This should be addressed as soon as possible within the process, ideally at the need assessment stage before procurement commences. In order to address this issue, a change in the procurement approach, specification or business strategy may be required.

Where an alternative is chosen that does not have the lowest WOL costs, then the additional 'value added' benefit must be proportional and objectively justifiable. Assessment of bids should be conducted only in relation to a published set of evaluation criteria (which should be relevant to the subject of the contract), and any 'added value' that justifies a higher price must flow from these defined criteria. In public procurement VfM is often primarily established through the competitive process. A strong competition from a vibrant market will generally deliver a VfM outcome. However, where competition is limited, or even absent, other routes may have to be used to establish VfM. These can include benchmarking, construction of theoretical cost models or 'shadow' bids by the procurement agency. For major contracts, this can require considerable financial expertise and external support. A VfM assessment, based on the published conditions for participation and evaluation, may include consideration of some factors such as:

- i) Fitness for purpose;
- ii) Potential vendor/contractor's experience and performance history;
- iii) Flexibility (including innovation and adaptability over the lifecycle of the procurement);
- iv) Environmental sustainability (such as energy efficiency and environmental impact); and
- v) Total cost of ownership

But due to uncertainties in estimates of various components of TCO (and actual costs over the life-cycle) and intangibles of Value, some element of subjectivity may become unavoidable, and hence is not normally useable in routine Public Procurement cases. Therefore preference is given to alternative means for ensuring VfM by way of optimal description of needs; development of value-engineered specifications/ Terms of Reference and appropriate packaging/ slicing of requirements and selection of appropriate mode/ bidding systems of procurement etc.

\*\*\*\*\***End of Appendix-1**\*\*\*\*\*

## Appendix-2: Legal aspects of Public Procurement

### 1.0 Relevant Provisions of the Constitution of India

#### 1.1 Equality for Bidders

Article 19 (1) (g) of the Constitution of India (under Part III - 'Fundamental Rights') grants all its citizens the right "to practice any profession or to carry out any occupation, trade or business". This has been interpreted by courts in a way so as to ensure that every citizen of India has a right to get equal opportunity to bid for and be considered for a public procurement contract. However, this provision does permit stipulation of reasonable eligibility or pre-qualification criteria for the selection of successful bidders in a public procurement contract. Thus a public procurement organization should be ready to prove in court that no eligible bidder has been denied reasonable and equal opportunity under this article to bid and be considered for the concerned contract.

#### 1.2 Persons Authorized to Make and Execute Contracts on Behalf of Governments

As per Article 299 (Part XII - Finance, Property, Contracts and Suits) of the Constitution of India, all contracts on behalf of the Union Government or state Governments are to be entered into and executed by authorized persons on behalf of the President of India or Governor of the state, respectively. The President of India, Governor of the state and the authorized persons who enter into or execute such contracts are granted immunity from personal liability under this article. That is why, above the signatures of such persons, on the contract documents, a legal phrase "For and on Behalf of the President of India/the Governor of State" is written to signify this fact. In a state Government, the persons who are authorized to do so are listed in the DFPR. Provisions of DFPR are expanded upon by various Departments by issuing SoPP. Rule 224 (1) & (2), Chapter 8: Contract Management of the GFR, 2017 covers this aspect also.

"Part III - FUNDAMENTAL RIGHTS - Right to Freedom

§19 Protection of certain rights regarding freedom of speech, etc.

1. All citizens shall have the right-

(a) to freedom of speech and expression;

(b) to assemble peaceably and without arms;

(c) to form associations or unions;

(d) to move freely throughout the territory of India;

(e) to reside and settle in any part of the territory of India; [and]

(f) to practise any profession, or to carry on any occupation, trade or business."

"Part XII. - Finance, Property, Contracts and Suits

§299 Contracts:

All contracts made in the exercise of the executive power of the Union or of a State shall be expressed to be made by the President, or by the Governor of the State, as the case may be, and all such contracts and all assurances of property made in the exercise of that power shall be executed on behalf of the President or the Governor by such persons and in such manner as he may direct or authorise.

Neither the President nor the Governor shall be personally liable in respect of any contract or assurance made or executed for the purposes of this Constitution, or for the purposes of any enactment relating to the Government of India heretofore in force, nor shall any person making or executing any such contract or assurance on behalf of any of them be personally liable in respect thereof."

### **1.3 Other Mercantile Laws**

A procurement contract besides being a commercial transaction is also a legal transaction. There are a number of commercial/mercantile laws that are applicable equally to the private sector and public procurement, such as the Indian Contract Act, Sales of Goods Act, Arbitration and Conciliation Act, and so on. Although a public procurement professional is expected to have a working knowledge of the following basic laws relating to procurement, yet he is not expected to be a legal expert. If standard contract forms are used, the procurement official can discharge his normal functions without frequent legal help. In case any complex legal issue arises, or a complex contract beyond the standard contract form is to be drafted, an appropriate legal professional may be associated with the procurement from an early stage.

Salient features of these mercantile laws relating to Procurement are summarized below.

## **2.0 Salient Features of the Indian Contract Act**

### **2.1 Legal Aspects Governing Public Procurement of Goods - Introduction**

A public procurement contract, besides being a commercial transaction, is also a legal transaction. There are a number of laws that may affect various commercial aspects of public procurement contracts. A public procurement professional is expected to be generally aware of the implications of following basic laws affecting procurement of goods; however, he or she is not expected to be a legal expert. Where appropriate in complex cases, legal advice may be obtained. In other categories of procurement, additional set of laws may be relevant:

- i) The Constitution of India;
- ii) Indian Contracts Act, 1872;
- iii) Sale of Goods Act, 1930;
- iv) Arbitration and Conciliation Act, 1996 read with the Arbitration and Conciliation (Amendment) Act, 2015 and 2021;
- v) Competition Act, 2002 as amended with Competition (Amendment) Act, 2007;
- vi) Micro, Small and Medium Enterprises Development (MSME Development) Act, 2006;
- vii) Information Technology Act, 2000 (IT Act, regarding a-procurement and e-auction, popularly called the Cyber Law);
- viii) Right to Information (RTI) Act 2005;
- ix) Central Vigilance Commission Act, 2003;
- x) Delhi Special Police Establishment Act, 1946 (basis of the Central Bureau of Investigation);
- xi) Prevention of Corruption Act, 1988;
- xii) The Foreign Trade (Development and Regulation) Act, 1992 and the Foreign Trade Policy (EXIM Policy), 2015; Foreign Exchange Management Act (FEMA), 1999 and FEMA (Current Account Transactions) Rules, 2000.

The elements and principles of contract law and the meaning and import of various legal terms used in connection with the contracts are available in the Indian Contract Act, 1872 read with the Sale of Goods Act, 1930. Some of the salient principles relating to contracts are set out briefly in this chapter.

## 2.2 Elementary Legal Practices

- **What is a Contract?** The proposal or offer when accepted is a promise, a promise and every set of promises forming the consideration for each other is an agreement and an agreement if made with free consent of parties competent to contract, for a lawful consideration and with a lawful object is a contract.
- **Proposal or Offer: When** one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of the other to such act or abstinence, he is said to make a proposal or offer. In a sale or purchase by tender, the tender signed by the bidder is the proposal.  

The invitation to tender and instructions to bidders do not constitute a proposal.
- **Acceptance of the Proposal:** When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal when accepted becomes a promise.
- **What agreements are contracts:** An agreement is a contract enforceable by law when the following are satisfied. A defect affecting any of these renders a contract un-enforceable
  - i) Competency of the parties
  - ii) Freedom of consent of both parties
  - iii) Lawfulness of consideration
  - iv) Lawfulness of object

## 2.3 Competency of Parties

Under law any person who has attained majority and is of sound mind or not debarred by law to which he is subject, may enter into contracts. It, therefore, follows that minors and persons of unsound mind cannot enter into contracts nor can insolvent person do so.

- Categories of persons and bodies who are parties to the contract maybe broadly sub-divided under the following heads: -
  - Individuals
  - Partnerships
  - Limited Companies
  - Corporations other than limited companies
- (a) **Contracts with Individuals:** Individuals tender either in their own name or in the name and style of their business. If the tender is signed by any person other than the concerned individual, the authority of the person signing the tender on behalf of another must be verified and a proper power of attorney authorizing such person should be insisted on. In case, a tender is submitted in a business name and if it is a concern of an individual, the constitution of the business and the capacity of the individual must appear on the face of the contract and the tender signed by the individual himself as proprietor or by his duly authorized attorney.
- (b) **Contracts with Partnerships:** A partnership is an association of two or more individuals formed for the purpose of doing business jointly under a business name. It is also called a firm. It should be noted that a partnership is not a legal entity by itself, apart from the individuals constituting it. A partner is the implied authority to bind the firm in a contract coming in the purview of

the usual business of the firm. The implied authority of a partner, however, does not extend to enter into arbitration agreement on behalf of the firm. While entering into a contract with partnership firm care should be taken to verify the existence of consent of all the partners to the arbitration agreement.

**(c) Contracts with Limited Companies:** Companies are associations of individuals registered under Companies Act in which the liability of the members comprising the association is limited to the extent of the shares held by them in such companies. The company, after its incorporation or registration, is an artificial legal person which has an existence quite distinct and separate from the members of shareholders comprising the same. A company is not empowered to enter into a contract for purposes not covered by its memorandum of association; any such agreement in excess of power entered into the company is void and cannot be enforced. Therefore, in cases of doubt, the company must be asked to produce its memorandum for verification or the position may be verified by an inspection of the memorandum from the office of the Registrar of Companies before entering into a contract. Normally, any one of the Directors of the company is empowered to present the company. Where tenders are signed by persons other than Directors or authorized Managing Agents, it may be necessary to examine if the person signing the tender is authorized by the company to enter into contracts on its behalf.

**(d) Corporation other than Limited Companies:** Associations of individuals incorporated under statutes such as Trade Union Act, Co-operative Societies Act and Societies Registration Act are also artificial persons in the eye of law and are entitled to enter into such contracts as are authorized by their memorandum of association. If any contract has to be entered into with any one or such corporations or associations, the capacity of such

associations to enter into contract should be verified and also the authority of the person coming forward to represent the said Association.

#### **2.4 Consent of both Parties**

Two or more persons are said to consent when they agree upon the same thing in the same sense. When two persons dealing with each other have their minds directed to different objects or attach different meanings to the language which they use, there is no agreement. The misunderstanding which is incompatible with agreement may occur in the following cases: -

- i) When the misunderstanding relates to the identity of the other party to the agreement;
- ii) When it relates to the nature or terms of the transactions;
- iii) When it related to the subject matter of the agreement.

#### **2.5 Free consent of both Parties**

• The consent is said to be free when it is not caused by coercion, undue influence, fraud, mis-representation or mistake. Consent is said to be so caused when it would not have been given but for the existence of coercion, undue influence, fraud, mis-representation or mistake. When consent to an agreement is caused by coercion, undue influence, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was caused. A party to a contract, whose consent was caused by fraud or misrepresentation may, if he thinks fit, insist that the contract shall be performed, and that he shall

be put in the position in which he would have been if the representations made had been true.

- In case consent to an agreement has been given under a mistake, the position is slightly different. When both the parties to an agreement are under a mistake as to a matter essential to the agreement, the agreement is not voidable but void. When the mistake is unilateral on the part of one party only, the agreement is not void.

- Distinction has also to be drawn between a mistake of fact and a mistake of law. A contract is not void because it was caused by a mistake as to any law in force in India but a mistake as to law not in force in India has the same effect as a mistake of fact.

## **2.6 Consideration**

Consideration is something which is advantageous to the promiser or which is onerous or disadvantageous to the promisee. Inadequacy of consideration is, however, not a ground avoiding the contract. But an act, forbearance or promise which is contemplation of law has no value is no consideration and likewise an act or a promise which is illegal or impossible has no value.

## **2.7 Lawfulness of object**

The consideration or object of an agreement is lawful, unless it is forbidden by law or is of such a nature that if permitted, it would defeat the provisions of any law, or is fraudulent or involves or implies injury to the fraudulent property of another or the court regards it as immoral or opposed to public policy. In each of these cases the consideration or object of an agreement is said to be unlawful.

## **2.8 Communication of an Offer or Proposal**

The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made. A time is generally provided in the tender forms for submission of the tender. Purchaser is not bound to consider a tender, which is received beyond that time.

## **2.9 Communication of Acceptance**

A date is invariably fixed in tender forms upto which tenders are open for acceptance. A proposal or offer stands revoked by the lapse of time prescribed in such offer for its acceptance. If, therefore, in case it is not possible to decide a tender within the period of validity of the offer as originally made, the consent of the bidder firm should be obtained to keep the offer open for further period or periods.

The communication of an acceptance is complete as against the proposer or offerer, where it is put in the course of transmission to him, so as to be out of the power of the acceptor, and it is complete as against the acceptor when it comes to the knowledge of the proposer or offerer. The medium of communication in Government contracts is generally by post and the acceptance is, therefore, complete as soon as it is posted. So that there might be no possibility of a dispute regarding the date of communication of acceptance, it should be sent to the correct address by some authentic foolproof mode like registered post acknowledgement due, etc.

## **2.10 Acceptance to be identical with Proposal**

If the terms of the tender or the tender, as revised, and modified, are not accepted or if the terms of the offer and the acceptance are not the same, the acceptance remains a mere counter offer and there is no concluded contract. It should, therefore, be ensured that the terms incorporated in the acceptance are not at variance with the

offer or the tender and that none of the terms of the tender are left out. In case, uncertain terms are used by the bidders, clarifications should be obtained before such tenders are considered for acceptance. If it is considered that a counter offer should be made, such counter offer should be carefully drafted, as a contract is to take effect on acceptance thereof.

If the subject matter of the contract is impossible of fulfilment or is in itself in violation of law such contract is void.

#### **2.11 Withdrawal of an Offer or Proposal**

A bidder firm, who is the proposer may withdraw its offer at any time before its acceptance, even though the firm might have offered to keep the offer open for a specified period. It is equally open to the bidder to revise or modify his offer before its acceptance. Such withdrawal, revision or modification must reach the accepting authority before the *date and time of opening of tender*.

No legal obligations arise out of such withdrawal or revision or modification of the offer as a simple offer is without a consideration. Where, however, a bidder agrees to keep his offer open for a specified period for a consideration, such offers cannot be withdrawn before the expiry of the specified date. This would be so where earnest money is deposited by the bidder in consideration of his being supplied the subsidiary contract and withdrawal of offer by the bidder before the specified period would entitle the purchaser to forfeit the earnest money.

#### **2.12 Withdrawal of Acceptance**

An acceptance can be withdrawn before such acceptance comes to the knowledge of the bidder. A telegraphic revocation of acceptance, which reaches the bidder before the letter of acceptance, will be a valid revocation.

#### **2.13 Changes in terms of a concluded Contract**

No variation in the terms of a concluded contract can be made without the consent of the parties. While granting extensions or making any other variation, the consent of the contractor must be taken. While extensions are to be granted on an application of the contractor, the letter and spirit of the application should be kept in view in fixing a time for delivery.

#### **2.14 Discharge of Contracts**

A contract is discharged or the parties are normally freed from the obligation of a contract by due performance of the terms of the contract. A contract may also be discharged: -

- i) **By mutual agreement:** If neither party has performed the contract, no consideration is required for the release. If a party has performed a part of the contract and has undergone expenses in arranging to fulfil the contract it is necessary for the parties to agree to a reasonable value of the work done as consideration for the value.
- ii) **By breach:** In case a party to a contract breaks some stipulation in the contract which goes to the root of transaction, or destroys the foundation of the contract or prevents substantial performance of the contract, it discharges the innocent party to proceed further with the performance and entitles him to a right of action for damages and to enforce the remedies for such breach as provided in the contract itself. A breach of contract may, however, be waived.
- iii) **By refusal of a party to perform:** On a promisor's refusal to perform the

contract or repudiation thereof even before the arrival of the time for performance, the promisee may at his option treat the repudiation as an immediate breach putting an end to the contract for the future. In such a case the promisee has a right of immediate action for damages.

- iv) **In a contract where there are reciprocal promises:** If one party to the contract prevents the other party from performing the contract, the contract may be put to an end at the instance of the party so prevented and the contract is thereby discharged.

## **2.15 Stamping of Contracts**

Under entry 5 of Schedule I of the Indian Stamp Act, an agreement or memorandum of agreement for or relating to the sale of goods or merchandise exclusively is exempt from payment of stamp duty. (A note or memorandum sent by a Broker or Agent to his principal intimating the purchase or sale on account of such principal is not so exempt from stamp duty.)

The Stamp Act provides that no Stamp Duty shall be chargeable in respect of any instrument executed by or on behalf of or in favour of the Government in cases where but for such exemption Government would be liable to pay the duty chargeable in respect of such instrument. (Cases in which Government would be liable are set out in Section 29 of the Act).

## **2.16 Authority for Execution of Contracts**

As per Clause 1 of Article 299 of the Constitution, the contracts and assurances of property made in the exercise of the executive power of the Union shall be executed on behalf of the President. The words "for and on behalf of the President of India" should therefore follow the designation appended below the signature of the officer authorized in this behalf.

**Note 1:** The various classes of contracts and assurances of property, which may be executed by different authorities, are specified in the Notifications issued by the Ministry of Law from time to time.

**Note 2:** The powers of various authorities, the conditions under which such powers should be exercised and the general procedure prescribed with regard to various classes of contracts and assurances of property are laid down in Rule 21 of the Delegation of Financial Powers Rules.

## **2.17 Contract Effective Date**

The date of commencement of the obligations under the contract on the parties to a contract is referred as the contract effective date. This date should be invariably indicated in each contract, as per agreed terms and conditions. The Ministries/Departments are advised to set the effective date to be a date after the following:

- i) Date of signing of the contract.
- ii) Furnishing of performance bond in terms of performance security.
- iii) Receipt of Bank Guarantee for advance payment.
- iv) Obtaining Export Licence for supply of stores by seller and confirmation by the buyer.
- v) Receipt of End User's Certificate. The supplier shall provide the End User's Certificate within 30 (thirty) days of the signing of the contract.

### **3.0 Salient Features of the Sales of Goods Act, 1930**

#### **3.1 Scope**

Agreements for the sale of goods are governed by the general principles of the contract law. A contract for sale of goods has, however, certain peculiar features such as transfer of ownership of the goods and quality aspects implied under a contract for sale of goods, and so on, are not covered in the Contract Act. These peculiarities are the subject matter of the provisions of the Sale of Goods Act, 1930. In this act, the two parties to the contract are called "seller" and "buyer". This act defines goods, for the purpose of applicability of this act, as every kind of movable property, including stocks and shares, growing crops, goodwill, patents, trademarks, electricity, water, gas, and so on-all that can be exchanged for money but not any kind of immovable property (for example, real estate).

#### **3.2 Concept of Transfer of Property (Passing of Title)**

Proprietary (ownership) rights and obligations in "goods" are called legally "title to goods" or "property in goods". The meaning of property here is different from the common connotation of the word. At what point of time or stage in a contract does this passing of title of (property in) goods happen is laid down by this Act. This ownership of goods is different from 'possession of goods' which means the physical custody or control of the goods. Delivery of goods is only a transfer of 'possession of goods'; and may or may not coincide with the passing of title in goods. This distinction is very important in procurement.

The transfer of property in the goods, from the seller to the buyer, is the essence of a procurement of goods. Therefore, the moment when the property in goods passes from the seller to the buyer is significant for following reasons:

#### **3.3 Ownership**

The moment the property in goods passes, the seller ceases to be their owner and the buyer acquires the ownership. The buyer can exercise proprietary rights over the goods. For example, the buyer may sue the seller for non-delivery of the goods or when the seller has resold the goods, and so on.

#### **3.4 Concept of "Res Prit Domine" -- Risk Follows Ownership**

This concept simply means that, as a general rule, risk follows the ownership, irrespective of whether the delivery (or transfer of possession of goods) has been made or not. If the goods are damaged or destroyed, the loss shall be borne by the person who was the owner of the goods at that time - irrespective of whosoever is in the "possession of the goods".

#### **3.5 Action against Third parties**

When the goods are, in any way, damaged or destroyed by the action of third parties, it is only the owner of the goods who can take action (claim, litigation) against them.

#### **3.6 Time at which Property in Goods is Transferred**

The property in goods is transferred to the buyer at such time as the parties to the contract intend this to happen, as recorded in the terms of the contract. This needs neither to coincide with the point when payment is made nor with the

delivery of Goods and not even with the point of time when the seller dispatches the goods.

### **3.7 Document of Title to Goods**

These are the voucher, bill, document, receipt, cash memo, bill of lading, lorry receipt, railway receipt, or any such acknowledgement which proves the ownership of the goods that, in the ordinary course of business, the buyer may receive. These are called documents of title to goods.

### **3.8 Doctrine of Caveat Emptor**

The Sales of Goods Act lays down this important concept that the buyer must act with due diligence when buying goods; it is not a seller's duty to point out the defects in goods. This is a doctrine which is not in consonance with modern times but, unfortunately, is a legal position. This, however, does not apply if the buyer's consent to buy is obtained by the seller by knowingly concealing the defects which could not have been discovered by the buyer reasonably at the time of procurement. The caveat emptor is also diluted under some implied conditions in a contract for sale.

### **3.9 Provision of the Act regarding Statutory Variations in Taxes and Duties**

Statutory variations in the taxes and duties (customs duties, excise duty, tax on the sale or procurement of goods), after the making of any contract, has to be borne by the buyer even if there is no such express stipulation in the contract.

### **4.0 Salient Features of the Indian Arbitration & Conciliation Act 1996**

Indian Arbitration & Conciliation Act 1996 provides for dispute settlement either by a process of conciliation and/or by arbitration. This act is based on a 'United Nation's Commission on International Trade Law Model Arbitration Law' with an object to minimise the supervisory role of courts in the arbitral process and to provide that every final arbitral award is enforced in the same manner, as if it was a decree of the court. It covers both international and domestic arbitration and conciliation.

#### **4.1 Arbitration**

Arbitration is one of the oldest methods of settling civil disputes arising out of and in the course of performance of the contract between two or more persons by reference of the dispute to an independent and impartial third person called the arbitrator, instead of litigating the matter in the usual way through the courts. It saves time and expense, avoids unnecessary technicalities and, at the same time, ensures "substantial justice within limits of the law".

#### **4.2 Arbitrator, Arbitration and Arbitral Award**

The person or persons appointed to determine differences and disputes are called the arbitrator or arbitral tribunal. The proceeding before him is called arbitration proceedings. The decision is called an Award. For the purpose of Law of Limitations, The Arbitration for a particular dispute is deemed to have commenced on the date, on which a request for arbitration is received by the respondent.

#### **4.3 Arbitration Agreement**

It is an agreement by the parties to submit to arbitration all or certain disputes, which have arisen or which may arise between them, in respect of a defined legal relationship, whether contractual or non-contractual. The dispute resolution method

of arbitration, as per the Arbitration and Conciliation Act, can be invoked only if there is an arbitration agreement (in the form of an arbitration clause or a separate arbitration agreement) in the contract. If there is such an agreement, courts are barred from directly entertaining any litigation in respect of such contracts, and are bound instead to refer the parties to arbitration.

#### **4.4 Appointment and Composition of Arbitral Tribunal**

Both parties can mutually agree on the number of arbitrators (which cannot be an even number) to be appointed. In case there is no agreement, a single (sole) arbitrator may be appointed. The parties can mutually agree on a procedure for appointing the arbitrator or arbitrators, or else in case of arbitration with three arbitrators, each party will appoint one arbitrator and the two appointed arbitrators will appoint the third arbitrator, who will act as a presiding arbitrator. If one party fails to appoint an arbitrator within 30 (thirty) days, or if the two appointed arbitrators fail to agree on the third arbitrator, then the court may appoint any person or institution as arbitrator. In case of an international commercial dispute, the application for appointment of arbitrator has to be made to the Chief Justice of India. In case of other domestic disputes, the application has to be made to the Chief Justice of the High Court within whose jurisdiction the parties are situated.

#### **4.5 Challenge to Appointment of Arbitrator**

An arbitrator is expected to be independent and impartial. If there are some circumstances due to which his independence or impartiality can be challenged, he must disclose the circumstances before his appointment. The appointment of an arbitrator cannot be challenged on any ground, except when there is justifiable doubt as to the arbitrator's independence or impartiality or when he does not possess the qualifications for the arbitrator agreed to by the parties. The challenge to appointment has to be decided by the arbitrator himself. If he does not accept the challenge, the arbitration can continue and the arbitrator can make the arbitral award. However, in such a case, application for setting aside the arbitral award can be made to the court, after the award is made by the arbitrator. Thus the other party cannot stall further arbitration proceedings by rushing to court.

#### **4.6 Conduct of Arbitral Proceedings**

The parties are free to agree on the procedure to be followed for conducting proceedings, location, language of hearings and written proceedings. Failing any agreement, the arbitral tribunal may decide themselves on these aspects. The parties shall be treated with equality and each party shall be given a full opportunity to present its case. The arbitral tribunal shall observe the rules of natural justice but is bound neither by Civil Procedure Code 1908 nor by Indian Evidence Act 1872. Limitation Act, 1963 is applicable from the date of commencement of arbitral proceedings. Arbitral tribunals have powers to do the following:

- i)** Determine admissibility, relevance, materiality and weight of any evidence;
- ii)** Decide on their own jurisdiction;
- iii)** Decide on interim measures;
- iv)** Termination of proceedings; and
- v)** Seek court assistance in taking evidence.

#### **4.7 Arbitral Award**

The decision of the arbitral tribunal is termed as 'arbitral award'. The decision of

arbitral tribunal shall be by majority. The arbitral award shall be in writing, mentioning the place and date, and signed by the members of the tribunal. It must state the reasons for the award. A copy of the award should be given to each party. The tribunal can make interim award also. An arbitral award is enforceable in the same manner as if it were a decree of the court.

#### **4.8 Recourse against Arbitral Award**

Recourse to a court against an arbitration award can be made by an application (within three months from the date of the arbitral award), only on the grounds specified in the act, that is, the party was under some incapacity; arbitration agreement was not valid; proper opportunity was not given to present the case; award deal with disputes not falling within the terms of reference of arbitrator; composition of the arbitral tribunal is not as per agreement of parties; subject matter of dispute is not capable of settlement through arbitration under the law or the arbitral award is in conflict with the public policy.

#### **4.9 Conciliation**

This is a new concept added in the Act for settlement of disputes. The party initiating conciliation shall send a written invitation to the other party to conciliate and proceedings shall commence when the other party accepts the initiations to conciliation. The parties may agree on the name of a sole conciliator or each party may appoint one conciliator. The conciliation shall assist the parties to reach an amicable settlement of their dispute. When the parties sign the settlement agreement, it shall be final and binding on the parties. The conciliator shall authenticate the settlement agreement and furnish a copy thereof to each party. This process has not yet come into a common use.

#### **4.10 Changes introduced by the Arbitration and Conciliation (Amendment) Act, 2015**

- i) Independence, Disqualification and Obligations of arbitrators at the time of appointment**
  - a) Independence, Impartiality and Accountability of Arbitrators:** A fixed fee structure ensures the independence of the arbitral tribunal and also provides a reasonable cost estimate to the parties entering into arbitration. The Amendment Act in the Fourth Schedule prescribes the model fees for arbitrators and the High Courts have been assigned the responsibility of framing the rules for determination of the fees and the manner of its payment. The model fee varies from Rs 45,000 to Rs 30 Lakh (Rupees forty-five to rupees thirty lakh) for various slabs of disputed value from Rupees five Lakh to above Rs 20 (Rupees twenty) Crore (with a sole arbitrator entitles to 25% (twenty-five percent) extra above the model fee). However it is clarified that such fees shall not be applicable in International Commercial Arbitration and in cases where parties have agreed for determination of fees as per the rules of an arbitral institution.
  - b) Disqualification from appointment:** A long and exhaustive list of specific circumstances which shall act as a bar against any person from being appointed as an arbitrator in a dispute, have been enumerated in the seventh schedule. However, the parties to the dispute have been given the opportunity, after the dispute has arisen, to waive the applicability of the seventh schedule, by mutual written

agreement, if they so deem fit. Especially of interest in Public Procurement is disqualification of past or present employees, consultant, advisors or other related business relationship not only with the Procuring Entity but also with any affiliated entity thereof. Thus the earlier practice of appointing serving officers of procuring entity as arbitrator is no more legal.

**c) Disclosures:** An arbitrator who is approached for appointment is obligated to disclose as per Sixth Schedule of the Act. The declaration as per a set format removes any ambiguity and ensures uniformity:

1. conflict of Interest the existence either direct or indirect, of any past or present relationship with or interest in any of the parties or in relation to the subject matter in dispute, whether financial, business, professional or other kind, which is likely to give rise to justifiable doubts as to his independence or impartiality as per fifth schedule to the Act for arbitrator.
2. Time constraints: An arbitrator shall disclose all circumstances which may affect his ability to deliver an award within 12 (twelve) months.

**ii) Fast-tracking Arbitration in India**

**a) Award within 12 (Twelve) months:** The arbitral tribunal is statutorily obligated to deliver an award within 12 (twelve) months from the date when arbitral tribunal enters into reference. The arbitral tribunal is said to have entered upon the reference on the date on which the arbitrator(s) have received notice of their appointment. The award can be delayed by a maximum period of six months only under the special circumstances where all parties give their consent to such extension of time. Where the award is not made out within the statutory period the mandate of arbitrators shall automatically terminate. It is open for the courts to extend the time period for making an award upon receipt of an application by any of the parties. Such extension is to be granted only for sufficient cause and the court in its discretion may impose the following penalties depending on the facts and circumstances of the case:

1. Reduce the fees of arbitrators by up to 5% (five percent) for each month of delay.
2. Substitute one or all the arbitrators.
3. Impose actual or exemplary costs on any of the parties.

**b) Oral arguments to be held on a day-to-day basis:** Oral arguments as far as possible shall be heard by the arbitral tribunal on a day to day basis and no adjournments shall be granted without sufficient cause. Provision for imposition of exemplary cost on the party seeking adjournment without sufficient cause has also been made.

**c) Fast Track Procedure:** The parties to arbitration may choose to opt for a new fast track procedure either before or after the commencement of the arbitration. The award in fast track arbitration is to be made out within six months. Where the Arbitral Tribunal delivers the award within a period of six months the arbitral tribunal shall be entitled to additional fees. The quantum of such additional fees shall be determined by the parties. The

salient features of the fast track arbitration are:

1. Dispute is to be decided based on written pleadings only.
2. Arbitral Tribunal shall have the power to call for clarifications in addition to the written pleadings where it deems necessary.
3. Oral hearing maybe held only if all the parties make a request or if the arbitral tribunal considers it necessary.
4. The parties are free to decide the fees of the arbitrator(s).

**d) Appointment within 60 (sixty) days:** Whenever an application for appointment of Arbitrator(s) is moved before a court such application shall be disposed of as expeditiously as possible and an endeavour shall be made to dispose of the matter within a period of sixty days from the date of service of notice on the opposite party. The court while appointing arbitrators shall confine itself to the examination of the existence of an arbitration agreement.

**iii) Procedural and Jurisprudence simplified**

- a) Arbitration to commence within 90 (ninety) days of interim relief:** Where the court grants interim relief before the commencement of arbitration, the arbitration must commence within 90 (ninety) days from such order of interim relief. The court however has been given the authority to extend the period within which the arbitration must commence, if it deems such extension necessary. The Act prohibits courts from entertaining any application for interim relief once the arbitration has entered into reference, unless the court finds that circumstances exist which may not render the remedy provided under section 17 efficacious.
- b) Powers of Interim Relief in Section 9 also to Arbitral Tribunal:** The parties to arbitration can now directly approach the arbitral tribunal for seeking interim relief on the same grounds as were available to the parties under section 9 of the previous act. Further, the tribunal has now been granted the powers of a court while making interim awards in the proceedings before it.
- c) Arbitral tribunal not bound to rule in accordance with terms of the contract:** The arbitral tribunal was previously bound to deliver an award in accordance with the terms of the agreement and was required to take into consideration the 'usages of the trade applicable to the transaction'. Vide the Amendment the arbitral tribunal has been freed of the obligation to only rule in accordance with the terms of the agreement. The arbitral tribunal is only required to take the agreement into account while delivering its award and is free to deviate from the terms of the agreement if the circumstances so warrant.
- d) Act made applicable on International Commercial Arbitration with even seat outside India:** Part I of the act has been made applicable for limited purpose (listed below) on International Commercial Arbitrations even in instances where the seat of the arbitration is outside India, however giving freedom to exclude the applicability the Act by entering into an

agreement to this effect:

- 1) Seeking interim relief from courts [section 9]
- 2) Seeking the assistance of the court in taking evidence [section 27]
- 3) Appealing against the order of a court where the court refuses to refer the parties to arbitration. [section 37(1) (a)]
- 4) Restricting the right to second appeal and preserving the right of parties to approach the Supreme Court in appeal. [section 37 (3)]

#### **5.0 Salient Features of Competition Act, 2002 relating to Anti-competitive Practices**

- i) The **Preamble of the Competition Act, 2002**, provides for the establishment of a Commission keeping in view of the economic development of the country to promote and sustain competition in markets; prevent practices having adverse effect on competition; protect consumer interest; and ensure freedom of trade carried on by participants in Indian markets.
- ii) The Act was amended by Competition (Amendment) Act, 2007 and again by Competition (Amendment Act), 2009.
- iii) In India, Competition Commission of India ("CCI"), formulated under the Competition Act is a quasi-judicial and regulatory body entrusted with the task enforcement of the Competition Act, 2002. Apart from specific functions under the Competition Act, 2002 the CCI also has extra-territorial jurisdiction, inquiry into anticompetitive conduct, sector-specific regulatory work, competition advocacy, power of appointment of professional and experts, and procedure for investigation (in terms of regulating its own procedure).
- iv) Section 8 dealing with composition of Commission provides for a chairperson and not less than two and not more than six members which are to be appointed by Central Government. The CCI is vested with inquisitorial, investigative, regulatory, adjudicatory and also advisory jurisdiction. Vast powers have been given to the Commission and under Section 64, the Commission can frame regulations.
- v) The Competition Appellate Tribunal (COMPAT) is another body entrusted with the responsibility of hearing and disposing of appeals against any direction or decision or order of the CCI. It also adjudicates on compensation claims arising from the findings of the CCI or its own findings on appeals against the CCI orders and passes orders on the recovery of compensation.
- vi) Any person aggrieved by the order or decision of the CCI may prefer an appeal to the Competition Appellate Tribunal ('COMPAT') within 60 (sixty) days from the date of communication of such order or decision. The second and final appeal under Section 53T lies before the Supreme Court of India from the orders of the COMPAT within a period of 60 (sixty) days from the date of communication of the order by the COMPAT.
- vii) CCI may initiate an inquiry:

- a) On its own motion on the basis of information and knowledge in its possession, or
  - b) On receipt of any information, in such manner and accompanied by such fee as may be determined by regulations, from any person, consumer or their association or trade association, or
  - c) On receipt of a reference from the Central Government or a State Government or a statutory authority
- viii) The Act provides for Director General office as a separate investigative wing to assist the CCI. The DG looks into the complaints received from the CCI and submits all findings to it. DG is solely responsible for making enquiries, for examining documents and for making investigations into complaints. The DG is vested under the Act with powers of summoning of witnesses, examining them on oath, requiring the discovery and production of documents, receiving evidence on affidavits, issuing commissions for the examination of witnesses etc.
- ix) The Act in Section 49 (3) lays down the advocacy function of CCI and lays down that the CCI shall take suitable measures for the promotion of competition advocacy, creating awareness and imparting training about competition issues. Section 32 of the Act grants the CCI extra-territorial jurisdiction over anticompetitive conduct which has an appreciable adverse effect on competition within India. Any anticompetitive activity taking place outside India but having an appreciable adverse effect on competition within India shall be subject to the application of the Competition Act.
- x) Under Section 21 of the Act, any statutory authority can suo motto or on request of a party in the course of a proceeding before it can make a reference to CCI. CCI shall give its opinion within sixty days of receipt of such reference by such statutory authority. Under the provisions of the Act, the authority which made reference shall consider the opinion of the Commission and thereafter, give its findings recording reasons on the issues referred to in the said opinion by CCI. Section 21A in the same language provides for such reference by CCI to any statutory authority.
- xi) The key provisions of the Competition Act include:
- 1) Section 3 of the Competition Act, 2002 dealing with anti-competitive agreements;
  - 2) Section 4 of the Competition Act, 2002 which discusses abuse of dominance;
  - 3) Section 5 and 6 of the Competition Act, 2002 dealing with the regulation of combinations.
- xii) The term 'agreement', has been defined broadly in the Competition Act. It extends to a mere 'arrangement', 'understanding' or 'action in concert', none of which need be in writing or enforceable by law.
- xiii) Section 3(1) of the Competition Act lays down that no enterprise or association of enterprises or person or association of persons shall enter into any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause

an appreciable adverse effect on competition within India. The Act prohibits an anti-competitive agreement and declares that such an agreement shall be void.

- xiv) Section 3(3) of the Competition Act deals with the horizontal agreements as it covers the agreements between entities engaged in identical or similar trade of goods or provision of services. It also includes cartels. The section covers:
- 1) Agreement entered into between enterprises or associations of enterprises or persons or associations of persons or between any person and enterprise
  - 2) Practice carried on by any association of enterprises or association of persons
  - 3) Decision taken by any association of enterprises or association of persons
- xv) Section 3(3) of the Competition Act enlists four broad classifications of horizontal agreements which are presumed to cause an appreciable adverse effect on competition (AAEC) in India.
- 1) Agreements regarding Prices
  - 2) Agreements regarding Quantity/ Quality
  - 3) Market Allocation
  - 4) Bid Rigging

These four horizontal agreements are not presumed to have appreciable adverse effect on competition and excluded from the provisions of Section 3(3) of the Competition Act, 2002 provided they are entered into by way of joint ventures and increase efficiency in production, supply, distribution, storage, acquisition or control of goods or provision of services.

Cartels, by their very nature are secretive and thus it is difficult to find the direct evidence of their presence. The orders of the CCI clearly point that CCI relies on circumstantial evidence, both economic and conduct-based, to reach its decision on the existence of a cartel agreement.

The Act provides a definition for bid rigging and it covers agreements having effect of eliminating or reducing competition for bids or adversely affecting or manipulating the process for bidding:

- 1) Collusive bidding: Agreement between firms to divide the market, set prices or limit production - involves, kickbacks and misrepresentation of independence
- 2) Bid Rotation
- 3) Bid Suppression
- 4) Complementary Bidding
- 5) Subcontracting arrangements
- 6) Market Allocation

The Act gives wide discretion to CCI to frame the remedies to overcome the anticompetitive situation:

1. Declare Anticompetitive Agreements Void

2. Impose Heavy Penalties
  - (a) Penalty can be up to 10% (ten percent) of the average turnover for the last three preceding financial years upon each of such persons or enterprises which are parties to bid-rigging
  - (b) Cartel, a penalty of up to three times of its profit for each year of the continuance of such agreement or 10% (ten percent) of its turnover for each year of the continuance of such agreement, whichever is higher
3. Order the parties to Cease & Desist
4. Modification of agreements
5. Remedy Damage to reputation
6. Fix Individual Liability
7. Grant Interim orders
8. Any other order as CCI deems fit

xvi) **Who can file the information:** Raising issues regarding anti-competitive behaviour for action by CCI under the act is called filing the information:

- a) Any person, consumer or their association or trade association can file information before the Commission.
- b) Central Govt. or a State Govt. or a statutory authority can also make a reference to the Commission for making an inquiry.
- c) "Person" includes an individual, HUF, firm, company, local authority, cooperative or any artificial juridical person.

xvii) **What are the issues on which information can be filed?**

- a) The information can be filed on the issues like anti-competitive agreements and abuse of dominant position or a combination.
- b) Class of consumers.

xviii) **The fee -**

- a) Rupees 5000/- (Five thousand only) in case of individual, or Hindu undivided family (HUF), or Non-Government Organisation (NGO), or Consumer Association, or Co-operative Society, or Trust, duly registered under the respective Acts,
- b) Rupees 20,000/- (twenty thousand only) in case of firms, companies having turnover in the preceding year upto Rupees one Crore, and
- c) Rupees 50,000/- (fifty thousand only) in case not covered under clause (a) or (b) above.

## **6.0 Salient Features of the Whistle Blowers Protection Act, 2011 and the Whistle Blowers Protection (Amendment) Act, 2015**

- i) The Act seeks to protect whistle blowers, i.e. persons making a public interest disclosure related to an act of corruption, misuse of power, or criminal offence by a public servant.
- ii) Any public servant or any other person including a non-Governmental

organization may make such a disclosure to the designated agencies i.e. Central or State Vigilance Commission. The Time Limit for making any complaint or disclosure to the Competent Authority is seven years from the date on which the action complained against is alleged to have taken place.

- iii) The Designated Agency cannot entertain any disclosure relating to any inquiry ordered under the Public Servants (Inquiries) Act, 1850 and Commissions of Inquiry Act, 1952.
- iv) Similarly, the Amendment Act, 2015, The Bill prohibits the reporting of a corruption related disclosure if it falls under any 10 (ten) categories including information related to:
  - 1) The sovereignty, strategic, scientific or economic interests of India, or the incitement of an offence
  - 2) Records of deliberations of the Council of Ministers
  - 3) That which is forbidden to be published by a court or if it may result in contempt of court;
  - 4) A breach of privilege of legislatures;
  - 5) Commercial confidence, trade secrets, intellectual property (if it harms a third party);
  - 6) That relayed in a fiduciary capacity;
  - 7) That received from a foreign Government;
  - 8) That which could endanger a person's safety etc.;
  - 9) That which would impede an investigation etc.;
  - 10) Personal matters or invasion of privacy.

However, if information related to (ii), (v), (vi), and (x) is available under the Right to Information Act, 2005, then it can be disclosed under the Act.

- v) Any public interest disclosure received by a Competent Authority will be referred to a Government authorised authority if it falls under any of the above prohibited categories. This authority will take a decision on the matter, which will be binding.
- vi) The Identity of the Complainant must be included in the Complaint or the Disclosure. However the Designated Agency shall conceal the identity of the complainant unless the complainant himself has revealed his identity to any other office or authority while making public interest disclosure or in his complaint or otherwise. However, the Designated Agency can reveal the identity of the complainant in circumstances where it becomes inevitable or extremely necessary for the purposes of the enquiry.
- vii) The Designated Agency may, with the prior written consent of the complainant, reveal the identity of the complainant to such office or organization where it becomes necessary to do so. If the complainant does not agree to his name being revealed, in that case, the complainant shall provide all documentary evidence in support of his complaint to the Designated Agency.
- viii) Any person who negligently or with malafide reveals the identity of the complainant shall be punished with imprisonment up to three years and fine not exceeding Rs. 50,000 (Rupees fifty thousand).

- ix) Similarly any disclosure made with mala fide and knowingly that it was false or misleading shall be punished with imprisonment up to two years and fine not exceeding Rs. 30,000 (Rupees thirty thousand).
- x) After receipt of the report or comments relating to the complaint, if the Designated Agency is of the opinion that such comments or report reveals either wilful misuse of power or wilful misuse of discretion or substantiates allegations of corruption, it shall recommend to the public authority to take appropriate corrective measures such as initiating proceedings against the concerned public servant or other administrative and corrective steps. However, in case the public authority does not agree with the recommendation of the Designated Agency, it shall record the reasons for such disagreement.
- xi) While dealing with any such inquiry, the Designated Agency shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908 in respect of matters like receiving evidence, issuing commissions, discovery and production of any document etc. Also, every proceeding before the Designated Agency shall be deemed to be a judicial proceeding under the Code of Criminal Procedure, 1973 and Indian Penal Code.
- xii) No obligation to maintain secrecy or other restrictions upon the disclosure of information shall be claimed by any Public Servant in the proceedings before the Designated Agency.
- xiii) But, no person is required to furnish any information in the inquiry under this act if such information falls under the 10 (ten) categories mentioned before.
- xiv) It shall be the responsibility of the Central Government to ensure that no person who has made a disclosure is victimised on the ground that such person had made a disclosure under this act.
- xv) If any person is victimised or likely to be victimised on the above-mentioned ground, he may contact the Designated Agency and the Designated Agency may pass appropriate directions in this respect. The Designated Agency can even restore status quo ante with respect to the Public Servant who has made a disclosure. Also, the Designated Agency can pass directions to protect such complainant.
- xvi) If an offence under this act has been committed by any Head of the Department unless he proves that the offence was committed without his knowledge or that he exercised all due diligence in this respect.
- xvii) This Act extends to all the Companies as well. When any offence under this act has been committed by a company, every person who at the time of the offence was responsible for the conduct of the business of the company shall be deemed to be guilty of the offence unless he proves that the offence was committed without his knowledge or that he exercised all due diligence in this respect.
- xviii) No court can take cognizance of any offence under this act save on a complaint made by the Designated Agency. No court inferior to that of a Chief Metropolitan Magistrate or a Chief Judicial Magistrate shall try any offence under this act. The High Court shall be the appellate authority in this respect.

\*\*\*\*\*End of Appendix-2\*\*\*\*\*

## Appendix-3: Make in India (MII) Policy

No. P-45021/2/2017-PP (BE-II)  
Government of India  
Ministry of Commerce and Industry  
Department for Promotion of Industry and Internal Trade  
(Public Procurement Section)

Udyog Bhawan, New Delhi  
Dated: 16<sup>th</sup> September, 2020

To

All Central Ministries/Departments/CPSUs/All concerned

### ORDER

**Subject: Public Procurement (Preference to Make in India), Order 2017– Revision; regarding.**

Department for Promotion of Industry and Internal Trade, in partial modification [Paras 2, 3, 5, 10 & 13] of Order No.P-45021/2/2017-B.E.-II dated 15.6.2017 as amended by Order No.P-45021/2/2017-B.E.-II dated 28.05.2018, Order No.P-45021/2/2017-B.E.-II dated 29.05.2019 and Order No.P-45021/2/2017-B.E.-II dated 04.06.2020, hereby issues the revised 'Public Procurement (Preference to Make in India), Order 2017" dated 16.09.2020 effective with immediate effect.

**Whereas** it is the policy of the Government of 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, and

**Whereas** procurement by the Government is substantial in amount and can contribute towards this policy objective, and

**Whereas** local content can be increased through partnerships, cooperation with local companies, establishing production units in India or Joint Ventures (JV) with Indian suppliers, increasing the participation of local employees in services and training them,

**Now therefore the following Order is issued:**

1. This Order is issued pursuant to Rule 153 (iii) of the General Financial Rules 2017.
2. **Definitions:** For the purposes of this Order:

*'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.

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

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

'Non - Local supplier' means a supplier or service provider, whose goods, services or works offered for procurement, has local content less than that prescribed for 'Class-II local supplier' under this Order.

'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.

'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.

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

'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.

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

**3. 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', as defined under the Order, shall be eligible to bid irrespective of purchase value.

(b) Only 'Class-I local supplier' and 'Class-II local supplier', as defined under the Order, 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 3(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.

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**3A. Purchase Preference**

(a) Subject to the provisions of this Order and to any specific instructions issued by the Nodal Ministry or in pursuance of this 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 3(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:

- i. 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.
- ii. If L1 bid is not a 'Class-I local supplier', 50% 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% 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 3(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:

- i. 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.
- ii. 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.
- iii. 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.

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

**3B. 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 this Order.
- c) If 'Class I Local suppliers' qualify for award of contract for at least 50% 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% 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% 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% 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% 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% 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.
4. **Exemption of small purchases:** Notwithstanding anything contained in paragraph 3, procurements where the estimated value to be procured is less than Rs. 5 lakhs shall be exempt from this Order. However, it shall be ensured by procuring entities that procurement is not split for the purpose of avoiding the provisions of this Order.
5. **Minimum local content:** The 'local content' requirement to categorize a supplier as 'Class-I local supplier' is minimum 50%. For 'Class-II local supplier', the 'local content' requirement is minimum 20%. Nodal Ministry/ Department may prescribe only a higher

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percentage of minimum local content requirement to categorize a supplier as 'Class-I local supplier'/ 'Class-II local supplier'. For the items, for which Nodal Ministry/ Department has not prescribed higher minimum local content notification under the Order, it shall be 50% and 20% for 'Class-I local supplier'/ 'Class-II local supplier' respectively.

6. **Margin of Purchase Preference:** The margin of purchase preference shall be 20%.
7. **Requirement for specification in advance:** The minimum local content, the margin of purchase preference and the procedure for preference to Make in India shall be specified in the notice inviting tenders or other form of procurement solicitation and shall not be varied during a particular procurement transaction.
8. **Government E-marketplace:** In respect of procurement through the Government E-marketplace (GeM) shall, as far as possible, specifically mark the items 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.
9. **Verification of local content:**
  - a. The 'Class-I local supplier'/ 'Class-II local supplier' at the time of tender, bidding or solicitation shall be required to indicate percentage of local content and provide self-certification that the item offered meets the local content requirement for 'Class-I local supplier'/ 'Class-II local supplier', as the case may be. They shall also give details of the location(s) at which the local value addition is made.
  - b. In cases of procurement for a value in excess of Rs. 10 crores, the 'Class-I local supplier'/ 'Class-II local supplier' shall be required to provide a certificate from the statutory auditor or cost auditor of the company (in the case of companies) or from a practicing cost accountant or practicing chartered accountant (in respect of suppliers other than companies) giving the percentage of local content.
  - c. 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.

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- g. A supplier who has been debarred by any procuring entity for violation of this Order shall not be eligible for preference under this Order for procurement by any other procuring entity for the duration of the debarment. The debarment for such other procuring entities shall take effect prospectively from the date on which it comes to the notice of other procurement entities, in the manner prescribed under paragraph 9h below.
- h. The Department of Expenditure shall issue suitable instructions for the effective and smooth operation of this process, so that:
  - i. The fact and duration of debarment for violation of this Order by any procuring entity are promptly brought to the notice of the Member-Convenor of the Standing Committee and the Department of Expenditure through the concerned Ministry /Department or in some other manner;
  - ii. on a periodical basis such cases are consolidated and a centralized list or decentralized lists of such suppliers with the period of debarment is maintained and displayed on website(s);
  - iii. in respect of procuring entities other than the one which has carried out the debarment, the debarment takes effect prospectively from the date of uploading on the website(s) in the such a manner that ongoing procurements are not disrupted.

**10. Specifications in Tenders and other procurement solicitations:**

- a. Every procuring entity shall ensure that the eligibility conditions in respect of previous experience fixed in any tender or solicitation do not require proof of supply in other countries or proof of exports.
- b. Procuring entities shall endeavour to see that eligibility conditions, including on matters like turnover, production capability and financial strength do not result in unreasonable exclusion of 'Class-I local supplier'/ 'Class-II local supplier' who would otherwise be eligible, beyond what is essential for ensuring quality or creditworthiness of the supplier.
- c. Procuring entities shall, within 2 months of the issue of this Order review all existing eligibility norms and conditions with reference to sub-paragraphs 'a' and 'b' above.

**d. Reciprocity Clause**

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

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- ii. 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.
  - iii. The stipulation in (ii) above shall be part of all tenders invited by the Central Government procuring entities stated in (i) above. All purchases on GeM shall also necessarily have the above provisions for items identified by nodal Ministry/ Department.
  - iv. State Governments should be encouraged to incorporate similar provisions in their respective tenders.
  - v. The term 'entity' of a country shall have the same meaning as under the FDI Policy of DPIIT as amended from time to time.
- e. Specifying foreign certifications/ unreasonable technical specifications/ brands/ models in the bid document is 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."

**10A. Action for non-compliance of the Provisions of the Order:** In case restrictive or discriminatory conditions against domestic suppliers are included in bid documents, an inquiry shall be conducted by the Administrative Department undertaking the procurement (including procurement by any entity under its administrative control) to fix responsibility for the same. Thereafter, appropriate action, administrative or otherwise, shall be taken against erring officials of procurement entities under relevant provisions. Intimation on all such actions shall be sent to the Standing Committee.

**11. Assessment of supply base by Nodal Ministries:** The Nodal Ministry shall keep in view the domestic manufacturing / supply base and assess the available capacity and the extent of local competition while identifying items and prescribing the higher minimum local content or the manner of its calculation, with a view to avoiding cost increase from the operation of this Order.

**12. Increase in minimum local content:** The Nodal Ministry may annually review the local content requirements with a view to increasing them, subject to availability of sufficient local competition with adequate quality.

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13. **Manufacture under license/ technology collaboration agreements with phased indigenization:** While notifying the minimum local content, Nodal Ministries may make special provisions for exempting suppliers from meeting the stipulated local content if the product is being manufactured in India under a license from a foreign manufacturer who holds intellectual property rights and where there is a technology collaboration agreement / transfer of technology agreement for indigenous manufacture of a product developed abroad with clear phasing of increase in local content.
- 13A. In 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.
14. **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,
- a. reduce the minimum local content below the prescribed level; or
  - b. reduce the margin of purchase preference below 20%; or
  - c. 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.

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

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

**17. Functions of the Standing Committee:** The Standing Committee shall meet as often as necessary, but not less than once in six months. The Committee

- a. shall oversee the implementation of this order and issues arising therefrom, and make recommendations to Nodal Ministries and procuring entities.
- b. shall annually assess and periodically monitor compliance with this Order
- c. shall identify Nodal Ministries and the allocation of items among them for issue of notifications on minimum local content
- d. may require furnishing of details or returns regarding compliance with this Order and related matters
- e. may, during the annual review or otherwise, assess issues, if any, where it is felt that the manner of implementation of the order results in any restrictive practices, cartelization or increase in public expenditure and suggest remedial measures
- f. may examine cases covered by paragraph 13 above relating to manufacture under license/ technology transfer agreements with a view to satisfying itself that adequate mechanisms exist for enforcement of such agreements and for attaining the underlying objective of progressive indigenization
- g. may consider any other issue relating to this Order which may arise.

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

**19. Ministries having existing policies:** Where any Ministry or Department has its own policy for preference to local content approved by the Cabinet after 1<sup>st</sup> January 2015, such policies will prevail over the provisions of this Order. All other existing orders on preference to local content shall be reviewed by the Nodal Ministries and revised as needed to conform to this Order, within two months of the issue of this Order.

**20. Transitional provision:** This 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.



(Rajesh Gupta)  
Director

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F.No.6/18/2019-PPD  
Ministry of Finance  
Department of Expenditure  
Public Procurement Division

161, North Block,  
New Delhi  
23rd July, 2020

Order (Public Procurement No. 1)

**Subject: Restrictions under Rule 144 (xi) of the General Financial Rules (GFRs), 2017**

Attention is invited to this office OM no. 6/18/2019-PPD dated 23<sup>rd</sup> July 2020 inserting Rule 144 (xi) in GFRs 2017. In this regard, the following is hereby ordered under Rule 144 (xi) on the grounds stated therein:

Requirement of registration

1. 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 Annex I.
2. This 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 this order; and (ii) cases falling under Annex II.

Transitional cases

3. 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*

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entire process shall be scrapped and initiated *de novo*. The *de novo* process shall adhere to the conditions prescribed in this Order.

- c) As far as practicable, and in cases of doubt about whether a bidder falls under paragraph 1, a certificate shall be obtained from the bidder whose bid is proposed to be considered or accepted, in terms of paras 8, 9 and 10 read with para 1 of this Order.

Incorporation in tender conditions

4. In tenders to be issued after the date of this order, the provisions of paragraph 1 and of other relevant provisions of this Order shall be incorporated in the tender conditions.

Applicability

5. Apart from Ministries / Departments, attached and subordinate bodies, notwithstanding anything contained in Rule 1 of the GFRs 2017, this Order shall also be applicable
- a. 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

Definitions

6. "Bidder" for the purpose of this 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.
7. "Tender" for the purpose of this Order will include other forms of procurement, except where the context requires otherwise.
8. "Bidder from a country which shares a land border with India" for the purpose of this Order means

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- a) An entity incorporated, established or registered in such a country; or
- b) A subsidiary of an entity incorporated, established or registered in such a country; or
- c) An entity substantially controlled through entities incorporated, established or registered in such a country; or
- d) An entity whose *beneficial owner* is situated in such a country; or
- e) An Indian (or other) agent of such an entity; or
- f) A natural person who is a citizen of such a country; or
- g) A consortium or joint venture where any member of the consortium or joint venture falls under any of the above

9. "Beneficial owner" for the purpose of paragraph 8 above will be as under:

- (i) 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—

- a. "Controlling ownership interest" means ownership of, or entitlement to, more than twenty-five per cent of shares or capital or profits of the company;
- b. "Control" shall include the right to appoint the majority of the directors or to control the management or policy decisions, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements;

- (ii) In 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;

- (iii) 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;

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

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(v) 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

10. "Agent" for the purpose of this Order is a person employed to do any act for another, or to represent another in dealings with third persons.

#### Sub-contracting in works contracts

11. 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 8 above. This shall not apply to sub-contracts already awarded on or before the date of this Order.

#### Certificate regarding compliance

12. A certificate shall be taken from bidders in the tender documents regarding their compliance with this 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.

#### Validity of registration

13. 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.

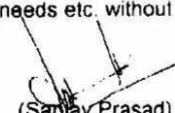
#### Government E-Marketplace

14. The Government E-Marketplace shall, as soon as possible, require all vendors/ bidders registered with GeM to give a certificate regarding compliance with this 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.

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Model Clauses/ Certificates

15. Model Clauses and Model Certificates which may be inserted in tenders / obtained from Bidders are enclosed as **Annex III**. 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 this Department.

  
(Sanjay Prasad)  
Joint Secretary (PPD)  
Email ID: [js.pfc2.doe@gov.in](mailto:js.pfc2.doe@gov.in)  
Telephone: 011-23093882

To

- (1) Secretaries of All Ministries/ Departments of Government of India for information and necessary action. They are also requested to inform these provisions to all procuring entities.
- (2) Secretary, Department of Public Enterprises with a request to immediately reiterate these orders in respect of Public Enterprises.
- (3) Secretary DPIIT with a request to initiate action as provided under Annex I
- (4) Chief Secretaries/ Administrators of Union Territories/ National Capital Territory of Delhi

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### Annex I: 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)\*.
- B. The Registration Committee shall have the following members\*:
- i. An officer, not below the rank of Joint Secretary, designated for this purpose by DPIIT, who shall be the Chairman;
  - ii. Officers (ordinarily not below the rank of Joint Secretary) representing the Ministry of Home Affairs, Ministry of External Affairs, and of those Departments whose sectors are covered by applications under consideration;
  - iii. Any other officer whose presence is deemed necessary by the Chairman of the Committee.
- C. DPIIT shall lay down the method of application, format etc. for such bidders as stated in para 1 of this Order.
- D. On receipt of an application seeking registration from a bidder from a country covered by para 1 of this Order, the Competent Authority shall first seek political and security clearances from the Ministry of External Affairs and Ministry of Home Affairs, as per guidelines issued from time to time. Registration shall not be given unless political and security clearance have both been received.
- E. The Ministry of External Affairs and Ministry of Home Affairs may issue guidelines for internal use regarding the procedure for scrutiny of such applications by them.
- F. The decision of the Competent Authority, to register such bidder may be for all kinds of tenders or for a specified type(s) of goods or services, and may be for a specified or unspecified duration of time, as deemed fit. The decision of the Competent Authority shall be final.
- G. Registration shall not be granted unless the representatives of the Ministries of Home Affairs and External Affairs on the Committee concur\*.
- H. 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.

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- I. 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.
- J. For national security reasons, the Competent Authority shall not be required to give reasons for rejection / cancellation of registration of a bidder.
- K. In transitional cases falling under para 3 of this Order, 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.
- L. 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.

[\*Note:

- i. In respect of application of this 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.]

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**Annex II: Special Cases**

- A. Till 31<sup>st</sup> December 2020, procurement of medical supplies directly related to containment of the Covid-19 pandemic shall be exempt from the provisions of this Order.
- B. *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 this Order.
- C. *Bona fide* small procurements, made without knowing the country of the bidder, shall not be invalidated by this Order.
- D. 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 this Order and without reference to the Competent Authority. Exceptions to this shall be decided in consultation with DEA.
- E. This Order shall not apply to procurement by Indian missions and by offices of government agencies/ undertakings located outside India.

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**Annex III**

**Model Clause /Certificate to be inserted in tenders etc.**

*(While adhering to the substance of the Order, procuring entities and GeM are free to appropriately modify the wording of the clause/ certificate based on their past experience, local needs etc.)*

**Model Clauses for Tenders**

- I. Any bidder from a country which shares a land border with India will be eligible to bid in this tender only if the bidder is registered with the Competent Authority.
- II. "Bidder" (including the term 'tenderer', 'consultant' or 'service provider' in certain contexts) means any person or firm or company, including any member of a consortium or joint venture (that is an association of several persons, or firms or companies), every artificial juridical person not falling in any of the descriptions of bidders stated hereinbefore, including any agency branch or office controlled by such person, participating in a procurement process.
- III. "Bidder from a country which shares a land border with India" for the purpose of this Order means: -
  - a. An entity incorporated, established or registered in such a country; or
  - b. A subsidiary of an entity incorporated, established or registered in such a country; or
  - c. An entity substantially controlled through entities incorporated, established or registered in such a country; or
  - d. An entity whose *beneficial owner* is situated in such a country; or
  - e. An Indian (or other) agent of such an entity; or
  - f. A natural person who is a citizen of such a country; or
  - g. A consortium or joint venture where any member of the consortium or joint venture falls under any of the above
- IV. The *beneficial owner* for the purpose of (iii) above will be as under:
  1. In case of a company or Limited Liability Partnership, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has a controlling ownership interest or who exercises control through other means.

Explanation—

    - a. "Controlling ownership interest" means ownership of or entitlement to more than twenty-five per cent. of shares or capital or profits of the company;

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- b. "Control" shall include the right to appoint majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholders agreements or voting agreements;
2. In case of a partnership firm, the beneficial owner is the natural person(s) who, whether acting alone or together, or through one or more juridical person, has ownership of entitlement to more than fifteen percent of capital or profits of the partnership;
  3. In case of an unincorporated association or body of individuals, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has ownership of or entitlement to more than fifteen percent of the property or capital or profits of such association or body of individuals;
  4. Where no natural person is identified under (1) or (2) or (3) above, the beneficial owner is the relevant natural person who holds the position of senior managing official;
  5. In case of a trust, the identification of beneficial owner(s) shall include identification of the author of the trust, the trustee, the beneficiaries with fifteen percent or more interest in the trust and any other natural person exercising ultimate effective control over the trust through a chain of control or ownership.
- V. An Agent is a person employed to do any act for another, or to represent another in dealings with third person.
- VI. *[To be inserted in tenders for Works contracts, including Turnkey contracts]* The successful bidder shall not be allowed to sub-contract works to any contractor from a country which shares a land border with India unless such contractor is registered with the Competent Authority.

Model Certificate for Tenders (for transitional cases as stated in para 3 of this Order)

*"I have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India; I hereby certify that this bidder is not from such a country and is eligible to be considered."*

Model Certificate for Tenders

*"I have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India; I certify that this bidder is not from such a country or, if from such a country, has been registered with the*

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Competent Authority. I hereby certify that this bidder fulfills all requirements in this regard and is eligible to be considered. [Where applicable, evidence of valid registration by the Competent Authority shall be attached.]"

Model Certificate for Tenders for Works involving possibility of sub-contracting

"I have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India and on sub-contracting to contractors from such countries; I certify that this bidder is not from such a country or, if from such a country, has been registered with the Competent Authority and will not sub-contract any work to a contractor from such countries unless such contractor is registered with the Competent Authority. I hereby certify that this bidder fulfills all requirements in this regard and is eligible to be considered. [Where applicable, evidence of valid registration by the Competent Authority shall be attached.]"

Model Certificate for GeM:

"I have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India; I certify that this vendor/ bidder is not from such a country or, if from such a country, has been registered with the Competent Authority. I hereby certify that this vendor/ bidder fulfills all requirements in this regard and is eligible to be considered for procurement on GeM. [Where applicable, evidence of valid registration by the Competent Authority shall be attached.]"

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F.No.6/18/2019-PPD  
Ministry of Finance  
Department of Expenditure  
Public Procurement Division

161, North Block  
New Delhi  
23rd July, 2020


**Order ( Public Procurement No. 2)**

**Subject: Exclusion from restrictions under Rule 144 (xi) of the General Financial Rules (GFRs), 2017 –regarding.**

In Order (Public Procurement No. 1) dated 23rd July 2020, orders have been issued requiring registration of bidders from a country sharing a land border with India in order to be eligible to bid in public procurement.

2. Notwithstanding anything contained therein, it is hereby clarified that the said 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.

3. 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.

  
(Sanjay Prasad)  
Joint Secretary (PPD)  
Email ID: [js\\_pfc2\\_doe@gov.in](mailto:js_pfc2_doe@gov.in)  
Telephone: 011-23093882

To,

- (1) Secretaries of All Ministries/ Departments of Government of India for information and necessary action. They are also requested to inform these provisions to all procuring entities.
- (2) Secretary, Department of Public Enterprises with a request to immediately reiterate these orders in respect of Public Enterprises.
- (3) Chief Secretaries/ Administrators of Union Territories/ National Capital Territory of Delhi

F.No.6/18/2019-PPD  
Ministry of Finance  
Department of Expenditure  
Public Procurement Division

161, North Block,  
New Delhi  
24<sup>th</sup> July, 2020

**Order (Public Procurement No. 3)**

**Subject: Clarification to Order (Public Procurement No.1) dated 23<sup>rd</sup> July 2020**

Attention is invited to paragraph 3(b) of the Order (Public Procurement No.1), under the heading "Transitional provisions" which reads as follows:

*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 this Order.*

It is hereby clarified that for the purpose of paragraph 3 (b), "qualified bidders" means only those bidders who would otherwise have been qualified for award of the tender after considering all factors including price, if Order (Public Procurement No. 1) dated 23<sup>rd</sup> July 2020 had not been issued.

2. If bidders from such countries would not have qualified for award for reasons unconnected with the said Order (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.

3. The following examples are given to assist in implementation of the Order.

Example 1: 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 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 23<sup>rd</sup> July. In this case, the tender should be scrapped and fresh tender initiated.

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

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\*\*\*\*\*End of Appendix-3\*\*\*\*\*

## Appendix-4: Global Tender enquiry (GTE)

No.F.4/1/2021-PPD  
Government of India  
Ministry of Finance  
Department of Expenditure  
Procurement Policy Division

\*\*\*\*\*

Room No.264C, North Block, New Delhi.  
Dated the 1<sup>st</sup> September, 2021.

### OFFICE MEMORANDUM

**Subject: Global Tender Enquiry (GTE) under Rule 161(iv) of the General Financial Rules (GFRs), 2017.**

Attention is also invited to this Department's OM No. F.12/17/2019-PPD dated 15.05.2020 and 28.05.2020, vide which Rule 161 (iv) of the GFRs, 2017 was amended to stipulate prior approval from competent authority for invitation of Global Tender Enquiry (GTE) for tender upto Rs. 200 crore, or such limit as may be prescribed by this Department from time to time.

2. It was further clarified by this Department, vide OM No. F.12/17/2019-PPD dated 29.10.2020, that the restrictions on issue of GTE, issued vide OM No. F.12/17/2019-PPD dated 15.05.2020, shall not be applicable on procurement of spares parts of the equipments/ Plant & Machinery etc. on nomination basis from Original Equipment Manufacturer (OEM)/ Original Equipment Supplier (OES) or Original Part Manufacturer (OPM), as no competitive tenders are invited in such cases.

3. In this context, NITI in consultation with Scientific Ministries/ Departments has recommended that services like Annual Maintenance Contract (AMC) and auxiliary/ add-on components for existing equipments, which are procured from OEM/ OES/ OPM on nomination basis should also be exempted from seeking approval of GTE from competent authority.

4. The matter has been perused and it is clarified that this Department's OM No. F.12/17/2019-PPD dated 15.05.2020 will also not be applicable to procurement of services like AMC and auxiliary/ add-on components for existing equipments/ Plant & Machinery, etc. on nomination basis from OEM/ OES/ OPM as no competitive tenders are invited in such cases.

5. This issues with the approval of Finance Secretary.

by  
01/09/2021  
Kanwalpreet  
Director (PPD)

Tel.: 23093811, email: kanwal.irss@gov.in

To.

Secretaries, All Ministries/ Departments of Government of India.

**F.No.DPE/7(4)/2017-Fin.  
Government of India  
Ministry of Finance  
Department of Public Enterprises  
\*\*\*\*\***

**Public Enterprise Bhawan  
Block No. 14, CGO Complex  
Lodhi Road, New Delhi- 110003**

**Date: 07.08.2021**

**OFFICE MEMORANDUM**

**Subject: Revised Consolidated Instructions regarding Global Tender Enquiry (GTE) under rule 161(iv) of General Financial Rules (GFRs), 2017 upto Rs.200 crore- regarding**

In continuation to this Office OM of even number dated 6<sup>th</sup> July, 2021 on the above subject the undersigned is directed to forward the revised consolidated guidelines on Global Tender Enquiry (GTE) issued by D/o Expenditure vide OM No. F.4/1/2021-PPD dated 03<sup>rd</sup> August, 2021 for bringing them to notice of the CPSEs and their administrative Ministries/Departments for compliance.

2. This issues with the approval of competent authority.

  
(Amit Rastogi)  
Director  
Tel. 24362061

Encl: AS above

To

- i) All the Secretaries to the Administrative Ministries/Departments of CPSEs
- ii) Chief Executives of CPSEs

No. F.4/1/2021-PPD  
Government of India  
Ministry of Finance  
Department of Expenditure  
Procurement Policy Division

264-C, North Block,  
New Delhi Dated the 03<sup>rd</sup> August, 2021

**OFFICE MEMORANDUM**

**Subject: Revised Consolidated Instructions regarding Global Tender Enquiry (GTE) under Rule 161(iv) of General Financial Rules (GFRs) 2017 upto Rs 200 crore.**

Attention is invited to this Department's OM No. F.12/17/2019-PPD dated 15.05.2020 regarding amendment in Rule 161(iv) of General Financial Rules (GFRs) 2017 stipulating that no Global Tender Enquiry (GTE) shall be invited for tenders upto Rs.200 crore or such limit as may be prescribed by this Department from time to time. It further stipulates that in exceptional cases, where the Ministry or the Department feels that there are special reasons for GTE, it may record its detailed justification and seek prior approval for relaxation to the above Rule from the competent authority i.e. Secretary (Coordination), Cabinet Secretariat.

2. Applicability: Restriction on Global tenders as specified in the revised Rule 161(iv) of GFRs, 2017 will be applicable on all procurements including Goods, Non-consulting services, Consultancy Services and Works including turnkey projects. The instructions are applicable for all the tenders published in newspapers or website after 15.05.2020.

3. It is noted that 40-45 % of the proposals being sent by Ministries/ Departments are either not complete or not in accordance with the instructions issued by this Department and Cabinet Secretariat for submission of the proposals. Due to this, such proposals are returned to proposing Ministry/ Department for rectification. In order to avoid shuttling of the proposals and to save time, all instructions for submission of proposals have been consolidated as under for convenience of proposing Ministries/Departments:

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

3.2 The proposals shall be submitted along-with **duly filled format** (issued by Cabinet Secretariat vide ID No. 213/2/1/2020-C.A.IV dated 06.10.2020, Annexure-I). **Every page should be attested by Administrative Ministry.**

Page 1 of 3

3.3 Proposals are to be simultaneously sent to the following:

- (i) Cabinet Secretariat, email: [ca4-cabsec@gov.in](mailto:ca4-cabsec@gov.in),
- (ii) Department for Promotion of Industry & Internal Trade (DPIIT) emails: [manmeet.nanda@ias.nic.in](mailto:manmeet.nanda@ias.nic.in) & [rajesh.gupta66@gov.in](mailto:rajesh.gupta66@gov.in), and
- (iii) Department of Expenditure, email: [kanwal.irss@gov.in](mailto:kanwal.irss@gov.in) and [sudesh.kumar85@gov.in](mailto:sudesh.kumar85@gov.in)

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

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

#### 4. Exemptions/Clarifications

4.1 For procurement of specialised equipments required for research purposes, and spares and consumables, for such equipments upto Rs. 200 crore for the use of Educational and Research Institutes, Secretary of Ministry/ Department concerned shall be the competent authority to approve issue of Global Tender Enquiries for such requirements subject to fulfilment of conditions as laid down in Annexure-II. The equipment should be of specialized nature required for research purposes and not the routine equipment used in offices. (OM No. 20/45/2020-PPD dated 08.01.2021)

4.2 **Special relaxation for procurement of Covid-19 related items/ equipments/ services etc. through GTEs till 31.10.2021:** Secretary of Ministry/ Department concerned shall be the competent authority to approve issue of such Global Tender Enquiries (OM No. 4/1/2021-PPD dated 11.06.2021).

4.3 Further, instructions issued vide this department OM No. 12/17/2019-PPD dated 15.05.2020 will not be applicable in following cases:

- (i) On procurement of spare parts of the equipments/ Plants & Machinery etc. on nomination basis from Original Equipments Manufactures (OEMs) or Original Equipment Suppliers (OES) or Original Part Manufacturers (OPMs) as no competitive tenders are invited in such cases (OM No. 12/17/2019-PPD dated 29.10.2020).
- (ii) Where procuring entities need to issue GTEs to fulfil contractual commitments/ obligations entered by them before 15.05.2020 i.e. bid has been submitted by them to their clients before 15.05.2020. Similarly, where procuring entities need to issue GTEs in view of existing collaboration agreements entered by them with foreign suppliers before 15.05.2020. (OM No. 4/1/2021-PPD dated 12.03.2021).

*4/03/08/2021.*  
(Kanwalpreet)  
Director (PPD)  
Tel.No. 2309 3811  
Email: kanwal.irss@gov.in

To,

All the Secretaries and Financial Advisers to Government of India

Page 3 of 3

\*\*\*\*\***End of Appendix-4**\*\*\*\*\*

## **Appendix-5: E-Tender**

### **1.0 E-PROCUREMENT**

Electronic procurement or e-Procurement is a web-based application, where an organization uses internet to procure the goods and services. It allows greater flexibility and control over every aspect of the purchasing process with a fully electronic workflow. Apart from various features, e-tendering is carried out through internet in an online environment in effective and transparent way.

### **1.1 E-TENDER:**

E - Tendering is the process of floating tender and receipt of bids from the bidders through internet portal. OIL is presently using MY SAP SRM with standard SAP BSE (Bid Security Enhancement) for e-tendering. Threshold value for E-tender is presently fixed at Rs. 10 Lakhs. Publications of tender in OIL website / Govt. portals are to be done in the same manner as in case of physical tenders.

### **1.2 MODALITIES OF E-TENDERING PROCESS:**

1.2.1 The Purchase requisition (PR) is made in the SAP ECC system by maintaining the relevant e-tender related purchasing group in the PR. PR is to be released in the system as per the provision of DoP/approval process.

1.2.2 Released PR's to be transported to e-tender server for doing e-Tendering.

The following needs to be taken care of before replication:

- i. PR is fully released in system.
- ii. Materials in the PR are already in the e-Tender system.
- iii. The replication date is greater than or equal to the Max. Delivery Date as per the PR.

*Note: In the following scenarios PR replication is not possible and Manual creation of tender in e-portal is required.*

- a) PR with unknown A/C Assignment
- b) PR without Plant Data
- c) PR Services without Quantity

1.2.3 After replication of PR and its items, tender no. is to be generated in SAP ECC system. The first three letters of the tender shall define the purchase group of the tender. The next four Digits are system generated serial numbers. Then "L" indicates Limited Tender and "P" indicated Press Tender. Last two Digits is the Year of the Tender.

The generated tender no. is then mapped in E-tender portal by linking the PR through carryout sourcing. As the tender type cannot be changed after creation, utmost care must be taken while creating a tender in the portal.

1.2.4 Created tenders are then to be processed further in E-tender portal as per the publication type (Restricted / Open) and to fill all relevant data in respective fields. User must have valid class 3 Digital Signature Certificate with encryption to upload any files (tender documents/supporting documents) in E-tender portal. After implementation of standard BSE tool in E-tender portal, it is mandatory to maintain primary, secondary and tertiary decrptors with valid users. The users assign for Decryptor bid will be responsible for decrypting the Technical/Price Bid.

Hence, users to assign carefully at the time of publishing the Rfx. Encryption certificate of all these users should be valid throughout tendering process. Otherwise, it will not be possible to make any amendments/re-publishing of the respective tenders in E-tender portal.

Before Tender publication, Tender Documents Folder in the Technical Rfx folder shall be released. Once the Tenders are published, no files from the Tender folders are allowed to be deleted or modified. An Amendment shall be incorporated in the Amendment folder only. This folder shall not be released. For Limited Tenders, name of the bidders are maintained in the bidders page of the e-tender portal and once the tender is published, system generated automatic e-mail inviting bid from the bidders is sent automatically by the system.

- 1.2.5 For press e-tender, a guest bidder is maintained automatically by the system and any bidder can view and download the tender document through guest log in the OIL's e-tender portal. Also registered vendors with OIL, who have a user ID and password for OIL's e-tender portal, can view any press tender document by logging onto the e-portal using their user ID and password.

For new vendors, there is also a provision of online vendor registration in E-tender portal. New vendors can apply online for user ID and password through ROS (Registration of Supplier) features of E-tender portal. It takes 3-4 working days by ERP team to generate user ID and password after completion of registration.

- 1.2.6 Bidders can submit their bids any time before the bid closing date and time. Bid modification and / or withdrawal after submission is allowed before the due date and time of submission.

- 1.2.7 E-tender system has in-built checks, which controls and accepts only bids submitted before the bid closing date and time. Similarly, it checks and verify requisite digital certificate as system accepts only Class III DSC [Organization] along with Encryption Certificate issued by any of the Licensed Certifying Authorities (CA) operating under Controller of Certifying Authorities (CCA) of India as per Indian IT Act 2000. The "time" is the SRM system Server's time which is displayed on the e- Tendering screen.

- 1.2.8 Bids can be opened in the system by simultaneous log on from two users (one from C&P and other from F&A), once the opening Date and time maintained in the system are over. Therefore, unlike physical tender, at the time of bid opening, physical signature of Tendering officer as well as Account officer is not required in the document. However, about the important parameter like receipt of tender sample, hard copy of original bid bond whenever required are to be recorded at the time of bid opening. After completing the Simultaneous logon successfully (technical/price), the technical bid/ price bid has to be decrypted by the predefined users (Decryptor) maintained in the tender. Tender opening is completed only after successful decryption of technical / price bid.

- 1.2.9 The bid security, wherever applicable, is taken in physical form which should be submitted before the bid opening date & time. Bid security can also be submitted online through the e-tender portal. However, for online submission of bid security by bidders, EMD details should be properly maintained by dealing officer in E-tender portal.

### **1.3 PRE-REQUISITES FOR SUBMISSION OF TENDERS ONLINE:**

- 1.3.1 Supplier shall have a valid User Id & Password to access OIL e- Procurement site.

- 1.3.2 In order to bid for OIL e-tenders, all the vendors must have a legally valid Digital Certificate Class III [Organization] along with Encryption Certificate as per Indian IT

Act from the licensed Certifying Authorities (CA) operating under the Root Certifying Authority of India (RCAI), Controller of Certifying Authorities (CCA) of India. Digital Signature Certificate comes in a pair of Signing/verification and Encryption/decryption certificate. Bidder should have both the Signing/verification and Encryption/Decryption certificate for Signing and encryption, decryption purpose respectively.

Encryption certificate is mandatorily required for submission of bid. In case bidder created response with one certificate (using encryption key) and bidder change his Digital Signature Certificate then old certificate (used for encryption) is required in order to decrypt his encrypted response for getting the edit mode of the response. Once decryption is done, bidder may use new DSC certificate for uploading and submission of their offer. It is the sole responsibility of the bidder to keep their DSC certificate properly.

**1.4 GENERAL GUIDELINE FOR E-TENDERING:**

- 1.4.1 For Composite bid system, Bid closing and Opening Date are maintained same but a time gap of minimum 3 hours shall be maintained between closing and opening of bids.
- 1.4.2 For two-bid system, Bid closing and Techno-commercial Unpriced Bid Opening Date are maintained same but a time gap of minimum 3 hours shall be maintained between closing and opening of bids. However, to ensure that a commercial bid does not open, a future date and time are maintained in the system under Opening Date and time. For preponing price bid opening date in system after approval of price bid opening proposal, dealing officer needs to take an authorisation from ERP. No specific date and time should be put under “Start date” as bidder is eligible to submit their bid on the same day after publishing of tender.
- 1.4.3 For e-tenders, unlike physical tender, at the time of bid opening, physical signature of Tendering officer as well as Account officer is not required on the offers. However, about the important parameter like receipt of tender sample, hard copy of original bid bond whenever required are to be recorded at the time of bid opening.

\*\*\*\*\* End of Appendix-5\*\*\*\*\*

## **Appendix-6: Physical tender**

### **1.0 Enquiry Register**

**1.1** An enquiry register shall be maintained, either in system (SAP etc.) or physically.

**1.2** In case of limited enquiries, the name of the firms to whom the enquiries will be addressed will be entered in that register. This will be signed by the concerned officer issuing the enquiry.

### **2.0 ISSUE OF TENDER DOCUMENTS TO FIRMS WITH WHOM BUSINESS HAS BEEN BANNED / SUSPENDED:**

It may be specified in INVITATION TO BID that firm(s) to whom no further business is to be given or dealings with whom have been banned / suspended are not eligible to participate in the tender and any bid received from such firm(s) shall not be considered and will be returned un-opened to the concerned firm(s) within a period of seven days from the due date of opening of tenders.

If inadvertently a tender document is issued to a bidder falling in above category and such bidder submits the bid, his bid shall not be considered and will be returned to the bidder.

### **3.0 RECEIPT OF TENDERS**

**3.1** Bids are to be submitted by the bidders in triplicate or duplicate in sealed envelopes as mentioned in the tender. The cover of the submitted envelopes should bear Tender No. and Bid Closing date and time. Name of the bidder should also be mentioned on the envelope. In case the bidder is the authorised dealer of the OEM, then the name of the OEM should also be mentioned on the envelope.

**3.2** The bids will be received as under:

- (i) Directly put in Tender Box by bidders.
- (ii) Received by ordinary/registered post/courier/Speed post.
- (iii) Handed over personally to Despatch section of C&P department by the Bidder(s) if not possible for them to put in Tender Box due to volume of the documents.

**3.3** Bids hand carried by the bidder's representatives shall be directly put by them in the Tender Box.

**3.4** In case of bids received through courier or post, the Despatch Section of Contracts/Materials Department will maintain a separate register wherein details like tender no., receipt date etc. would be recorded by them. After recording the same in the register, the bids shall be put inside the Indigenous or Foreign Tender Boxes as the case may be.

**3.5** Bids and samples hand carried by the bidders or received though Post/Courier, which cannot be put in the tender boxes due to its voluminous sizes will be received by Despatch section of Contracts/Materials department from the bidders directly. All such bids and samples received in Despatch section will be forwarded through register to the concerned Contracts/Materials Section who will keep record in a separate register. The register and the bids & samples so received will be kept in the safe condition under lock & key. On the bid opening date, the tenders falling due on

that day are taken out after recording the same in the register and brought to the tender opening room for opening of the same.

**3.6** The above provision shall not be applicable in case of e-tendering. However, in case of e-tendering, the bid shall be received only in electronic form through e-tender portal of OIL. The under mentioned document, in addition to the uploading of document on portal shall also be submitted in original in physical form:

- (i) EMD/Bid bond
- (ii) Power of Attorney

**3.7** In case of quotations received after the bid closing date/time, the same shall be put in the respective Tender Box after recording date and time of receipt on the cover of the quotation. At the time of subsequent opening of the Tender Box, all such late tenders will be taken out and stamped as under:

"LATE OFFER Found in Tender Box on ....."

#### **4.0 TENDER BOX AND ITS CUSTODY**

**4.1** The Tender Box shall have suitable provision at the top for dropping envelopes. Two tender boxes should be there - One for International Competitive Bidding (ICB)/Limited International Competitive Bidding (LICB)/Other Foreign tenders and the other box will be for all Domestic tenders.

**4.2** The Tender Box shall be kept at a secured and safe place in the office accessible to the public.

**4.3** The Tender Box shall always be kept under lock and key under double lock system, one key is to be kept in the custody of a Contracts/Materials officer and the other key in the custody of a Finance & Accounts Officer. The duplicate keys are to be kept with the representatives of HoD of Contracts/Materials and HoD of Finance & Accounts.

#### **5.0 OPENING OF TENDERS**

**5.1** Tenders are opened on the day and time as specified in the NIT in the presence of a representative of the F&A Department not below the rank of a Senior Accounts Officer and a representative of the C&P Department not below the rank of a Senior Purchase Officer. Bids for which an acceptable request of withdrawal has been received from the bidder shall not be opened.

**5.2** Tenders shall be opened on next working day if the opening date specified in NIT turns out to be an unscheduled holiday/ Bandh.

**5.3** Accordingly, bid closing date / time will get extended upto the next working day.

**5.4** The bidders or their authorised representatives may be present at the time of tender opening. No other person than officials of OIL or authorised representatives of bidders shall be present at the time of tender opening. If a bidder desires his authorised representative to be present at the time of opening, he is required to submit a letter of authority along with his tender and a copy of the said letter of authority has to be presented by the bidder's representative to the officers opening the tenders. Representatives of bidders whose offers have not been received within

the date and time of tender opening shall not be allowed to attend the tender opening.

**5.5** While opening the tenders, the names and addresses of all the bidders are recorded in a Statement. The quotations are serially numbered. For example, if four quotations are received, the first quotation opened will be numbered 1/4, the second 2/4 and so on. If any regret letter is received from any bidder, it is also recorded in the Statement. If authorized representatives of the bidders are present at the time of bid opening, their names and names of firms they represent are recorded in another Statement. Signatures of the representatives are also obtained on this Statement against their respective names. Each page of both the above Statements are signed by OIL's Tender Opening officers opening the Tenders.

**5.6** Following points are to be noted –

- i) Corrections/ Cutting/ overwriting/ additions are to be initialled by tender opening officer.
- ii) Number of corrections on each page of the bid (s) will also be recorded by tender opening officers.
- iii) Numbering has to be done on each page of the price bid (including attachments but excluding printed general catalogues and booklets) with initials of tender opening officers. For general catalogues and booklets, first and last page to be initialled by Tender opening officers. Total number of pages in the Price Bid should be indicated on top of the Price bid. This is applicable only for original bid.
- iv) Any ambiguities in rates quoted by tenderers, in words or figures must be clearly indicated.
- v) Where the Bidders have omitted to quote the rates in figures or in words, the officer opening the tender should record the omissions. Nil correction/omission/insertion are also required to be specified on each page of the price bids.
- vi) Discount of any type, if indicated separately shall be initialled by tender opening officers.
- vii) The samples received along with the tenders shall also be signed by both the officers. If it is not possible to sign on the samples then those samples should be sealed with the label mentioning the name of the firm. Name of the firm should invariably be recorded on the sample, if not given already. The names of the parties who have submitted sample should also be recorded in Bid Opening statement.
- viii) The cases where Bid Security is required as per tender condition, names of Bidders, who have submitted/not submitted Bid Security, shall be recorded in Bid Opening statement.
- ix) While reading out the rates in the public opening, only the total prices or group-wise prices, if sought as per tender, should be read out in addition to delivery schedule and major terms and conditions.

\*\*\*\*\***End of Appendix-6**\*\*\*\*\*

## Appendix-7: Micro Small & Medium Enterprise (MSME) Policy

रजिस्ट्री सं० डी० एल०-33004/99

REGD. NO. D. L.-33004/99



# भारत का राजपत्र The Gazette of India

असाधारण

EXTRAORDINARY

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### सूक्ष्म, लघु और मध्यम उद्यम मंत्रालय

#### आदेश

नई दिल्ली, 9 नवम्बर, 2018

**का.आ. 5670(अ).**—केंद्रीय सरकार, सूक्ष्म, लघु और मध्यम उद्यम विकास अधिनियम, 2006 (2006 का 27) की धारा 11 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, सूक्ष्म और लघु उद्यम (एमएसई) के लिए सार्वजनिक प्रापण नीति आदेश, 2012 में निम्नलिखित संशोधन करता है:—

- (i) यह आदेश सूक्ष्म और लघु उद्यमों (एमएसई) के लिए सार्वजनिक प्रापण नीति संशोधन आदेश, 2018 कहा जाएगा।  
(ii) यह सरकारी राजपत्र में अपने प्रकाशन की तिथि से प्रवृत्त होगा।
- पूरे सूक्ष्म और लघु उद्यमों (एमएसई) के लिए सार्वजनिक प्रापण नीति आदेश, 2012 (जिसे इसमें इसके पश्चात उक्त आदेश कहा गया है) में जहां कहीं भी आंकड़े और शब्द "20 प्रतिशत" है उसे "25 प्रतिशत" के आंकड़े और शब्द से प्रतिस्थापित किया जाएगा।
- उक्त आदेश के पैराग्राफ 4 के पश्चात निम्नलिखित पैरा को जोड़ा जाएगा :-  
"4 क. महिलाओं के स्वामित्व वाले सूक्ष्म और लघु उद्यम के लिए विशेष प्रावधान। सूक्ष्म और लघु उद्यमों से कुल वार्षिक खरीद में से 25 प्रतिशत के लक्ष्य के अंदर महिलाओं के स्वामित्व वाले सूक्ष्म और लघु उद्यम से खरीद के लिए 3 प्रतिशत का लक्ष्य निर्दिष्ट किया जाएगा।"

[फा. सं. 21(22)/2018-एमए]

राम मोहन मिश्रा, अपर सचिव और विकास आयुक्त

6586 GI/2018

(1)

**MINISTRY OF MICRO, SMALL AND MEDIUM ENTERPRISES****ORDER**

New Delhi, the 9th November, 2018

**S.O. 5670(E).**—In exercise of powers conferred by section 11 of the Micro, Small and Medium Enterprises Development Act, 2006 (27 of 2006), the Central Government hereby makes the following amendments to the Public Procurement Policy for the Micro and Small Enterprises (MSEs) Order, 2012 namely :—

1. (i) This Order may be called the Public Procurement Policy for Micro and Small Enterprises (MSEs) Amendment Order, 2018.  
(ii) This shall come into force on the date of its publication in the Official Gazette.
2. Throughout the Public Procurement Policy for Micro and Small Enterprises (MSEs) Order, 2012, (hereinafter referred to as the said Order), for the figures and word “20 per cent”, wherever they occur, the figures and word “25 per cent” shall be substituted.
3. After paragraph 4 of the said Order, the following paragraph shall be inserted, namely:-  
“4A. Special provision for Micro and Small Enterprise owned by women. Out of the total annual procurement from Micro and Small Enterprises, 3 per cent from within the 25 per cent target shall be earmarked for procurement from Micro and Small Enterprises owned by women.

[F. No. 21(22)-2018-MA]

RAM MOHAN MISHRA, Addl. Secy. & Development Commissioner

F.No. 1(3)/2018-MA, Part-III  
Government of India  
Office of Development Commissioner  
(Micro, Small & Medium Enterprises)  
(Public Procurement Policy)

Dated: 25<sup>th</sup> March, 2022

**OFFICE MEMORANDUM**

**Subject: Revised FAQs in respect of Public Procurement Policy for MSEs Order, 2012-reg.**

This is in continuation of earlier FAQs circulated vide O.M. No. 1(3)/2018-MA Part III of this Ministry on 27<sup>th</sup> January, 2022. Based on the repeated queries being received by this office, the attachment has revisions pertaining to Question No. 8 and 29.

This issues with the approval of Competent Authority.

Encl.: As above



(Nitisha Mann)  
Dy. Director  
(Public Procurement Policy)

To

All Concerned

**FREQUENTLY ASKED QUESTIONS  
ON  
PUBLIC PROCUREMENT POLICY FOR MSEs, ORDER 2012**

Dated, 25<sup>th</sup> March, 2022

**Q.No.1: What is the share of procurement from MSEs out of the total procurement made by Central Government Ministries/ Departments/ Public Sector Undertakings?**

Ans. Under amended Public Procurement Policy for MSEs, Order 2012 a minimum 25 per cent share out of the total annual procurement by Central Government Ministries / Departments / Public Sector Undertakings are to be made from MSEs.

**Q. No.2: Is there any reservation for MSEs owned by SC/ST/ Women entrepreneurs?**

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

**Q No.3: Who is eligible for availing the benefits under the Public Procurement Policy?**

Ans. As mentioned in Section 7(4) of Ministry of MSME's Notification No. S.O2119(E) dated 26th June, 2020, an enterprise registered with any other organization under the Ministry of MSME shall register itself under Udyam Registration. With effect from 01.07.2020, MSEs registered under Udyam Registration are eligible to avail the benefits under the Policy. MSEs registered under Udyog Aadhaar Memorandum (UAM), validity of which is till 31.03.2022, are also eligible to avail the benefits under the Policy.

**Q.No.4: What is the date of implementation of the policy?**

Ans. The policy is applicable with effect from 1.4.2012 and became mandatory with effect from 1.4.2015 onwards.

**Q.No.5: Is the Policy transparent, competitive and cost effective?**

Ans. The Policy rests upon core principles of competitiveness, adhering to sound procurement practices and execution of orders for supply of goods and services in accordance with a system which is fair, equitable, transparent, competitive and cost effective.

**Q.No.6: Is the policy implemented in parts or fully from its inception?**

Ans. As per Gazette Notification(S.O. 5670(E) dated 8<sup>th</sup> November, 2018, it is mandatory for all Central Government Ministries / Departments/ CPSUs to procure at least 25% of their annual procurement from MSEs including 4% from MSEs owned by SC/ST entrepreneur and 3% from MSEs owned by women entrepreneur.

**Q.No.7: Is there any monitoring system for assessing the Government procurement from MSEs?**

Ans. To monitor the progress of procurement by Central Government Ministries/ Departments and CPSUs from MSEs, Ministry of MSME has launched the **MSME Sambandh 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.

**Q.No.8: Is there a price matching facility for procurement from MSEs over large scale?**

Ans.

(i) Price quotation in tenders: In tender, participating Micro and Small Enterprises, quoting price within price band of L1+15 percent shall also be allowed to supply a portion of requirement by bringing down their price to L1 price in a situation where L1 price is from someone other than a Micro and Small Enterprise and such MSE shall be allowed to supply up to 25 per cent of total tender value.

(ii) In case of more than one such Micro and Small Enterprise, the supply shall be shared proportionately ( to tendered quantity).

**Q.No.9: What steps are to be taken by the Central Government Ministries/ Departments/ CPSUs to develop MSE Vendors so as to achieve their targets for MSEs procurement?**

Ans. The Central Government Ministries/ Departments/ Public Sector Undertakings shall take necessary steps to develop appropriate vendors by organizing Vendor Development Programmes (VDPs) or Buyer-Seller Meets focused on developing MSEs for procurement through the GeM Portal.

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.

**Q.No.10: What steps are to be taken by the Central Government Ministries/ Departments/ CPSUs to develop vendors from MSEs owned by SC/ST/Women entrepreneurs?**

Ans. For enhancing the participation of MSEs owned by SCs / STs/ Women in Government procurement, Central Government Ministries / Departments / CPSUs have to take the following steps:

- i. Special Vendor Development Programmes/ Buyer-Seller Meets would be conducted by Departments/ CPSUs for SC/STs and Women.
- ii. Outreach programmes will be conducted by National Small Industries Corporation (NSIC) to cover more and more MSEs from SC/STs under its schemes of consortia formation; and
- iii. NSIC would open a special window for SCs/ STs under its Single Point Registration Scheme (SPRS).
- iv. A National SC/ST hub scheme was launched in October, 2016, for providing handholding support to SC/ST entrepreneur which is being coordinated / implemented by the NSIC under this Ministry.

**Q.No.11: What are the other benefits /facilities available to the MSEs under the policy?**

Ans. To reduce transaction cost of doing business, MSEs will be facilitated by providing them tender sets free of cost, exempting MSEs from payment of earnest money deposit, adopting e-procurement to bring in transparency in tendering process. However, exemption from paying of Performance Bank Guarantee is not covered under the policy. MSEs may also be given relaxation in prior turnover and prior experience criteria during the tender process.

**Q.No.12: Is there any review mechanism for monitoring and reviewing of the policy?**

Ans. A Review Committee has been constituted under the Chairmanship of Secretary, Ministry of MSME for monitoring and reviewing of Public Procurement Policy for MSEs. M/O MSME will review and/or modify the composition of the Committee as and when required. This Committee will, inter alia, review the list of 358 items reserved for exclusive purchase from MSEs on a continuous basis, consider requests from Central Government Departments, CPSUs for exemption from 25% target on a case to case basis and monitor achievements under the Policy.

**Q. No.13: What is the grievance redressal mechanism in case of non-compliance of the Policy by any Government Department?**

Ans. To redress the grievances of MSEs related to non-compliance of the Policy a Grievance Cell named "CHAMPION Portal" has been set up in the Ministry of MSME.

**Q. No.14: Whether there is any kind of purchase that has been kept out of the purview of procurement under the Policy? If yes, how is the monitoring of the set goal done?**

Ans. Given their unique nature, Defense armament imports will not be included in computing 25% goal for M/o Defense. In addition, Defense Equipments like weapon systems, missiles, etc. will remain out of purview of such policy of reservation. Monitoring of goals set under the policy will be done, in so far as they relate to the Defense sector, by Ministry of Defense itself in accordance with suitable procedures to be established by them.

**Q.No.15: From where can the details of the Policy be obtained?**

Ans. Policy details are available on the website of this office at [www.dcmsme.gov.in](http://www.dcmsme.gov.in).

**Q.No.16: Is this policy mandatory under any Act?**

Ans. Yes, the Policy is mandatory and notified under the MSMED Act, 2006.

**Q.No.17: How many items are reserved for exclusive purchase from MSEs?**

Ans. There are 358 items reserved for exclusive purchase from MSE Sector.

**Q.No.18: Whether this policy is applicable for works/ trading activities also?**

Ans. Policy is meant for procurement of only goods produced and services rendered by MSEs. However, traders/ distributors/ sole agent/ Works Contract are excluded from the purview of Public Procurement Policy for MSEs Order,2012.

**Q.No.19: Whether the Policy is applicable for MSEs registered with NSIC?**

Ans. The Policy is applicable for all MSEs registered under Udyam Registration and Udyog Aadhar Memorandum (valid till 31.03.2022).

**Q.No.20: Whether the Policy provides benefits for exemption from Security Deposit/ Performance Bank Guarantee to MSEs?**

Ans. No, there is no exemption on Security Deposit/ Performance Bank Guarantee under the Policy.

**Q.No.21: Can MSEs quoting a price within the band L1+15% be given complete supply to tender in case tender item cannot be split /divided?**

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

**Q.No.22: Which are the MSEs owned by SC/ST enterprises?**

Ans. The definition of MSEs owned by SC/ ST is as given under:

- (a) In case of proprietary MSE, proprietor(s) shall be SC /ST.
- (b) In case of partnership MSE, the SC / ST partners shall be holding at least 51% shares in the unit.
- (c) In case of Private Limited Companies, at least 51% share shall be held by SC/ST promoters.

**Q.No.23: Can the Central Government Ministries/ Departments/ CPSUs who have a meagre value of total procurement be exempted from the Policy?**

Ans. The Policy is applicable to all the Central Government Ministries / Departments / CPSUs, irrespective of the volume and nature of procurement.

**Q.No.24: Does the Policy have a provision for exemption from 25% procurement target?**

Ans. The Review Committee may consider any request of Ministries / Departments / CPSUs for exemption from the present 25% procurement targets on a case to case basis.

**Q.No.25: Does laminated paper Gr. I, II and III fall under the paper conversion product (Sl.No.202) and is a reserved item for exclusive procurement from MSEs?**

Ans. As per Policy Circular No. 21(6)/2016-MA dt. 26th May, 2016, it is clarified that only paper bags, envelopes, ice-cream cups, paper cups and saucers and paper plates are covered under the head "Paper Conversion products" at Sl. No. 202 of the list of reserved items under the Public Procurement Policy for MSEs Order-2012. Accordingly, the description of Sl. No. 202 as indicated in the English version of the Reserved List will be applicable.

**Q.No.26: Are MSEs having Udyam Registration Certificate eligible for availing benefits under the PP Policy?**

Ans. Yes, Udyog Aadhar has been replaced with Udyam Registration Certificate w.e.f 01.07.2020. Udyam Registered MSMEs can avail the benefits under the Public Procurement Policy. The UAM will also remain valid till 31.03.2022.

**Q.No.27: Does the Ministry give any certificate for MSEs having Udyam Registration?**

Ans. The Erstwhile Udyog Aadhaar Memorandum (UAM valid till 31.03.2022) has been replaced by Udyam Registration Certificate (w.e.f. 01.07.2020). As part of ease of doing business, Udyam Registration Certificate (URC) has been introduced through a dedicated portal on self certification basis. An acknowledgement of URC is generated online instantly which is accepted by all Central Government Ministries / Departments / CPSUs and State Govts.

**Q.No.28: Is the Public Procurement Policy applicable to State Governments/ State Departments/ State PSUs?**

Ans. The Public Procurement Policy for MSEs Order, 2012 is applicable to Central Government Ministries/ Departments and CPSUs. This Policy is not applicable to State Government Ministries/ Departments/ PSUs.

**Q.No.29: Are the benefits of Public Procurement Policy applicable to MSEs who are not registered for the tendered items?**

Ans. The benefits of PPP should be given to all eligible MSEs irrespective of relevance of product Category and as per Sl. No. 3 of FAQ.

**Q.No.30: Can the relaxation of norms for start ups and MSEs in Public Procurement Policy in prior experience and prior turnover criteria be given to all MSEs?**

Ans. It is clarified that all Central Government Ministries/ Departments/ Central Public Sector Undertakings may relax conditions of prior turnover and prior experience with respect to Micro and Small Enterprises in all public procurement, subject to meeting of quality and technical specifications (*In exercise of Para 16 of Public Procurement Policy for Micro and Small Enterprises, Order 2012*).

However, there may be circumstances (like procurement of items related to public safety, health, critical security operations and equipment, etc.) where procuring entity may prefer the vendor to have prior experience rather than giving orders to new entities (**O.M.No.F.20/2/2014-PPD(Pt.)dated 20.09.2016 issued by DoE**).

**Q.No.31: Has the Ministry clarified the sub target of procurement from SC/STs/Women entrepreneurs under amended Public Procurement Policy for MSEs, Order 2012?**

Ans. It is clarified that sub-targets of 4% (within 25% of annual procurement target) and 3% (within 25% of annual procurement target) have been earmarked for procurement from MSEs owned by SC&ST and Women entrepreneurs, respectively under the amended Public Procurement Policy for MSEs Order, 2012.

**Q.No.32: Are Works Contracts a part of Services? What is the difference between Works and Services?**

Ans. Works Contracts are not covered under the purview of Public Procurement Policy for MSEs. The definition is available in **GFR Rules 130, 143, 177 & 197**.

**Q.No.33: Is there any provision to take action against the defaulting MSEs under the Policy?**

Ans. There is no such provision under the Policy. The procuring entity may take appropriate action as per terms and conditions (T&C) of the tender documents and/or as per GFR Rules.

**Q.No.34: Are financial institutions/ autonomous bodies included in the PP Policy?**

Ans. The Policy is applicable for all Central Government Ministries/ Departments and CPSUs.

**Q.No.35: Can the Ministry take action against the procuring agency for Delay in return of the Security Deposit of the MSEs?**

Ans. There is no such provision under the Policy. The matter can be referred to the department concerned for taking appropriate action in the interest of the MSE complainant.

**Q.No.36: Is it mandatory for MSEs to disclose their status as SC/ST/Women in Udyam Registration Certificate (URC)?**

Ans. Yes, it is mandatory to disclose the status as SC/ST/Women for in Udyam Registration.

**Q.No.37: Have the State Governments been asked to frame a Public Procurement Policy for MSEs?**

Ans. Yes, all the State Governments have been requested to frame the Public Procurement Policy on similar lines.

**Q.No.38: Have all the CPSUs been uploading their monthly and annual procurement details, on MSME SAMBANDH Portal?**

Ans. Most of the CPSUs are uploading their procurement details on the portal.

**Q.No.39: Is there any provision to take action against the procuring agency for non-compliance of PPP-MSE under the Policy?**

Ans. No, there is no such provision in the Policy.

**Q.No.40: What is the objective of the Policy?**

Ans. The objective of the Policy is to promote Micro and Small Enterprises (MSEs) by improving their market access and competitiveness through:-

- Increased participation in Government purchase.
- Encouraging relationship (including product development) between MSEs and Public Sector Undertaking (PSUs).
- Increased share of supplies of MSEs to Central Government Ministries/ Departments and CPSUs.
- Increased share of supplies of MSEs to Central Government Ministries/ Departments and CPSUs.

**Q.No.41: What are the items or goods which can be procured from MSEs to achieve the target of 25% from MSEs ?**

Ans. To achieve the target Government / CPSUs they can procure

- i. The items from the list of 358 items reserved for procurement from MSEs.
- ii. Items which are being manufactured by MSEs, besides reserved items.

**Q.No.42: How is the status of Enterprises as MSEs be verified?**

Ans. The status of enterprises as MSEs can be verified through their Udyam Registration Certificate or UAM certificate, which is valid till 31st March, 2022. As per notification No. S.O. 2119(E) dated 26.06.2020, in case of any discrepancy or complaint, the General Manager of the District Industries Centre of the District concerned shall undertake an inquiry for verification of the details of Udyam Registration/UAM submitted by the enterprise and thereafter forward the matter with necessary remarks to the Director or Commissioner or Industry Secretary concerned of the State Government who after issuing a notice to the enterprise and after giving an opportunity to present its case and based on the findings, may amend the details or recommend to the Ministry of MSME, Government of India, for cancellation of the Udyam Registration Certificate/UAM.

**Q.No.43: Can sub-contracting be considered under the procurement target from MSE?**

Ans. Yes, if subcontract is given to MSEs, it will be considered as procurement from MSEs.

**Q.No.44: If MSEs participate in tender but the procuring agency denies providing benefits under the Policy, how can the problem be addressed?**

Ans. The problem can be resolved through the Grievance Cell constituted to tackle such situations and the matter may be referred to the procuring agency concerned to redress the problem.

**Q.No.45 What are the steps taken by the Ministry of MSME to promote marketing through GeM portal for supply of Goods or rendering services from MSEs to Government Departments and CPSUs?**

**Ans:**

- CEO, GeM has been requested to make a provision in the GeM portal for procurement of goods and services from MSEs through linking URC.
- Udyam Registration Portal has a facility through which an entrepreneur can opt for linking itself with Government e-market (GeM) place by selecting an option on Udyam Portal. The enterprise will be linked to GeM portal and flow of information will start between these two portals. With this facility, MSEs can link themselves with the Government's procurement system and can participate in Government's mandatory procurement programme from MSEs
- All CPSUs have been requested to procure goods and services from MSEs, through GeM portal only.
- The Ministry of MSME has signed an MOU with CEO, GeM, for mobilizing MSEs for onboarding themselves on the GeM portal for supply of goods & services from MSEs.
- All UAM holders had been requested to register themselves on GeM portal for supply of goods and services through GeM portal.

**Q.No.46: What is the difference between PPP-MII Order, 2017 and PPP-MSE Order, 2012?**

Ans. The Public Procurement Policy for MSEs Order, 2012 is a delegated legislation deriving authority from the Act of Parliament. PPP-MII, Order, 2017 is an executive Order.

**Q.No.47: Can Joint Ventures take the benefits of the Public Procurement Policy for MSEs Order, 2012?**

Ans. No, Under Udyam Registration (and earlier under UAM), there is no provision of registration of Joint Ventures. As mentioned in S. No. 3 above, benefits of the Public Procurement Policy for MSEs Order, 2012 can be availed by those MSEs which are registered on the Udyam Registration portal.

**Q.No.48: Can Consortiums with Foreign Company takes the benefits of the Public Procurement Policy for MSEs Order, 2012?**

Ans. No, Under Udyam Registration (and earlier under UAM), there is no provision of registration of Consortium. As mentioned in S. No. 3 above, benefits of the Public Procurement Policy for MSEs Order, 2012 can be availed by those MSEs which are registered on the Udyam Registration portal.

**Q.No.49: Can trader benefits from Public Procurement Policy, for MSEs Order, 2012?**

Ans. No, as mentioned in O.M. No. 5/2(2)/2021-E/P & G/Policy dated 02.07.2021, Retail and Wholesale traders can register on Udyam Registration Portal for the purpose of Priority Sector Lending (PSL) only.

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**Tentative List of items selected for Purchase from Mico & Small Scale Industrial Units**

<b>Sl. No.</b>	<b>Sl. No. at the List of Items</b>	<b>Description</b>
1	23	Bolts & Nuts
2	149	Hinges
3	197	Pad Locks of all types
4	320	Washers all types
5	334	Wires nails and Horse shoe nails
6	36	Brushes of all types
7	35	Brooms
8	172	Linseed Oil
9	136	Hand Gloves of all types
10	147	Helmet Non-Metallic
11	123	Garments
12	244	Sanitary Plumbing Fittings
13	201	Pans Lavatory Flush
14	293	Taps
15	61	Cloth Sponge
16	294	Tarpaulin
17	177	Machine Screws
18	163	Lamp Holders
19	96	Distribution Board up to 15 amps
20	105	Electric call bells / Buzzers / Door bells
21	122	Fuse unit
22	113	Expanded Metal
23	13	Barbed Wire
24	333	Wire Fencing and Fittings
25	335	Wire nettings of guage thicker than 100 mesh size
26	46	Ceiling roses upto 15 amps
27	224	PVC insulated Aluminium Cables (upto 12 sq. mm.)
28	237	Rubber Hoses (Unbranded)
29	212	Plugs & Sockets electric upto 15 amp
30	107	Electric transmission line hardware items like steel cross bars, cross arms clamps arching horn, brackets, etc.
31	53	Chokes for light fittings
32	9	Automobile Head Lights Assembly
33	27	Boots and shoes of all types including canvas shoes
34	223	PVC Pipes up to 110 mm
35	95	Disinfectant fluids
36	317	Valves Metallic
37	202	Paper conversion products – Paper bags , envelope , ice cream cups , paper cup & saucers , paper plates & Photocopy paper **

\*\*Ministry of MSME , vide Circular – 21(6)/2014-MA dt. 28.11.2014 included Photocopy paper under Srl. No. 202.

### List of 358 Items Reserved for Purchase from Micro and Small Enterprises

- | Sl No. | Item Description  |
|--------|---|
| 1.     | AAC/& ACSR Conductor upto 19 strands  |
| 2.     | Agricultural Implements   |
|        | a. Hand Operated tools & implements   |
|        | b. Animal driven implements   |
| 3.     | Air/Room Coolers  |
| 4.     | Aluminum builder's hardware   |
| 5.     | Ambulance stretcher   |
| 6.     | Ammeters/ohm meter/Volt meter (Electro magnetic upto Class I accuracy)  |
| 7.     | Anklets Web Khaki   |
| 8.     | Augur (Carpenters)  |
| 9.     | Automobile Head lights Assembly   |
| 10.    | Badges cloth embroidered and metals   |
| 11.    | Bags of all types i.e. made of leather, cotton, canvas & jute etc. including kit bags, mail bags, sleeping bags & water-proof bag |
| 12.    | Bandage cloth   |
| 13.    | Barbed Wire   |
| 14.    | Basket cane (Procurement can also be made from State Forest Corpn. and State Handicrafts Corporation)                             |
| 15.    | Bath tubs   |
| 16.    | Battery Charger   |
| 17.    | Battery Eliminator  |
| 18.    | Beam Scales (upto 1.5 tons)   |
| 19.    | Belt leather & straps   |
| 20.    | Bench Vices   |
| 21.    | Bituminous Paints   |
| 22.    | Blotting Paper  |
| 23.    | Bolts & Nuts  |
| 24.    | Bolts Sliding   |
| 25.    | Bone Meal   |
| 26.    | Boot Polish   |
| 27.    | Boots & Shoes of all types including canvas shoes   |
| 28.    | Bowls   |
| 29.    | Boxes Leather   |
| 30.    | Boxes made of metal   |
| 31.    | Braces  |
| 32.    | Brackets other than those used in Railways  |
| 33.    | Brass Wire  |
| 34.    | Brief Cases (other than moulded luggage)  |
| 35.    | Brooms  |
| 36.    | Brushes of all types  |
| 37.    | Buckets of all types  |
| 38.    | Button of all types   |
| 39.    | Candle Wax Carriage   |
| 40.    | Cane Valves/stock valves (for water fittings only)  |

41. Cans metallic (for milk & measuring)
42. Canvas Products :
  - a. Water Proof Deliver, Bags to spec. No. IS - 1422/70
  - b. Bonnet Covers & Radiators Muff. to spec. Drg. Lv 7/NSN/IA/130295
43. Capes Cotton & Woollen
44. Capes Waterproof
45. Castor Oil
46. Ceiling roses upto 15 amps
47. Centrifugal steel plate blowers
48. Centrifugal Pumps suction & delivery 150 mm. x 150 mm
49. Chaff Cutter Blade
50. Chains lashing
51. Chappals and sandals
52. Chamois Leather
53. Chokes for light fitting
54. Chrome Tanned leather (Semi-finished Buffalo & Cow)
55. Circlips
56. Claw Bars and Wires
57. Cleaning Powder
58. Clinical Thermometers
59. Cloth Covers
60. Cloth Jaconet
61. Cloth Sponge
62. Coir fibre and Coir yarn
63. Coir mattress cushions and matting
64. Coir Rope hawserlaid
65. Community Radio Receivers
66. Conduit pipes
67. Copper nail
68. Copper Napthenate
69. Copper sulphate
70. Cord Twine Maker
71. Cordage Others
72. Corrugated Paper Board & Boxes
73. Cotton Absorbent
74. Cotton Belts
75. Cotton Carriers
76. Cotton Cases
77. Cotton Cord Twine
78. Cotton Hosiery
79. Cotton Packs
80. Cotton Pouches
81. Cotton Ropes
82. Cotton Singlets
83. Cotton Sling
84. Cotton Straps
85. Cotton tapes and laces
86. Cotton Wool (Non absorbent)
87. Crates Wooden & plastic

88. (a) Crucibles upto No. 200  
(b) Crucibles Graphite upto No. 500  
(c) Other Crucibles upto 30 kgs.
89. Cumbles & blankets
90. Curtains mosquito
91. Cutters
92. Dibutyl phthalate
93. Diesel engines upto 15 H.P
94. Dimethyl Phthalate
95. Disinfectant Fluids
96. Distribution Board upto 15 amps
97. Domestic Electric appliances as per BIS Specifications :-  
- Toaster Electric, Elect. Iron, Hot Plates, Elect. Mixer, Grinders Room heaters & convectors and ovens
98. Domestic (House Wiring) P.V.C. Cables and Wires (Aluminum) Conforming to the prescribed BIS Specifications and upto 10.00 mm sq. nominal cross section
99. Drawing & Mathematical Instruments
100. Drums & Barrels
101. Dust Bins
102. Dust Shield leather
103. Dusters Cotton all types except the items required in Khadi
104. Dyes :  
a. Azo Dyes (Direct & Acid)  
b. Basic Dyes
105. Electric Call bells/buzzers/door bells
106. Electric Soldering Iron
107. Electric Transmission Line Hardware items like steel cross bars, cross arms clamps arching horn, brackets, etc
108. Electronic door bell
109. Emergency Light (Rechargeable type)
110. Enamel Wares & Enamel Utensils
111. Equipment camouflage Bamboo support
112. Exhaust Muffler
113. Expanded Metal
114. Eyelets
115. Film Polythene - including wide width film
116. Film spools & cans
117. Fire Extinguishers (wall type)
118. Foot Powder
119. French polish
120. Funnels
121. Fuse Cut outs
122. Fuse Unit
123. Garments (excluding supply from Indian Ordnance Factories)
124. Gas mantels
125. Gauze cloth
126. Gauze surgical all types
127. Ghamellas (Tasllas)
128. Glass Ampules

129. Glass & Pressed Wares
130. Glue
131. Grease Nipples & Grease guns
132. Gun cases
133. Gun Metal Bushes
134. Guntape
135. Hand drawn carts of all types
136. Hand gloves of all types
137. Hand Lamps Railways
138. Hand numbering machine
139. Hand pounded Rice (polished and unpolished)
140. Hand presses
141. Hand Pump
142. Hand Tools of all types
143. Handles wooden and bamboo (Procurement can also be made from State Forest Corpn. and State Handicrafts Corporation)
144. Harness Leather
145. Hasps & Staples
146. Haver Sacks
147. Helmet Non-Metallic
148. Hide and country leather of all types
149. Hinges
150. Hob nails
151. Holdall
152. Honey
153. Horse and Mule Shoes
154. Hydraulic Jacks below 30 ton capacity
155. Insecticides Dust and Sprayers (Manual only)
156. Invalid wheeled chairs.
157. Invertor domestic type upto 5 kvA
158. Iron (dhobi)
159. Key board wooden
160. Kit Boxes
161. Kodali
162. Lace leather
163. Lamp holders
164. Lamp signal
165. Lanterns Posts & bodies
166. Lanyard
167. Latex foam sponge
168. Lathies
169. Letter Boxes
170. Lighting Arresters - upto 22 kv
171. Link Clip
172. Linseed Oil
173. Lint Plain
174. Lockers
175. Lubricators
176. L.T. Porcelain KITKAT & Fuse Grips
177. Machine Screws

178. Magnesium Sulphate
179. Mallet Wooden
180. Manhole covers
181. Measuring Tapes and Sticks
182. Metal clad switches (upto 30 Amps)
183. Metal Polish
184. Metallic containers and drums other than N.E.C. (Not elsewhere classified)
185. Metric weights
186. Microscope for normal medical use
187. Miniature bulbs (for torches only)
188. M.S. Tie Bars
189. Nail Cutters
190. Naphthalene Balls
191. Newar
192. Nickel Sulphate
193. Nylon Stocking
194. Nylon Tapes and Laces
195. Oil Bound Distemper
196. Oil Stoves (Wick stoves only)
197. Pad locks of all types
198. Paint remover
199. Palma Rosa Oil
200. Palmgur
201. Pans Lavatory Flush
202. Paper conversion products, paper bags, envelopes, Ice-cream cup, paper cup and saucers & paper Plates
203. Paper Tapes (Gummed)
204. Pappads
205. Pickles & Chutney
206. Piles fabric
207. Pillows
208. Plaster of Paris
209. Plastic Blow Moulded Containers upto 20 litre excluding Poly Ethylene Terphthalate (PET) Containers
210. Plastic cane
211. Playing Cards
212. Plugs & Sockets electric upto 15 Amp
213. Polythene bags
214. Polythene Pipes
215. Post Picket (Wooden)
216. Postal Lead seals
217. Potassium Nitrate
218. Pouches
219. Pressure Die Casting upto 0.75 kg
220. Privy Pans
221. Pulley Wire
222. PVC footwears
223. PVC pipes upto 110 mm
224. PVC Insulated Aluminium Cables (upto 120 sq. mm) (ISS:694)

- 225. Quilts, Razais
- 226. Rags
- 227. Railway Carriage light fittings
- 228. Rakes Ballast
- 229. Razors
- 230. RCC Pipes upto 1200 mm. dia
- 231. RCC Poles Prestressed
- 232. Rivets of all types
- 233. Rolling Shutters
- 234. Roof light Fittings
- 235. Rubber Balloons
- 236. Rubber Cord
- 237. Rubber Hoses (Unbranded)
- 238. Rubber Tubing (Excluding braided tubing)
- 239. Rubberised Garments Cap and Caps etc
- 240. Rust/Scale Removing composition
- 241. Safe meat & milk
- 242. Safety matches
- 243. Safety Pins (and other similar products like paper pins, staples pins etc.)
- 244. Sanitary Plumbing fittings
- 245. Sanitary Towels
- 246. Scientific Laboratory glasswares (Barring sophisticated items)
- 247. Scissors cutting (ordinary)
- 248. Screws of all types including High Tensile
- 249. Sheep skin all types
- 250. Shellac
- 251. Shoe laces
- 252. Shovels
- 253. Sign Boards painted
- 254. Silk ribbon
- 255. Silk Webbing
- 256. Skiboats & shoes
- 257. Sluice Valves
- 258. Snapfastner (Excluding 4 pcs. ones)
- 259. Soap Carbolic
- 260. Soap Curd
- 261. Soap Liquid
- 262. Soap Soft
- 263. Soap washing or laundry soap
- 264. Soap Yellow
- 265. Socket/pipes
- 266. Sodium Nitrate
- 267. Sodium Silicate
- 268. Sole leather
- 269. Spectacle frames
- 270. Spiked boot
- 271. Sports shoes made out of leather (for all Sports games)
- 272. Squirrel Cage Induction Motors upto and including 100 KW440 volts 3 phase

273. Stapling machine
274. Steel Almirah
275. Steel beds stead
276. Steel Chair
277. Steel desks
278. Steel racks/shelf
279. Steel stools
280. Steel trunks
281. Steel wool
282. Steel & aluminium windows and ventilators
283. Stockinet
284. Stone and stone quarry rollers
285. Stoneware jars
286. Stranded Wire
287. Street light fittings
288. Student Microscope
289. Studs (excluding high tensile)
290. Surgical Gloves (Except Plastic)
291. Table knives (Excluding Cutlery)
292. Tack Metallic
293. Taps
294. Tarpaulins
295. Teak fabricated round blocks
296. Tent Poles
297. Tentage Civil/Military & Salitah Jute for Tentage
298. Textiles manufacturers other than N.E.C. (not elsewhere classified)
299. Tiles
300. Tin Boxes for postage stamp
301. Tin can unprinted upto 4 gallons capacity (other than can O.T.S.)
302. Tin Mess
303. Tip Boots
304. Toggle Switches
305. Toilet Rolls
306. Transformer type welding sets conforming to IS:1291/75 (upto 600 amps)
307. Transistor Radio upto 3 band
308. Transistorised Insulation - Testers
309. Trays
310. Trays for postal use
311. Trolley
312. Trolleys - drinking water
313. Tubular Poles
314. Tyres & Tubes (Cycles)
315. Umbrellas
316. Utensils all types
317. Valves Metallic
318. Varnish Black Japan
319. Voltage Stablisers including C.V.T's
320. Washers all types
321. Water Proof Covers

- 322. Water Proof paper
- 323. Water tanks upto 15,000 litres capacity
- 324. Wax sealing
- 325. Waxed paper
- 326. Weighing Scale
- 327. Welded Wiremesh
- 328. Wheel barrows
- 329. Whistle
- 330. Wicks cotton
- 331. Wing Shield Wipers (Arms & Blades only)
- 332. Wire brushes and Fibre Brushes
- 333. Wire Fencing & Fittings
- 334. Wire nails and Horse shoe nails
- 335. Wire nettings of gauze thicker than 100 mesh size
- 336. Wood Wool
- 337. Wooden ammunition boxes
- 338. Wooden Boards
- 339. Wooden Box for Stamps
- 340. Wooden Boxes and Cases N.E.C. (Not elsewhere classified)
- 341. Wooden Chairs
- 342. Wooden Flush Door Shutters
- 343. Wooden packing cases all sizes
- 344. Wooden pins
- 345. Wooden plugs
- 346. Wooden shelves
- 347. Wooden veneers
- 348. Woollen hosiery
- 349. Zinc Sulphate
- 350. Zip Fasteners

**HANDICRAFT ITEMS**

<u>Sl.No.</u>	<u>Item Description</u>
351	Cane furniture
352.	Bamboo file tray, Baskets, Pencil stand, side racks etc.
353.	Artistic Wooden Furniture
354.	Wooden paper weight, racks etc.
355.	Glass covers made of wood and grass jute.
356.	Jute furniture
357.	Jute bags, file cover
358.	Woollen & silk carpets.

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F. No. DPE/3(3)/10-Fin.  
Government of India  
Ministry of Finance  
Department of Public Enterprises

Block No. 14, CGO Complex,  
Lodi Road, New Delhi-110003  
Dated the 29<sup>th</sup> May, 2023

To,

Chief Executives of all CPSEs

Subject- Concurrent application of Public Procurement Policy for Micro and Small Enterprises Order, 2012 and Public Procurement (Preference to Make in India) Order, 2017 - regarding

Sir/Madam,

The undersigned is directed to forward herewith a copy of Department of Expenditure O.M. dated 18<sup>th</sup> May, 2023 on the subject mentioned above for information and strict compliance.

Encl : As stated

  
(Kailash Bhardani)  
Deputy Director  
Tel : 2436-6247

Copy to :- Shri Kanwalpreet, Director, Department of Expenditure, Room No. 264-C,  
North Block, New Delhi.

**OFFICE MEMORANDUM**

**Subject: Concurrent application of Public Procurement Policy for Micro and Small Enterprises Order, 2012 and Public Procurement (Preference to Make in India) Order, 2017.**

The undersigned is directed to refer two Preferential Procurement Orders mandated for the Public Procurement in India, namely:

- i. Public Procurement Policy for Micro and Small Enterprises (MSEs) Order dated 23.03.2012 (PPP-MSE Order) issued by Ministry of Micro, Small and Medium Enterprises (MoMSME) in exercise of the powers conferred in Section 11 of the MSME Development Act, 2006. (Last revised on 09.11.2018)
- ii. Public Procurement (Preference to Make in India) Order, 2017 (PPP-MII order), under Rule 153(iii) of the General Financial Rules (GFRs) 2017, approved by the Cabinet. Implementation of this PPP-MII order is monitored by Department for Promotion of Industry and Internal Trade (DPIIT). (Last revised on 16.09.2020.)

2. It has been brought to the notice of this Department that concurrent application of these two orders are creating confusion to the procuring entities and different procuring entities interpret them differently. In order to bring predictability both to the procuring entities as well as bidders, following guidelines are being issued.

**Guidelines**

3. The Class-I local suppliers, under PPP-MII Order, participating in any government tender, may or may not be MSEs, as defined under the MSME Act. Similarly, MSEs participating in any government tender, may or may not be Class-I local suppliers. Suppliers may be categorised in following four broad categories for consideration or applicability of purchase preference:

<b>Category</b>	<b>Terminology</b>
Supplier is both MSE & Class-I local supplier.	"MSE Class-I local supplier"
Supplier is MSE but not Class-I local supplier.	"MSE but non-Class-I local supplier"
Supplier is not MSE but is Class-I local supplier.	"Non-MSE but Class-I local supplier"
Supplier is neither MSE nor Class-I local.	"Non-MSE non-Class-I local supplier"

4. The applicability of PPP-MSE Order and PPP-MII Order in various scenarios, involving simultaneous purchase preference to MSEs and Class-I local suppliers under PPP-MSE Order and PPP-MII Order respectively, shall be as under:

a) *Items covered under Para 3(a) of PPP- MII Order, 2017 for which Nodal Ministry has notified sufficient local capacity and competition:* For these items, only Class-I local suppliers are eligible to bid irrespective of purchase value. Hence, Class-II local suppliers or Non-local suppliers, including MSEs which are Class-II local suppliers/ Non-local suppliers, are not eligible to bid. Possible scenarios can be as under:

- (i) L-1 is "MSE Class-I local supplier" - 100% of the tendered quantity is to be awarded to L-1.
- (ii) L-1 is "Non-MSE but Class-I local supplier" - Purchase preference is given to MSEs as per PPP-MSE Order. Balance quantity is to be awarded to the L-1 bidder.

b) *Items reserved exclusively for procurement from MSEs as per PPP-MSE Order:* These items are reserved exclusively for purchase from MSEs. Hence, non-MSEs are not eligible to bid for these items. Possible scenarios can be as under:

- (i) L-1 is "MSE Class-I local supplier" - 100% of the tendered quantity is to be awarded to L-1.
- (ii) L-1 is "MSE non-Class-I local supplier" - Purchase preference is to be given to Class-I local supplier as per PPP-MII Order. Balance quantity, is to be awarded to L-1 bidder.

c) *If items are neither notified for sufficient local capacity nor reserved for MSEs, then the process will be as follows:*

c (a) Items covered under Para 3A(b) of PPP-MII Order are divisible items and both MSEs as well as Class-I local suppliers are eligible for purchase preference. Possible scenarios can be as under:

- (i) L-1 is "MSE Class-I local supplier" - 100% of the tendered quantity is to be awarded to L-1.
- (ii) L-1 is "Non-MSE but Class-I local supplier" - Purchase preference is to be given to MSEs, if eligible, as per PPP-MSE Order. Balance quantity is to be awarded to L-1 bidder.
- (iii) L-1 is "MSE but non-Class-I local supplier" - Purchase preference is to be given to Class-I local suppliers, if eligible, as per PPP-MII Order. Balance quantity is to be awarded to L-1 bidder.
- (iv) L-1 is "Non-MSE non-Class-I local supplier" - Purchase preference is to be given to MSEs as per PPP-MSE Order. Thereafter, purchase preference is to be given to Class-I local suppliers for "50% of the tendered quantity minus quantity allotted to MSEs

above" as per PPP- MII Order. For the balance quantity, contract is to be awarded to L-1 bidder. (Kindly refer to the illustrative example in the annexure).

- c (b) Items covered under Para 3A(c) of PPP-MII Order, 2017 are non-divisible items and both MSEs as well as Class-I local suppliers are eligible for purchase preference. Possible scenarios can be as under:
- (i) L-1 is "MSE Class-I local supplier" - Contract is awarded to L-1.
  - (ii) L-1 is not "MSE Class-I local supplier" but the "MSE Class-I local supplier" falls within 15% margin of purchase preference - Purchase preference is to be given to lowest quoting "MSE Class-I local supplier". If lowest quoting "MSE Class-I local supplier" does not accept the L-1 rates, the next higher "MSE Class-I local supplier" falling within 15% margin of purchase preference is to be given purchase preference and so on.
  - (iii) If conditions mentioned in sub paras (i) and (ii) above are not met i.e. L-1 is neither "MSE Class-I local supplier" nor "MSE Class-I local supplier" is eligible to take benefit of purchase preference, the contract is to be awarded/ purchase preference to be given in different possible scenarios as under:
    - A. L1 is "MSE but non-Class-I local supplier" or "Non-MSE but Class-I local supplier" – Contract is awarded to L1.
    - B. L1 is "Non-MSE non-Class-I local supplier" - First purchase preference to be given to MSE as per PPP-MSE Order. If MSE not eligible/ does not accept - purchase preference to be given to Class- I Local supplier as per PPP-MII Order. If Class-I Local supplier also not eligible/ does not accept – contract to be awarded to L-1.
- d) *Items reserved for both MSEs and Class-I local suppliers:* These items are reserved exclusively for purchase from MSEs as well as Class-I local suppliers. Hence, only "MSE Class-I local supplier" are eligible to bid for these items. Non-MSEs/Class-II local suppliers/ Non-local suppliers cannot bid for these items. Hence the question of purchase preference does not arise.
- e) Non-local suppliers, including MSEs falling in the category of Non-local suppliers, shall be eligible to bid only against Global Tender Enquiry.

  
(Kanwalpreet)  
Director

Tel.:-223093811; email: - kanwal.irss@gov.in

To

1. Secretaries of all Central Government Ministries/ Departments.
2. Secretary Department of Public Enterprises with a request for issuing suitable instructions to all Central Public Sector Enterprises in this regard.

Page 3 of 4

**Annexure**

**Example explaining applicability in scenario explained in para 4 c (a)(iv)**

(Scenario: Divisible items, both MSEs as well as Class-I local suppliers eligible for purchase preference and L-1 is "Non-MSE non-Class-I local supplier")

**Item** – Desktop computer

**Qty** – 50 Nos.

**Details of bids received**

Sr. No.	Name of bidder	Rates quoted	Price Ranking	Status of bidder
1.	A	100	L1	"Non-MSE non- Class-I local supplier"
2.	B	110	L2	"Non-MSE but Class-I local supplier"
3.	C	112	L3	"MSE but non- Class-I local supplier"
4.	D	115	L4	"Non-MSE but Class-I local supplier"
5.	E	118	L5	"MSE but non- Class-I local supplier"
6.	F	120	L6	"MSE Class-I local supplier"

1. In this case, first purchase preference is to be given to MSEs as per PPP-MSE Order for 25% of tendered quantity of 50 Nos. i.e. 12.5 Nos. (rounded off to the next whole number say 13 Nos). Accordingly, invite L3 (bidder C), whose quoted rates falls within 15% margin of purchase preference to match L1 price i.e. Rs. 100/- for quantity of 13 Nos. Bidder "E" and "F", although MSEs, will not get purchase preference since their quoted rates don't fall within 15% margin of purchase preference. Bidder C will be considered for order of 13 Nos. on confirmation of reduction of price.
2. For 50% of balance quantity of 37 number (tendered quantity of 50 – 13 awarded to bidder C; assuming bidder C has confirmed to accept L1 rates), purchase preference will be given to lowest Class-I local supplier as per PPP-MII Order. Accordingly, bidder B will be invited to match L-1 price for 50% of 37 Nos i.e. 18.5 (say 19 Nos of computers). If bidder "B" does not accept the L1 price i.e. price of Rs. 100/- per unit, next higher Class-I local supplier falling within 20% margin of purchase preference, i.e. bidder "D", may be invited to match L-1 price for 19 Nos. of computers and so on.
3. For remaining quantity i.e. 18 Nos (50-13-19), the contract will be awarded to lowest quoting bidder i.e. Bidder "A", who is L-1 in the example.

\*\*\*

\*\*\*\*\*End of Appendix-7\*\*\*\*\*

## **Appendix-8: Relaxation of qualifying norms for Start-ups and MSE Vendors**

### **POLICY ON STARTUP AND MSE VENDORS**

#### **OPPORTUNITY TO STARTUP AND MICRO & SMALL ENTERPRISES**

In case a Startup [defined as per Ministry of Commerce and Industry (Department of Industrial Policy and Promotion, DIPP) latest notification]/ MSE is interested in supplying the tendered item but does not meet the Pre-Qualifying Criteria (PQC)/ Proven Track Record (PTR) indicated in the tender document, the Startup/MSE is requested to write a detailed proposal separately, and not against the present tender requirement, to the tender issuing authority about its product. Such proposals shall be accompanied by relevant documents in support of MSE (where applicable) or in case of Startup, following documents shall be given:

1. Certificate of Recognition issued by the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, Government of India.
2. Certificate of incorporation.
3. Audited Profit & Loss (P&L) Statement of all the Financial Years since incorporation. In case where the Balance sheet has not been prepared, bidder shall submit a certificate in original from its CEO/CFO stating the turnover of the bidding entity separately for each Financial Years since incorporation along with a declaration stating the reason for not furnishing the audited P&L Statement. This certificate shall be endorsed by a Chartered Accountant/Statutory Auditor.

The Proposal shall be examined by OIL and OIL may consider inviting a detailed offer from the Startup/MSE with the intent to place a TRIAL or TEST Order, provided the Startup/MSE meets the Quality and Technical Specifications.

In case the Startup/MSE is successful in the Trial Order, the vendor shall be considered for PQC exemption/relaxation (as the case may be) for the next tender for such item till the time it remains a Startup/MSE.

**Note:** *For any requirement recommended by HoDs towards relaxation of 'experience' and 'turnover' criteria for Start Ups/MSEs, all the criteria related to technical experience and financial requirement including Networth as stipulated in this Manual are to be relaxed.*

**\*\*\*\*\*End of Appendix-8\*\*\*\*\***

## Appendix-9: QCBS parameters weightage



ऑयल इंडिया लिमिटेड  
(भारत सरकार का उद्यम) पंजीकृत कार्यालय: दुलैजान, असम  
**Oil India Limited**  
(A Government of India Enterprise) Registered Office: Dulaijan, Assam

प्लॉट नं. 19, सेक्टर 16-ए, नोएडा-201 301 उत्तर प्रदेश  
Plot No. : 19, Sector 16-A, Noida-201 301, Uttar Pradesh  
दूरभाष / Telephone : 0120-2419000 फैक्स / Fax : 0120-2488310  
CIN : L11101AS1959GOI001148 ई-मेल / E-mail : oilindia@oilindia.in, वेबसाइट / Website : www.oil-india.com

Ref: OIL 62/C&P/79

Date: 23.03.2022

From	:	Chief General Manager (C&P), Corp.
To	:	All Executives of C&P Department, All Spheres
Sub	:	Adoption of revised terms & conditions for Tenders in line with the current situation

Reference is invited to Notification No. F.1/1/2021-PPD dated 29.10.2021 issued by Procurement Policy Division, Department of Expenditure, Ministry of Finance with regard to guidelines on Quality and Cost Based Selection (QCBS) for works and non-consultancy services amongst others and OIL's Circular No. OIL 62/C&P/339 dated 25.11.2021 in this regard.

2.0 As you are aware that Circular No. OIL 62/C&P/339 dated 25.11.2021 was issued from this office pursuant to aforesaid Govt. Notification dated 29.10.2021 with an understanding that “the maximum weightage of the non-financial parameters shall in no case exceed 30%” shall be applicable for all QCBS cases. However, on subsequent clarification from PPD, DoE, MoF, it has been confirmed that the 30% maximum ceiling of non-financial parameters (quality) as stated in the said notification is applicable for works & non-consultancy services only. The QCBS guidelines for consultancy services shall prevail as per Rule 192 (i) to (iv) of GFR, which allows the weightage of non-financial : financial parameters (i.e. quality : cost) as 70:30, 60:40, 50:50 etc. depending on relative importance of quality with a maximum ceiling of 80% for non-financial (quality) parameter.

3.0 In view of the foregoing and to maintain uniform policy across the Company in adopting the QCBS weightage of quality and cost parameters against tenders, approval of the Executive Council has been obtained now vide EC minutes OIL/TECH/EC-112(05) dated 02.03.2022 against EC Note No. CORP/C&P/QCBS/49/21 dated 23.02.2022 (copy enclosed).

4.0 Therefore, all future tenders adopting QCBS methodology of evaluation shall follow the guidelines with respect to weightage of non-financial (quality) and financial (cost) parameters as under:


	Type of Services involving QCBS	Weightage Non-financial(Quality) : Financial (Cost)
1.	Consultancy Services:	
	(i) For Hiring of Consulting Firms	60 : 40
	(ii) For Hiring Consultants as Individual	70 : 30

1 | Page 2

2.	<b>Works and Non-Consultancy Services:</b> (i) For procurement value not exceeding Rs. 10 crore (including all taxes and option clause).  (ii) For procurement value above Rs. 10 crore (including all taxes and option clause) which is declared as QOP (Quality Oriented Procurement) along with constituted STC (Special Technical Committee) by the Board of Directors.	30 : 70
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**Note:**

1. The principles of QCBS shall be as provided in Rule 192(i), (ii) and (iii) of the GFR and as per para 15.2 of the Notification No. F.1/1/2021-PPD dated 29.10.2021 which is furnished herewith vide Annexure-I.
2. Purchase preference policies (like Policy for MSEs and PPLC etc.) shall not be applicable against tenders adopting QCBS methodology.
- 5.0 All concerned are requested to be guided accordingly.

  
 23/03/2022  
 (Anita Dam)

Chief General Manager (C&P)  
 For Chairman & Managing Director



cc: CMD  
 cc: D(F) / D(O)  
 cc: RCE  
 cc: ED (RF) / ED (F&A), Corp. / ED (E&D)  
 cc: ED (C&P) FHQ / ED (KGB & BEP) / CGM (PLS) / CGM (KB)  
 cc: GM (F&A), Corp.

Annexure-I

15.2 Quality-cum-Cost based Selection (QCBS) for Works and Non-Consultancy Services:-

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

- (i) Where the procurement has been declared to be a Quality Oriented Procurement (QOP) by the competent authority or
- (ii) For procurement of Non-Consulting Services, where estimated value of procurement (including all taxes and option clause) does not exceed Rs. 10 crore.

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

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

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

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

- (i) For declaring a procurements as QOP:
  - (a) Where the procuring entity/ project executing authority is covered by Rule 1 of GFR, the Secretary of the Ministry/ Department, to which the procuring entity belongs.
  - b) Where the procuring entity is a CPSE, the Board of Directors of the CPSE.
- (ii) For Non-consulting Services not exceeding Rs. 10 crore in value:
  - a) Where the procuring entity is covered by Rule 1 of GFR, by the officer or authority two levels above the officer/ authority competent to finalize the particular procurement, or the Secretary of the Ministry/ Department whichever is lower.
  - b) Where the procuring entity is a CPSE, the authority or officer two levels above the officer competent to finalize the particular procurement, or the Board of Directors of the CPSE whichever is lower.

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

- (i) Two or more persons who have expert knowledge and/or long experience relevant to the procurement in question;
- (ii) One or more persons with extensive experience in handling public projects and/or public finance in the Government or State/Central Public Sector;
- (iii) One or more persons with experience in financial management/financial administration/audit/accountancy;
- (iv) Not more than one member representing the procuring entity who may inter alia provide administrative support to the Committee.
- (v) Any person who is a member of the STC shall not associate himself in any manner with any bidder for the procurement concerned.
- (vi) The persons referred to in sub paras (i) to (iii) shall be persons not working under the Competent Authority specified in para 15.2.2 and shall not belong to any organization under the control of, or receiving funding from, the procuring entity or the Ministry/Department to which such procuring entity belongs.

15.2.4 The names of members of the Special Technical Committee shall be decided either by the Competent Authority specified in para 15.2.2 above or by any other authority to whom such power is delegated by the competent authority; however, powers shall be not be delegated to the officer or authority competent to finalize the particular procurement. Sitting fee may be paid to the members of the STC. Incidental costs including travel shall be paid by the procuring entity.

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

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

The recommendations of the STC shall be followed except where there are special grounds in public interest for deviating from them. However, every case of deviation from the recommendations of the STC shall require approval of the Competent Authority specified in para 15.2.2(i) above who approved in the declaration of the procurement as QOP.

15.2.6 In respect of QCBS for Non-Consultancy Services not exceeding Rs.10 crore, a Technical Committee shall be constituted to carry out functions mentioned in para 15.2.5 in lieu of the STC. The composition of the Technical Committee shall follow the provisions of para 15.2.3 (i) to (v). The provisions of 15.2.3 (vi) shall however not be applicable in such cases.

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

15.2.8 Tender Documents – Fixing / Selection of the Evaluation / Qualification Criteria

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

15.2.9 Fixing of Scoring Marking Criteria:

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

- (v) Bidders may be asked to submit a detailed presentation on their proposals in the form of soft copy along with the bid so as to facilitate better understanding of their proposal and to ensure commitment.
- (vi) Besides the Bill of Quantity (BOQ) output criteria for payment, Key Performance Indicators (KPIs) may be specified with minimum achievement levels for payment so as to ensure quality compliance.

15.2.10 Evaluation of QBCS Bids; For evaluation, a suitable committee shall be constituted. However, members of the STC shall not be involved.

15.2.11 Joint ventures in QCBS:

- (i) In conventional tenders, some bidders adopt “name borrowing” and Joint Ventures (JV) often do not function in letter and spirit. This results in lack of quality and accountability. JVs often end in one-sided participation, diluting the essence of the tender evaluation during its performance. Since quality is given weightage in the evaluation itself, in QCBS procurement, it is even more important to guard against such tendencies. Therefore, Joint Ventures may be avoided in QCBS procurements as far as possible. Joint Ventures could, however, become necessary in high technology or innovative projects where a single entity may not be able to execute the work alone.
- (ii) If JVs are allowed, adequate safeguards should be provided. Since weightage for quality/ experience influences the award itself, measures should be taken to ensure that all the JV partners are present and deliver services all through the contract period. An Implementation Board with participation of all JV partners may be provided for wherein the Project Manager from the procuring entity shall also be allowed audience when required. Meeting of JV partners with the project executing authority for quarterly progress review may be made as a criterion linked to achievement of key dates or even payment.

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GeM. An organisation having its own website should also publish all its advertised tender enquiries on the website. Enquiry for seeking Expression of Interest should include in brief, the broad scope of work or service, inputs to be provided by the Ministry or Department, eligibility and the pre-qualification criteria to be met by the consultant(s) and consultant's past experience in similar work or service. The consultants may also be asked to send their comments on the objectives and scope of the work or service projected in the enquiry. Adequate time should be allowed for getting responses from interested consultants.

**Rule 184 Short listing of consultants.** On the basis of responses received from the interested parties as per Rule 183 above, consultants meeting the requirements should be short listed for further consideration. The number of short listed consultants should not be less than three.

**Rule 185 Preparation of Terms of Reference (TOR).**

The TOR should include

- (i) Precise statement of objectives.
- (ii) Outline of the tasks to be carried out.
- (iii) Schedule for completion of tasks.
- (iv) The support or inputs to be provided by the Ministry or Department to facilitate the consultancy.
- (v) The final outputs that will be required of the Consultant.

**Rule 186 Preparation and Issue of Request for Proposal (RFP).** RFP is the document to be used by the Ministry/Department for obtaining offers from the consultants for the required service. The RFP should be issued to the shortlisted consultants to seek their technical and financial proposals. The RFP should contain :

- (i) A letter of Invitation
- (ii) Information to Consultants regarding the procedure for submission of proposal.
- (iii) Terms of Reference (TOR).
- (iv) Eligibility and pre-qualification criteria in case the same has not been ascertained through Enquiry for Expression of Interest.

- (v) List of key position whose CV and experience would be evaluated.
- (vi) Bid evaluation criteria and selection procedure.
- (vii) Standard formats for technical and financial proposal.
- (viii) Proposed contract terms.
- (ix) Procedure proposed to be followed for midterm review of the progress of the work and review of the final draft report.

**Rule 187 Receipt and opening of proposals**  
Proposals should ordinarily be asked for from consultants in 'Two bid' system with technical and financial bids sealed separately. The bidder should put these two sealed envelopes in a bigger envelope duly sealed and submit the same to the Ministry or Department by the specified date and time at the specified place. On receipt, the technical proposals should be opened first by the Ministry or Department at the specified date, time and place.

**Rule 188 Late Bids.** Late bids i.e. bids received after the specified date and time of receipt should not be considered.

**Rule 189 Evaluation of Technical Bids:** Technical bids should be analysed and evaluated by a Consultancy Evaluation Committee (CEC) constituted by the Ministry or Department. The CEC shall record in detail the reasons for acceptance or rejection of the technical proposals analysed and evaluated by it.

**Rule 190 Evaluation of Financial Bids of the technically qualified bidders:** The Ministry or Department shall open the financial bids of only those bidders who have been declared technically qualified by the Consultancy Evaluation Committee as per Rule 189 above for further analysis or evaluation and ranking and selecting the successful bidder for placement of the consultancy contract.

**Rule 191 Methods of Selection/ Evaluation of Consultancy Proposals**

The basis of selection of the consultant shall follow any of the methods given in Rule 192 to 194 as appropriate for the circumstances in each case.

**Rule 192. Quality and Cost Based Selection (QCBS):** QCBS may be used for Procurement of consultancy services,



where quality of consultancy is of prime concern.

- (i) In QCBS initially the quality of technical proposals is scored as per criteria announced in the RFP. Only those responsive proposals that have achieved at least minimum specified qualifying score in quality of technical proposal are considered further.
- (ii) After opening and scoring, the Financial proposals of responsive technically qualified bidders, a final combined score is arrived at by giving predefined relative weight ages for the score of quality of the technical proposal and the score of financial proposal.
- (iii) The RFP shall specify the minimum qualifying score for the quality of technical proposal and also the relative weight ages to be given to the quality and cost (determined for each case depending on the relative importance of quality vis-a-vis cost aspects in the assignment, e.g. 70:30, 60:40, 50:50 etc). The proposal with the highest weighted combined score (quality and cost) shall be selected.
- (iv) The weight age of the technical parameters i.e. non- financial parameters in no case should exceed 80 percent.

**Rule 193 Least Cost System (LCS).** LCS is appropriate for assignments of a standard or routine nature (such as audits and engineering design of non-complex works) where well established methodologies, practices and standards exist. Unlike QCBS, there is no weight age for Technical score in the final evaluation and the responsive technically qualified proposal with the lowest evaluated cost shall be selected.

**Rule 194 Single Source Selection/Consultancy by nomination.** The selection by direct negotiation/nomination, on the lines of Single Tender mode of procurement of goods, is considered appropriate only under exceptional circumstance such as:

- (i) tasks that represent a natural continuation of previous work carried out by the firm;
- (ii) in case of an emergency situation, situations arising after natural

disasters, situations where timely completion of the assignment is of utmost importance; and

- (iii) situations where execution of the assignment may involve use of proprietary techniques or only one consultant has requisite expertise.
- (iv) Under some special circumstances, it may become necessary to select a particular consultant where adequate justification is available for such single-source selection in the context of the overall interest of the Ministry or Department. Full justification for single source selection should be recorded in the file and approval of the competent authority obtained before resorting to such single-source selection.
- (v) It shall ensure fairness and equity, and shall have a procedure in place to ensure that the prices are reasonable and consistent with market rates for tasks of a similar nature; and the required consultancy services are not split into smaller sized procurement.

**Rule 195 Monitoring the Contract.** The Ministry/Department should be involved throughout in the conduct of consultancy, preferably by taking a task force approach and continuously monitoring the performance of the consultant(s) so that the output of the consultancy is in line with the Ministry /Department's objectives.

**Rule 196 Public competition for Design of symbols/logos.** Design competition should be conducted in a transparent, fair and objective manner. Wide publicity should be given to the competition so as to ensure that the information is accessible to all possible participants in the competition. This should include publication on the website of Ministry/Department concerned, as also the Central Public Procurement Portal. If the selection has been by a jury of experts nominated for the purpose, the composition of the jury may also be notified.

#### B. OUTSOURCING OF SERVICES

**Rule 197 "Non-Consulting Service"** means any subject matter of procurement (which as distinguished from 'Consultancy

No.F.1/1/2021-PPD  
Government of India  
Ministry of Finance  
Department of Expenditure  
Procurement Policy Division

264-C, North Block, New Delhi.  
29<sup>th</sup> October, 2021.

**Subject: General Instructions on Procurement and Project Management**

It has always been a concern and challenge for the Government and its agencies to execute public projects on time, within the approved cost and with good quality. As the Government strives to step up the pace of economic development, the role of procedure and rules, and the incentives and disincentives they create, warrants careful examination.

2. The Central Vigilance Commission (CVC) and the Comptroller & Auditor General (CAG) are among the institutions which have, at various times, had occasion to comment on procurement and project management. Taking cognizance of these issues, CVC issued a Concept Paper on Alternative Procurement Strategy suggesting various reforms. Later after elaborate consultations with various stakeholders and a reform workshop held on 18.12.2020, CVC prepared Draft Guidelines on "Reforms in Public Procurement and Project Management". The draft guidelines inter alia stated: "Endeavour should be to explore the possibility of employing alternative procurement methods and other emerging trends apart from regularly used methods of procurement".

Separately, the CAG held a workshop on 27<sup>th</sup> February, 2020, soliciting ideas to improve procurement and project management. In that workshop, the then CAG himself observed: "It is also important to examine the information available with the decision maker at the time of taking the procurement decision. Post facto wisdom is easy and costs of indecision high". He hoped that the "focus of the presentations would be on discussing the challenges faced in procurement, especially that of adhering to the L1 requirement and related quality issues and new mechanisms/ strategies of procurement to overcome these challenges":

The National Institution for Transforming India (NITI) Aayog also prepared in August, 2020 a detailed paper entitled "Indian Public Procurement: Alternative Strategies and Way Forward" with various proposals.

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3. A common theme arising in all these deliberations was a need to improve procurement and project management rules and procedures, to update them to present day needs, and empower those implementing projects to take better decisions, while adhering to probity and fairness. The fact that two premier institutions overseeing probity and accountability and India's premier policy think-tank felt the need to improve public procurement and project management procedures indicates the importance of the issue.

4. The Draft Guidelines prepared under the aegis of the CVC provided a sound platform for initiating reforms for empowering executing agencies and officers to take effective decisions in public interest, not only without favour but also without fear. These Draft Guidelines were considered by the Committee of Secretaries, and it was decided that the Department of Expenditure (DoE) would consider and issue guidelines, after soliciting and incorporating comments from Ministries/ Departments. Comments were solicited from all Ministries/ Departments and after due and detailed consideration of the comments received, instructions as contained in the subsequent paragraphs are being issued for compliance. While the primary source of these instructions is the draft guidelines prepared by the CVC, the views expressed in the CAG's workshop, by NITI Aayog, and in other comments received have also been duly considered and incorporated wherever appropriate.

5. The instructions below are "general instructions" within the meaning of Rule 6(1) of the GFR. They shall prevail in case of any general or case-specific conflict with the existing provisions of the Manual for Procurement of Goods, 2017, Manual for Procurement of Consultancy and other Services 2017, Manual for Procurement of Works 2019 or any other instruction issued by DoE in the past. For the purpose of these instructions:

- (i) Instructions containing 'may' are to be considered desirable or good practices which procuring entities/ project executing agencies are encouraged to implement but not mandatory.
- (ii) Instructions containing 'should' are required to be followed in general. However, there may be circumstances where it may not be practical/ desirable to implement them. In such cases, the concerned officer/ agency may deviate by recording reasons in writing for not implementing the same.

- (iii) Instructions containing 'shall' are mandatory; any deviation shall require relaxation of rules from the DoE (for Ministries/ Departments etc.) or from the Board of Directors (for Central Public Sector Enterprises).
- (iv) Instructions containing "allowed" indicate an optional course of action to be decided upon on merits.
- (v) "Procuring Entity" or "Project Executing Authority" or "Project Executing Agency" means Central Government Ministries/ Departments, Attached/ Subordinate bodies including Autonomous Bodies or Central Public Sector Enterprises (CPSEs) (etc) executing projects/ works.
- (vi) "Public Authority" means the client organization, which may be asking a "Procuring Entity" or "Project Executing Authority" or "Project Executing Agency" to execute a project or work on their behalf. For example, in case a University executes the works through Central Public Works Department (CPWD), then the said university will be the public authority and CPWD will be the Procuring Entity or Project Executing Authority or Project Executing Agency. (The public authority and the project executing authority may also be the same.)

**6. Feasibility Study/ Ground Survey:** Before undertaking a project Feasibility study/ Preliminary Project Report (PPR) may be prepared by the Project Executing Agency as prescribed in Para 2.2.1 of the Manual for Procurement of Works 2019 (*hereinafter called Manual*). A presentation on the findings of the feasibility study/ PPR may be made by a team (which may include engineers/ consultants/ outside experts, finance officers etc.) before the public authority/ or designated competent authority. This is to provide an opportunity to the public authority to have an overall assessment of the situation, appraisal of various options as well as likely challenges and mitigation measures. In the case of very large projects, such presentation may be made to the head of the public authority. The record of discussions during the presentation may become part of the Detailed Project Report (DPR) and tender file/ project record.

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## **7. Detailed Project Report (DPR):**

7.1 As prescribed in Para 2.4 of the Manual, once the project is considered viable and the competent public authority gives approval, a DPR/ Detailed Estimate should be prepared with due care and accuracy, using latest technological tools collecting all relevant ground information including consultation with the field units, wherever applicable.

7.2 Presentation may be made about the DPR before the public authority, for projects above a threshold value, as decided by Project Executing Authorities. The presentation may include salient features of the project including general layout, architectural drawings, broad specifications, cash flow (over the life of the project), composition of the project team, quality management plan for the project, important milestones in the project execution, obligations of the authority and the contractor/ concessionaire (hereinafter referred to as "contractor") and possible risks and mitigation measures. In the case of very large projects such presentation may be made to the head of the public authority. The record of discussions during the presentation shall become part of tender file/project record.

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

7.4. Endeavour may be made to enlarge the base of the 'Schedule of Rates' published by various organizations to bring a maximum number of items under its ambit. For non-scheduled items, rates may be finalized by a committee constituted by the organization concerned/ consultants as the case maybe.

## **8. Availability of Land and Statutory Clearances:**

8.1 It is desirable to have 100% of the required land in possession before award of contract; however, it may not always be possible to have the entire land due to prevailing circumstances. Also, it may not be prudent to put the entire process of award of contract on hold for want of the remaining portion of land, which in the assessment of public authority or the project executing

authority, could possibly be acquired in a targeted manner after award of the contract, without affecting progress.

8.2 Minimum necessary encumbrance free land should be available before award of contract. The minimum may be determined based on the circumstances of each case or general guidelines, issued by the concerned authorities. Only such land, non availability of which, will prevent essential components of work from execution, should be insisted upon.

8.3 Time taken in grant of statutory and other clearances also contributes to the time and cost of public projects. These clearances are required to achieve specific objectives like concern for the environment, aviation safety, preservation of national heritage, conservation of forest and wildlife etc. Public Authorities/ Project Executing Authorities should plan for obtaining all necessary clearances quickly and closely monitor the progress.

#### 9. Pre-Tender activities:

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

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

9.3 Empanelment of contractors: Public authorities may empanel/ register contractors of those specific goods and services which are required by them regularly. Performance of such empanelled contractors should be reviewed

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periodically. The list of registered contractors shall be updated on a regular basis. The category/ class of contractors may be upgraded/ downgraded or contractors may be de-listed based on their performance. Empanelment of contractors shall be done in a fair and equitable manner, preferably online after giving due publicity. The practice of inviting bids for works tenders only from empanelled contractors may be confined to tenders up to certain threshold value, as decided by the project executing authorities.

#### **10. Tender documents:**

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

10.2 In tenders containing General Conditions of Contract (GCC), additional/ special conditions to be incorporated in the tender document, shall be need based and specific. The GCCs should not be altered and changes, if any, in conditions of contract should only be made through the Special Conditions of Contract.

10.3 Identification of milestones may be done in an optimal and sequential manner and the same may be stipulated in the tender document along with enabling provisions.

10.4 Payment terms prescribed in the tender document should be such that the payment made to contractors at every stage is commensurate to quantum of work done, subject to any requirements for initial mobilisation.

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10.5 Procuring entities may issue instructions regarding appropriate delegation of authority for approval of deviations, variations and changes in the scope of the contract.

10.6 Provision of price variation, wherever considered appropriate, as well as methodology for calculation of the same shall be clearly stipulated in the tender document.

10.7 Quality Assurance Plan (QAP) may be incorporated in the tender document/ contract. Schedule of visit by various levels of officials should also form part of the QAP.

10.8 Technical and Financial eligibility Criteria for the bidders are important in the public procurement process. They shall be clear and fair, having regard to the specific circumstances of the procurement. Appropriate parameters should be prescribed in the eligibility criteria for bidders, to enable selection of the right type of bidders in public interest, balancing considerations of quality, time and cost.

10.9 Open online tendering should be the default method to ensure efficiency of procurement. Public authorities should also keep the experience criteria broad based so that bidders with experience in similar nature of works in various sectors can participate.

10.10 Pre-bid conference may be conducted for large value tenders by Procuring Entities. The Place and time of pre-bid conferences should be mentioned in the tender document and/ or publicized through the website of the procuring entity and/ or through newspaper publication.

#### **11. Project Management**

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

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

systems may be used for capturing progress and quality of work, site records/ photographs/ videos etc. including geo tagging.

11.3 Wherever applicable, the role of the Project Management Consultant (PMC) should be clearly defined in the contracts. Deployment of the PMC does not absolve the project executing authority of the responsibility to supervise the quality and timelines of the project.

11.4 The credentials and deployment schedule of key and other technical personnel to be engaged by PMC on the work should be taken along with the bid. During execution, adherence to deployment of key and other technical personnel as per the schedule of deployment should be ensured.

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

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

11.7 **Sub-contracting:** As per Para 6.1.6 of the Manual, the works contract may provide for the contractor to get specified works executed from sub-contractors included in the pre-qualification application or later agreed to by the Procuring Entity, with a caveat that the responsibility for all sub-contract work rests with the prime contractor. Sub-contracting may be for specialized items of work, such as reinforced earth retaining walls, pre-stressing works, and so on. Procurement of material, hiring of equipment or engagement of labour will not mean sub-contracting. The total value of subcontracted work should not exceed the percentage of the contract price specified in the

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contract (say 25%). Sub-contracting by the contractor without the approval of the Procuring Entity shall be a breach of contract, unless explicitly permitted in the contract.

**11.8 Rejection of Single Bid:** It has become a practice among some procuring entities to routinely assume that open tenders which result in single bids are not acceptable and to go for re-tender as a 'safe' course of action. This is not correct. Re-bidding has costs: firstly the actual costs of re-tendering; secondly the delay in execution of the work with consequent delay in the attainment of the purpose for which the procurement is being done; and thirdly the possibility that the re-bid may result in a higher bid.

Lack of competition shall not be determined solely on the basis of the number of Bidders. Even when only one Bid is submitted, the process should be considered valid provided following conditions are satisfied:

- (i) the procurement was satisfactorily advertised and sufficient time was given for submission of bids;
- (ii) the qualification criteria were not unduly restrictive; and
- (iii) prices are reasonable in comparison to market values.

**11.9 Electronic-Measurement Books(e-MBs):** Project executing authorities should, as early as possible, implement e-MBs and the same should be integrated with IT based project monitoring system, being used by the procuring entities.

**11.10 Extension of time for completion of projects:** Procuring entity may put in place a graded authority structure whereby extension of time for completion of contract, beyond a specified threshold value of contract, may be granted by the next higher authority.

**11.11 Delay in taking timely decisions:** Delay in decision making by the officials of the project executing authority on various changes in the project scheme arising out of emerging situations during execution of the work is also one of the contributors to the delay in completion of projects. Sometimes timely decisions on these changes are so crucial that the next step could only be taken after addressing the change. Delay in decisions by the project executing authority can also lead to litigation due to inadequate utilization/ idling of resources of the contractor. There is frequently a feeling among officials that indecision is safe while a decision may lead to adverse

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consequences for the decision maker. Therefore, there is a need for project executing authorities to put in place a system of resolution of the issues coupled with timelines for various levels to take decisions.

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

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

## **12. Delay in payment to the contractors:**

12.1 Delay in eligible payments to contractors leads to delay in execution of projects, cost overruns and disputes. Hence, ad-hoc payments of not less than 75% of eligible running account bill/ due stage payment, shall be made within 10 working days of the submission of the bill. This period of 10 days is for completion of all processes including prima facie scrutiny and certification by the engineer in-charge (as declared by procuring entities). The remaining payment is also to be made after final checking of the bill within 28 working days of submission of bill by the contractor. In case the payment has not been released within 10 working days as prescribed above, it shall be made as soon as possible, and after payment a written explanation for the delay shall be submitted to the next higher authority within three working days.

12.2 Public authorities may put in place a provision for payment of interest in case of delayed payment of bills by more than 30 working days after

submission of bill by the contractor. Where interest is to be paid, the rate of interest should be the rate of interest on General Provident Fund.

12.3 In case of unwarranted discretionary delays in payments, including failure to authorise / make ad hoc payments as prescribed in para 12.1 above, responsibility shall be fixed on the concerned officers. Project executing authorities should have a system to monitor delays in payments and to identify such unwarranted delays.

12.4 The Final bill should also be paid to the contractor within three months after completion of work.

12.5 All project executing authorities implementing works contracts involving aggregate payments of more than Rs.100 crore per annum shall have an online system for monitoring of the bills submitted by contractors. Such system shall have the facility for contractors to track the status of their bills. It shall be mandatory for all contractors' bills to be entered into the system with date of submission and date of payment. Such system shall be put in place within one year of issue of these instructions.

### **13. Engineering, Procurement and Construction (EPC) contracts:**

13.1 In EPC contracts, since primary responsibility to execute the work lies with the EPC contractor, success of the project also depends upon the quality of the tender document wherein enough clarity on the broad framework for execution of the work and the obligations of the contractor needs to be built in.

13.2 Milestones for payment to the contractor should be fixed in a manner that facilitates smooth cash flow for the contractor as well as for progress of the work. Milestones fixed should avoid excessive front loading or back loading, i.e., amount of payment should be commensurate with stage-wise quantum of work/ cost incurred. Milestones for payment to the contractor should also be linked with the deliverables.

13.3 In case of EPC contracts, only general arrangement drawings and architectural control parameters should be part of the EPC tender document. In case of EPC contracts, timelines for submission of drawings by the contractors and approval thereof by the competent authority should be clearly prescribed in the tender document, wherein, damages for non-adherence of such timelines in this regard may also be incorporated.

13.4 EPC contracts shall specify broad technical specifications and key output parameters. Over-specification of design may lead to increase in cost. Technical specifications shall be framed in such a manner to allow sufficient freedom to the contractor to optimize design. Provisions on the following should be included in commercial conditions:

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

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

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

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

**14. Substitution of key personnel during execution of consultancy contract:**

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

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

**15. Additional Methods of Procurement:**

**15.1 Fixed Budget – based Selection (FBS) for consultancy services:**

15.1.1 GFRs 2017 provide three methods for selection/evaluation of consultancy proposals viz. Quality and Cost Based Selection (QCBS), Least Cost System (LCS) and Single Source Selection (SSS). The Fixed Budget-based Selection (FBS) method is hereby also allowed for selection of consultants. Under this method, cost of the consulting services shall be specified as a fixed budget in the tender document itself. FBS may be used when:

- (i) the type of consulting service required is simple and/or repetitive and can be precisely defined; and
- (ii) the budget can be reasonably estimated and set based on credible cost estimates and/ or previous selections which have been successfully executed; and
- (iii) the budget is sufficient for the consultant to perform the assignment.

15.1.2 Under FBS, the selection of the consultant shall be made by one of the following two methods:-

- (i) By a competitive selection process, based only on quality, using specific marking criteria for quality in the manner indicated in Rule 192(i) of the GFR. The proposal with the highest technical score that meets the fixed budget requirement shall be considered for placement of contract.
- (ii) In cases of repetitive or multiple assignments, by empanelling suitable consultants, through an open advertised process with specified quality criteria. Thereafter, selection of a specific consultant for a specific assignment from such panel shall be based on overall considerations of public interest including timeliness, practicability, number of other assignments already given to that consultant in the past, etc. In such cases the budget for each assignment shall also be fixed by the procuring entity.

**15.2 Quality-cum-Cost based Selection (QCBS) for Works and Non-Consultancy Services:-**

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

- (i) where the procurement has been declared to be a Quality Oriented Procurement (QOP) by the competent authority or
- (ii) for procurement of Non-Consulting Services, where estimated value of procurement (including all taxes and option clause) does not exceed Rs 10 crore.

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

*(a) In case the difference between estimated value ( including taxes etc as above) and value of the proposed contract (including taxes etc) is less than 10% of the estimated value, there will be no bar on placement of contract.*

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

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

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

- (i) For declaring a procurement as QOP:
  - a) Where the procuring entity/ project executing authority is covered by Rule 1 of GFR, the Secretary of the Ministry/ Department, to which the procuring entity belongs.
  - b) Where the procuring entity is a CPSE, the Board of Directors of the CPSE.
- (ii) For Non-consulting Services not exceeding Rs.10 crore in value:
  - a) Where the procuring entity is covered by Rule 1 of GFR, by the officer or authority two levels above the officer/ authority competent to finalize the particular procurement, or the Secretary of the Ministry/ Department whichever is lower.
  - b) Where the procuring entity is a CPSE, the authority or officer two levels above the officer competent to finalize the particular procurement, or the Board of Directors of the CPSE whichever is lower.

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

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- (i) Two or more persons who have expert knowledge and/or long experience relevant to the procurement in question;
- (ii) One or more persons with extensive experience in handling public projects and/or public finance in the Government or State/Central Public Sector;
- (iii) One or more persons with experience in financial management/ financial administration/audit/accountancy;
- (iv) Not more than one member representing the procuring entity who may *inter alia* provide administrative support to the Committee.
- (v) Any person who is a member of the STC shall not associate himself in any manner with any bidder for the procurement concerned.
- (vi) The persons referred to in sub paras (i) to (iii) shall be persons not working under the Competent Authority specified in para 15.2.2 and shall not belong to any organization under the control of, or receiving funding from, the procuring entity or the Ministry/ Department to which such procuring entity belongs.

15.2.4 The names of members of the Special Technical Committee shall be decided either by the Competent Authority specified in para 15.2.2 above or by any other authority to whom such power is delegated by the competent authority; however, powers shall not be delegated to the officer or authority competent to finalize the particular procurement. Sitting fee may be paid to the members of the STC. Incidental costs including travel shall be paid by the procuring entity.

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

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

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The recommendations of the STC shall be followed except where there are special grounds in public interest for deviating from them. However, every case of deviation from the recommendations of the STC shall require approval of the Competent Authority specified in para 15.2.2(i) above who approved the declaration of the procurement as QOP.

15.2.6 In respect of QCBS for Non-Consultancy Services not exceeding Rs.10 crore, a Technical Committee shall be constituted to carry out functions mentioned in para 15.2.5 in lieu of the STC. The composition of the Technical Committee shall follow the provisions of para 15.2.3 (i) to (v). The provisions of 15.2.3 (vi) shall however not be applicable in such cases.

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

15.2.8 Tender Documents – Fixing/ Selection of the Evaluation/ Qualification Criteria

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

15.2.9 Fixing of Scoring/ Marking Criteria:

- (i) The scoring should not be a variable that relies on the subjective opinion of the evaluating panel. The marking scheme should enable achievement of almost similar scores irrespective of the persons/ experts being involved in the evaluation process. When

the outcomes are consistent for the available information, the QCBS parameters are more reliable. Unambiguous description and criteria help to avoid grey areas so as to ensure that there is only one possible score for the item. As far as possible, the criteria should be so specific and clear that bidders can self-mark their own bids.

- (ii) It is better to specify minimum marks for meeting the qualifying criteria specified.
- (iii) Examples of fixed quality parameters that ought not to be considered for relative scoring include organizations' ISO/standards' accreditation, etc. These are required to establish the credentials of the service provider but cannot be used for relative comparison between various bidders.
- (iv) Bidders should be asked to produce certificates for the past performance. A format may be given in the tender itself outlining the contract details, completion, sustainability of service etc and bidders may be asked to fill it and give evidence to that effect.
- (v) Bidders may be asked to submit a detailed presentation on their proposals in the form of soft copy along with the bid so as to facilitate better understanding of their proposal and to ensure commitment.
- (vi) Besides the Bill of Quantity (BOQ) output criteria for payment, Key Performance Indicators (KPIs) may be specified with minimum achievement levels for payment so as to ensure quality compliance.

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

15.2.11 Joint ventures in QCBS:

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

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even more important to guard against such tendencies. Therefore, Joint Ventures may be avoided in QCBS procurements as far as possible. Joint Ventures could, however, become necessary in high technology or innovative projects where a single entity may not be able to execute the work alone.

- (ii) If JVs are allowed, adequate safeguards should be provided. Since weightage for quality/ experience influences the award itself, measures should be taken to ensure that all the JV partners are present and deliver services all through the contract period. An Implementation Board with participation of all JV partners may be provided for wherein the Project Manager from the procuring entity shall also be allowed audience when required. Meeting of JV partners with the project executing authority for quarterly progress review may be made as a criterion linked to achievement of key dates or even payment.

#### **16. Arbitration and dispute resolution:**

16.1 During operation of the contracts, issues and disputes arising due to lack of clarity in the contract become the root cause for litigation. Litigation has adverse implications on the timelines and overall cost of the project. Before resorting to arbitration/ litigation, the parties may opt for mutual discussion, mediation, and conciliation for the resolution of disputes.

16.2 Arbitration/ Court awards should be critically reviewed. In cases where there is a decision against Government/Public Sector Enterprise (PSE), the decision to appeal should not be taken in a routine manner but only when the case genuinely merits going for the appeal and there are high chances of winning in the court/ higher court. There is a perception that such appeals etc. are sometimes resorted to postpone the problem and defer personal accountability. Casual appealing in arbitration/court cases has resulted in payment of heavy damages/ compensation/ additional interest cost, thereby causing more harm to the exchequer, in addition to tarnishing the image of the Government.

16.3 The procuring entity should monitor the success rate of appealing against arbitration awards. There should be a clear delegation to empower officials to accept arbitration/ court orders. A special board/committee may be set up to review the case before an appeal is filed against an order. Arbitration/Court awards should not be routinely appealed without due

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application of mind on all facts and circumstances including realistic probability of success. The Board/Committee or other authority deciding on the matter shall clarify that it has considered both legal merits and the practical chances of success and after considering the cost of, and arising through, litigation/appeal/further litigation as the case may be, it is satisfied that such litigation/appeal/further litigation cost is likely to be financially beneficial compared to accepting the arbitration/court award.

16.4 Statistics have shown that in cases where the arbitration award is challenged, a large majority of cases are decided in favour of the contractor. In such cases, the amount becomes payable with interest, at a rate which is often far higher than the Government's cost of funds. This results in huge financial losses to the Government. Hence, in aggregate, it is in public interest to take the risk of paying a substantial part of the award amount subject to the result of the litigation, even if in some rare cases of insolvency etc. recovery of the amount in case of success may become difficult. Instructions have been issued in this matter in the past but have not been fully complied with. The GFRs have now been amended accordingly.

16.5 All procuring entities and public authorities are required to comply with Rule 227A of GFRs. The only circumstances in which such payment need not be made is where the contractor declines, or is unable, to provide the requisite Bank Guarantee and /or fails to open escrow account as required. Persons responsible for not adhering to the Rule 227A of the GFRs are liable to be held personally accountable for the additional interest arising, in the event of the final court order going against the procuring entity.

#### **17. Aligning the interest of stakeholders**

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

17.2 Public authorities may devise strategies to provide incentives to contractors/ concessionaires/ consultants/ architects/ other stakeholders by various means, including bonus, better rating and recognition for early/ timely and quality completion of projects. Similar strategies may be devised for recognition of engineers/ officers/ other team members for early/ timely and quality completion of the projects. The practice of mentioning the names of contractor and the project in-charge publicly at work sites may be implemented. Such recognition may be in a form which has long shelf life so as to associate the contractor and project in-charge with the life of the project.

17.3 "Coming together is a beginning; keeping together is progress; working together is success." It is an accepted fact that the success of any project is dependent on a well-co-ordinated team working towards a common goal. For successful execution of any project within specified time, cost and quality, the interest of all the stakeholders needs to be aligned. Coordinated efforts of all stakeholders such as contractors, consultants, public authority and project executing authority and public representatives will bring about the best possible outcome.

ly  
29.10.2024

(Kanwalpreet)  
Director (Procurement Policy)  
Tel.: 23093811  
E-mail: kanwal.irss@gov.in

To

- (i) Secretaries to All Central Government Ministries/ Departments
- (ii) Secretary, Department of Public Enterprises with a request for reiterating these instructions to all Central Public Sector Enterprises

Copy to:

- (i) Cabinet Secretary
- (ii) Secretary, Central Vigilance Commission.

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\*\*\*\*\*End of Appendix-9\*\*\*\*\*

## Appendix-10: Performance Security against Consulting Service Contract



प्लॉट. नं. 19, सेक्टर 16-ए, नोएडा-201 301 उत्तर प्रदेश

Plot No. : 19, Sector 16-A, Noida-201 301, Uttar Pradesh

दूरभाष / Telephone : 0120-2419000 फैक्स / Fax : 0120-2488310

CIN : L11101AS1959GOI001148 ई-मेल / E-mail : oilindia@oilindia.in, वेबसाइट / Website : www.oil-india.com

### CIRCULAR

Ref: OIL 62/C&P/ 275 /2020

Date: 04.12.2020

From	:	General Manager (C&P), Corporate Office
To	:	All Executives of C&P Department, All Spheres
Sub	:	Performance Bank Guarantee against consulting service contract

- 1.0 As per OIL's Integrated Procedure / Manual for procurement of goods and services, no Performance Bank Guarantee is required for consulting service contract. In order to maintain the uniformity across the organisation, it is felt prudent to define the type of consulting services where Performance Bank Guarantee is not required.
- 2.0 Normally, in consulting services, consultant is engaged for giving his/her/their proficient opinion/suggestion and it is the prerogative of the client whether to accept it or not. As such, this type of consulting service cannot be compared with normal service contract, where there is no warranty or defect liability period for which performance security shall be required to take care of the interest of the client.
- 3.0 However, it has been observed in some of the consultancy service contracts that , apart from the consultancy/consulting services, other services are also involved/associated and as a result, the nature of the services on overall contractual context becomes different from the absolute consulting services. In such consultancy contracts like Project Management Consultancy(PMC), EPMC/EPCM, Environment Impact Assessment (EIA) contract, Hiring of Architect for consultancy and execution of Civil Engineering Contract etc., where non-performance of the consulting agencies may lead to delay in execution of the project as well as operational/financial losses to the organisation. As such, this type of consulting contract can be treated at par with other service contract and hence, Performance Bank Guarantee should be made applicable to bind the Consulting Agencies towards obligation of the Contract as well as to cover the warranty obligation of the respective EPC/construction contract.

*Handwritten signature*

4.0 In view of above, the type of consultancy services is differentiated as under to decide on applicability Performance Bank Guarantee :

A. Type of Consulting Services where Performance Bank Guarantee (PBG) is applicable and PBG should be valid till 3 months beyond the warranty obligations/defect liability period of the EPC/construction contract:

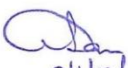

- a) Project Management Consultant ( PMC ) / EPMC/EPCM
- b) EIA consultant.
- c) Architectural firm engaged for execution of any civil engineering project.

B. Type of Consulting Services where Performance Bank Guarantee ( PBG ) is not applicable:

- a) Individual consultant / Expert engaged for a specialised job.
- b) Consultant engaged for submitting project report.
- c) Consultant engaged for due diligence.
- d) Consultant engaged on nomination basis.

5.0 The above shall be applicable for all future Limited as well as Open Tenders.

All concerned are requested to be guided accordingly.

  
04/12/2020  
(Anita Dam)  
General Manager (C&P)  
For Chairman & Managing Director  


cc: CMD  
cc: D (HR&BD) / D (E&D) / D (F) / D (O) / CVO  
cc: RCE / ED (CA) / ED (C&P) / ED (RF) / ED (E&D)  
cc: CGM (KGB & BEP) / CGM (PHQ) / CGM (KOLKATA)  
Note : This guideline is issued as per the approval accorded LMC, FHQ against proposal no. FHQ-CNP/3/2020-SERVICE

\*\*\*\*\***End of Appendix-10**\*\*\*\*\*

## Appendix-11: Integrity Pact - SoP



सत्यमेव जयते

केन्द्रीय सतर्कता आयोग  
CENTRAL VIGILANCE COMMISSION



सतर्कता भवन, जी.पी.ओ. कॉम्प्लेक्स,  
ब्लॉक-ए, आई.एन.ए., नई दिल्ली-110023  
Satarkta Bhawan, G.P.O. Complex,  
Block A, INA, New Delhi-10023

सं./No.....015/VGL/091.....

दिनांक / Dated. 14.06.2023.....

Circular No. 04/06/23

**Subject : Adoption and implementation of Integrity Pact-Revised Standard Operating Procedure- regarding.**

The Commission has reviewed the Standard Operating Procedure (SOP) for adoption of Integrity Pact (IP) by all Government Organizations, Public Sector Enterprises, Public Sector Banks, Insurance Companies, other Financial Institutions and Autonomous bodies etc. A copy of the revised SOP is enclosed, which would be applicable for adoption and implementation of the IP by the organizations concerned.

2. The present SOP is in supersession of the earlier SOP issued vide Circular No. 05/01/22 dated 25.01.2022.

*WJ Keishing*

(Wormila Jasmine Keishing)  
Deputy Secretary

Encl.: As above

To

- (i) All Secretaries of Ministries / Departments. **(This Circular may also be shared with the existing IEMs in the organizations concerned)**
- (ii) All CMDs/Head of CPSUs/Public Sector Banks/Organisations. **(This Circular may also be shared with the existing IEMs in the organizations concerned)**
- (iii) All CVOs of Ministries/Departments/CPSUs/Public Sector Banks/Organisations. **(This Circular may be brought to the notice of the Chief Executive of the organization concerned)**
- (iv) All Independent External Monitors.

**STANDARD OPERATING PROCEDURE FOR IMPLEMENTATION OF  
INTEGRITY PACT**

**1.0 BACKGROUND**

- 1.1 In order to ensure transparency, equity and competitiveness in public procurement, the Commission recommends adoption and implementation of the concept of Integrity Pact (IP) by Government organizations, Public Sector Enterprises, Public Sector Banks, Insurance Companies, other Financial Institutions and Autonomous Bodies, etc.
- 1.2 Deptt. of Expenditure vide OM dt. 19.7.2011, issued guidelines to all Ministries/Departments/Organizations including their attached/subordinate offices and autonomous bodies for implementation of IP. Also, vide OM dated 20.7.2011, Deptt. of Expenditure requested Department of Public Enterprises for directions to Central Public Sector Enterprises for use of IP.
- 1.3 Further, in view of the increasing procurement activities of Public Sector Banks (PSBs), Insurance Companies (ICs) and Financial Institutions (FIs), the Commission vide Circular No. 02/02/2015 dated 25.02.2015 advised that all PSBs, PSICs and FIs shall also adopt and implement the Integrity Pact.
- 1.4 The Commission vide Circular No. 05/01/22dated 25.01.2022, issued a revised Standard Operating Procedure (SOP) for adoption and implementation of Integrity Pact by Organizations.

**2.0 INTEGRITY PACT**

- 2.1 The Pact essentially envisages an agreement between the prospective vendors/bidders and the buyer, committing the persons/officials of both sides, not to resort to any corrupt practices in any aspect/stage of the contract. Only those vendors/bidders, who commit

themselves to such a Pact with the buyer, would be considered competent to participate in the bidding process. In other words, entering into this Pact would be a preliminary qualification. The essential ingredients of the Pact include:

- Promise on the part of the Principal not to seek or accept any benefit, which is not legally available;
- Promise on the part of bidder not to offer any benefit to the employees of the Principal not available legally;
- Principal to treat all bidders with equity and reason;
- Bidders not to enter into any undisclosed agreement or understanding with other bidders with respect to prices, specifications, certifications, subsidiary contracts, etc.
- Bidders not to pass any information provided by Principal as part of business relationship to others and not to commit any offence under PC/ IPC Act;
- Foreign bidders to disclose the name and address of agents and representatives in India and Indian Bidders to disclose their foreign principals or associates;
- Bidders to disclose the payments to be made by them to agents / brokers or any other intermediary;
- Bidders to disclose any transgressions with any other public/government organization that may impinge on the anti-corruption principle. The date of such transgression, for the purpose of disclosure by the bidders in this regard, would be the date on which cognizance of the said transgression was taken by the competent authority. The period for which such transgression(s) is/are to be reported by the bidders shall be the last **three years** to be reckoned from date of bid submission. The transgression(s), for which cognizance was taken even before the said period of three years, but are pending conclusion, shall also be reported by the bidders.

2.2 Any violation of Integrity Pact would entail disqualification of the bidders and exclusion from future business dealings, as per the existing provisions of GFR, 2017, PC Act, 1988 and other Financial Rules/Guidelines etc. as may be applicable to the organization concerned.

- 2.3 IP would be implemented through a panel of Independent External Monitors (IEMs), appointed by the organization. The IEM would review independently and objectively, whether and to what extent parties have complied with their obligations under the Pact on receipt of any complaint by them from the bidder(s).
- 2.4 Integrity Pact, in respect of a particular contract, shall be operative from the date IP is signed by both the parties. The IEMs shall examine all the representations/grievances/complaints received by them from the bidders or their authorized representative related to any discrimination on account of lack of fair play in modes of procurement and bidding systems, tendering method, eligibility conditions, bid evaluation criteria, commercial terms & conditions, choice of technology/specifications etc.
- 2.5 For ensuring the desired transparency and objectivity in dealing with the complaints arising out of the tendering process, the matter should be examined by the full panel of IEMs jointly, who would look into the records, conduct an examination, and submit their joint recommendations to the Management. In case the full panel is not available due to some unavoidable reasons, the available IEM(s) will conduct examination of the complaints. Consent of the IEM(s), who may not be available, shall be taken on record.
- 2.6 The role of IEM is advisory and the advice of IEM is non-binding on the Organization. However, as IEMs are invariably persons with rich experience who have retired as senior functionaries of the government, their advice would help in proper implementation of the IP.
- 2.7 The role of the CVO of the organization shall remain unaffected by the presence of IEMs. A matter being examined by the IEMs can be separately investigated by the CVO in terms of the provisions of the CVC Act or Vigilance Manual, if a complaint is received by him/her or directed to him/her by the Commission. CVO and /or the officials of the vigilance wing should not be associated by IEMs during examination of the complaints in any manner.

### 3.0 APPOINTMENT OF IEMs

- 3.1 The IEMs appointed should be eminent persons of high integrity and reputation. A periodical notice inviting applications from eligible persons will be published on the Commission's website. After due scrutiny and verification of the applications and accompanying documents, as may be deemed appropriate by the Commission, the name(s) would be included in the panel for consideration for nomination as IEM.
- 3.2 The zone of consideration of eminent persons for empanelment as IEMs would consist of:-
- (i) Officers who have held the post of Additional Secretary to Govt. of India or were in equivalent or higher pay scale, at the time of retirement (whether serving with Govt. of India or any State Govt.).
  - (ii) Persons who have held the post of CMD of Schedule 'A' Public Sector Enterprise and were equivalent to Additional Secretary to Govt. of India, at the time of retirement.
  - (iii) Persons who have held the post of CMD/MD and CEO of Public Sector Banks, Insurance Companies and other Financial Institutions, at the time of retirement.
  - (iv) Chief Executive Officer of an organization (other than listed above and were equivalent or higher to Additional Secretary to Govt. of India, at the time of retirement).
  - (v) Officers of Armed Forces, who were in the pay scale of equivalent or higher to Additional Secretaries to Govt. of India, at the time of retirement.
- 3.3 The Commission would not include a retired person in the panel being maintained by it for consideration for nomination as IEM, if that retired person has accepted a full time assignment, post retirement, either in government sector or private sector or elsewhere. All those empanelled persons, who accept full time assignment elsewhere, would cease to remain on the panel, from the date on which they have accepted the said assignment. In

this regard, it would be incumbent upon the empanelled persons to immediately inform the Commission about the acceptance of full time assignment by them.

3.4 The Commission would nominate IEMs for an organization, from the panel of IEMs maintained by it. The concerned organization should send a request for nomination of IEMs in case of adoption of Integrity Pact by them. Whenever a vacancy is likely to arise due to completion of tenure of an existing IEM, the organization should send the request for nomination of IEM three months before the expiry of tenure. Similarly, in case of resignation of IEM(s), intimation along with request for nomination should be sent immediately by the organization to the Commission.

3.5 Three IEMs shall be nominated for appointment in Maharatna and Navratna PSUs and two IEMs shall be nominated in all other organizations.

3.6 A person may be appointed as an IEM in a maximum of three organizations at a time.

3.7 An empanelled person cannot be appointed in one organization for a period of more than three years.

3.8 Age of IEM should not be more than 70 years at the time of appointment.

#### 4.0 IMPLEMENTATION PROCEDURE

4.1 The provision for the Integrity Pact is to be included in all Requests for Proposal/Tender documents issued in future in respect of the procurements that meet the criteria laid down by the Ministry/Department in terms of Department of Expenditure's OM dated 19.07.2011.

4.2 In all tenders covered under the IP, particulars of all IEMs, including their email IDs, should be mentioned, instead of mentioning details of a single IEM.

- 4.3 The Purchase / procurement wing of the organization would be the focal point for the implementation of IP.
- 4.4 It has to be ensured, through an appropriate provision in the tender document, that Integrity Pact is deemed as part of the contract so that the parties concerned are bound by its provisions.
- 4.5 A clause should be included in the IP that a person signing IP shall not approach the Courts while representing the matters to IEMs and he / she will await their decision in the matter.
- 4.6 In case of a joint venture, all the partners of the joint venture should sign the Integrity Pact. In case of sub-contracting, the Principal contractor shall take responsibility of the adoption of IP by the sub-contractor. It is to be ensured that all sub-contractors also sign the IP. In case of sub-contractors, the IP will be a tri-partite arrangement to be signed by the Organization, the contractor, and the sub-contractor.
- 4.7 The final responsibility for implementation of IP vests with the Head of organization/CMD/CEO of the organization.

5.0 **ROLE OF IEMs**

- 5.1 The IEMs would be provided access to all documents/records pertaining to the tender for which a complaint or issue is raised before them, as and when warranted.
- 5.2 The Procurement wing of the organization shall hold quarterly meetings with the IEMs. A summary of contracts awarded in the previous quarter, which are covered under the IP, shall be shared with the IEMs during the quarterly meeting. Such summary of contracts should include details like tender number, mode of tendering, period allowed for publicity, number of bids received, number of bidders considered eligible, and name and address of the successful bidder.

- 5.3 The above summary of contracts is to help the IEMs in analyzing whether appropriate mode of tendering is being adopted by the organization i.e. limited tender mode or nomination mode are not unduly used, number of bidders are not too low, large number of bidders are not excluded while judging the eligibility or during technical bid evaluation stage, and whether particular firm or set of particular firms is repeatedly getting contracts etc. Based on their analysis, the IEMs can suggest to the Management suitable systemic improvement(s) and measures to improve objectivity in decision making, capacity building etc.
- 5.4 It would be desirable to have structured meetings of the IEMs with the Chief Executive of the Organization on a half yearly basis to discuss / review the information on tenders awarded during the preceding six months' period. Additional such meetings, however, can be held as per requirement. All such meetings with the Procurement wing or with the Chief Executive of the organization should be minuted.
- 5.5 IEM should examine the process integrity; they are not expected to concern themselves with fixing of responsibility of officers. Complaints alleging malafide on the part of any officer of the organization should be looked into by the CVO of the concerned Organization.
- 5.6 In the event of any dispute between the management and the contractor relating to those contracts where Integrity Pact is applicable, in case, both the parties are agreeable, they may try to settle dispute through mediation before the panel of IEMs in a time bound manner. If required, the organizations may adopt any mediation rules for this purpose. However, not more than five meetings shall be held for a particular dispute resolution. The fees/expenses on dispute resolution shall be equally shared by both the parties.

In case, the dispute remains unresolved even after mediation by the panel of IEMs, the organization may take further action as per the terms & conditions of the contract.

- 5.7 All IEMs should sign non-disclosure agreements with the organization in which they are appointed.
- 5.8 The IEMs would also be required to sign a declaration of absence of conflict of interest. A person acting as an IEM shall not be debarred from taking up other assignments such as consultancy with other organizations or agencies subject to his declaring that his / her additional assignment does not involve any conflict of interest with existing assignment, and it is not a full time assignment. In case of any conflict of interest arising at a later date from an entity wherein he is or has been a consultant, the IEM should inform the CEO and recuse himself/herself from that case.

**6.0 ENTITLEMENTS OF IEMs**

- 6.1 In any organization, the IEMs shall be paid per sitting a fees of ₹ 25,000/- . However, the maximum amount payable to IEMs in a calendar year shall not exceed ₹ 3,00,000/- with respect to the sitting fees.
- 6.2 The travel and stay arrangement for the IEMs for such meetings shall be equal to their entitlements at the time of retirement. Booking of tickets for travel, as per the mode of travel indicated by the IEM in writing (including email), local transport and stay shall be done by the organization.
- 6.3 The fees for meetings held by IEMs for mediation between the Management and the contractor as per Para 5.6 above shall be the same as fee payable to IEMs otherwise and in addition to the fees for the regular meetings of IEMs, over and above the ceiling of ₹ 3,00,000/- annually, to be calculated as per calendar year. The travel and stay arrangement for such meetings shall be same as given in Para 6.2 above.
- 6.4 The organization concerned shall provide place for meeting and secretarial assistance to IEMs for rendering his/her job as IEM. No payment in lieu of secretarial assistance shall be paid to the IEMs.

7.0 **REVIEW SYSTEM**

- 7.1 CVOs of all organizations would keep the Commission posted with the implementation status through their annual reports and special reports, wherever necessary.
- 7.2 All organizations are called upon to make sincere and sustained efforts to imbibe the spirit and principles of the Integrity Pact and ensure its effective implementation.

**\*\*\*\*\*End of Appendix-11\*\*\*\*\***

## **ANNEXURES**

### Annexure 1: Procurement Guidelines (Refer Para 1.1)

Hierarchy Level	Procurement Guidelines
<b>I - Statutory Framework</b>	<p style="text-align: center;">The Constitution of India Indian Contract Act, 1872; Sale of Goods Act, 1930 and Mercantile Laws</p> <p style="text-align: center;">Laws relevant to Public Procurement (Right To Information Act, 2005; The Micro, Small and Medium Enterprises Development Act, 2006; Prevention of Corruption Act, 1988)</p>
<b>II - Rules and Regulations</b>	General Financial Rules, 2017
	Delegation of Power
	Any other financial, vigilance, security, safety, counter- trade and other regulatory aspects; orders and guidelines of the Government on the subject of Public Procurement
<b>III - Ministry of Finance's Manuals</b>	Ministry of Finance's Manual of Policies and Procedures for the Procurement of Good / Works and Consultancy Services (including non-consultancy services)
<b>IV - Procuring Entities' Codes/ Manuals and Standard Bidding Documents</b>	More Comprehensive and detailed Codes and Manuals for Public Procurement for various categories issued by 'Procuring Entities' for their own use
	Standard Bidding Documents for Procurement of Goods / Works / Consultancy Services etc.

**Remarks:** *The documents at Hierarchy Levels I and II above are of fundamental and generic in nature. Documents at lower levels of hierarchy must conform to the Documents higher up in hierarchy. Relationships of Bidders /Suppliers / contractors /service providers with procuring entities are solely governed by the law of the land and the relevant bid/ contract/registration document(s). Other documents at hierarchy levels II and III mentioned above shall have no locus standi in such relationships.*

**Annexure 2: Format for seeking the approval of the Competent Authority for inviting Global Tender Enquiry for procurements less than Rs. 200 crores**

- i) Proposals are to be simultaneously sent to the following:
- a) Cabinet Secretariat, email: [ca4-cabsec@gov.in](mailto:ca4-cabsec@gov.in)
  - b) Department of Promotion of Industry & Internal Trade (DPIIT) email: [manmeet.nanda@ias.nic.in](mailto:manmeet.nanda@ias.nic.in)&[rajesh.gupta66@gov.in](mailto:rajesh.gupta66@gov.in)
  - c) Department of Expenditure, email: [kanwal.irss@gov.in](mailto:kanwal.irss@gov.in) and [sudesh.kumar85@gov.in](mailto:sudesh.kumar85@gov.in)

**Table-1**

<b>Sl. No.</b>	<b>Particulars</b>	<b>Remarks</b>
1	Name of the Ministry:	
2	Name of the Department:	
3	Name of the sub-ordinate office (if applicable):	
4	Detailed Description of the Item	
4.1	Sl. No. in List of items in Notification no. F.20/43/2020-PPD dated 21/12/2020 of Ministry of Finance, if any	
5	Use of the Item	
6	Life time of the item proposed (in years)	
7	Whether item is procured regularly? [If so, details of procurement of the said item over the past three years (three completed financial years or last three tenders and the current financial year inclusive of supply details as per format given under table-2.	
8	Quantity required to be procured with justification for the quantity (States/UT/Region wise projection)	
9	Estimated procurement price along with basic of such estimation (International Price comparison chart)	
10	Justification to be submitted as under	
	a. Detailed justification for Global Tender and essentially of import (item wise)	
	b. Who are the (possible) vendors of the item under procurement, in the global (including India) market?	

	c. Whether the Department has tried and floated the tender to identify the domestic suppliers in the past financial year (If not, the reason thereof)	
	d. Capacity of all domestic local suppliers as per the domestic tender floated, if any	
11	What are technical alternatives available within country and whether they can be used <i>(substituted) for the proposed item under GTE?</i>	
12	Whether the Department had in the past attempted at development of local suppliers/ phased indigenization/ promotion of alternative technology having sufficient local suppliers. (If so, details thereof)	
13	Consequences of non-procurement of the item through GTE.	
14	Whether BIS standards are available for the items proposed under procurement. If not, the efforts made to operationalize such standards.	
15	Whether the department had published procurement plan for next 5 years, for the item under discussion?	
16	Total Lead Time (in months) for the tendering process and supply respectively, once the approval is accorded for procurement	
17	The Financial Year for which the proposed Item is procured	

The above proposal is submitted, with the approval of the Secretary of the Administrative Department/ Ministry, for the consideration of the Competent Authority, as mandated by D/o Expenditure order dated 15<sup>th</sup> May, 2020 regarding Amendment in GFRs-2017, regarding Global Tender Enquiry.

Also, it is informed that the above proposal had been sent to Cabinet Secretariat (via Email ID: [ca4-cabsec@gov.in](mailto:ca4-cabsec@gov.in)), D/o Expenditure (via Email ID: [GTEnquiry-200@gov.in](mailto:GTEnquiry-200@gov.in)) and to DPIIT, for their consideration.

Stamp and Signature of the

Authorized officer of the proposing Department

Name:

Designation:

Contact Number:

Email ID:

**Table-2**

Details of procurement of the said item over the past three years (Three completed financial years and the current financial year) inclusive of supply details.

<b>Year of contract</b>	<b>Item</b>	<b>Contract No. &amp; date</b>	<b>Supplier</b>	<b>Quantity of Supply with unit</b>	<b>Rate per unit</b>	<b>Completion date of contract</b>	<b>Country of Origin of goods</b>	<b>Local content in%</b>

**Annexure 3: Model Clause/ Certificate to be inserted in tenders etc. w.r.t  
Order vide office memorandum F. No. 6/18/2019-PPD dated 23rd July,  
2020 (Public Procurement no. 1)**

***Appendix-3 to be referred for the policy as per office memorandum F. No. 6/18/2019-  
PPD dated 23rd July, 2020 (Public Procurement no. 1) issued by Department of  
Expenditure, Ministry of Finance, Govt. of India***

**Model Certificate to be incorporated in tender document**

**Exhibit - I**

**UNDERTAKING TOWARDS COMPLIANCE OF PROVISIONS FOR RESTRICTIONS ON  
PROCUREMENT FROM A BIDDER OF A COUNTRY WHICH SHARES LAND BORDER WITH  
INDIA**

**(To be typed on the letter head of the bidder)**

**Ref. No** \_\_\_\_\_

**Date:** \_\_\_\_\_

Tender No. \_\_\_\_\_ Date: \_\_\_\_\_

**OIL INDIA LIMITED**

\_\_\_\_\_  
\_\_\_\_\_

**Dear Sirs,**

*We, M/s \_\_\_\_\_, have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India; we certify that we are not from such a country/or if from such a country, have been registered with the Competent Authority. We hereby certify that we fulfil all requirements in this regard and are eligible to be considered. [wherever applicable, evidence of valid registration by the Competent Authority shall be attached]*

Yours faithfully,  
For (type name of the firm here)

Signature of Authorised Signatory

Name:

Designation:

Phone No.

Place:

Date:

(Affix Seal of the Organization here, if applicable)

**Exhibit - II**

**UNDERTAKING FOR WORKS INVOLVING POSSIBILITY OF SUB-CONTRACTING**

(To be typed on the letter head of the bidder)

**Ref. No** \_\_\_\_\_

**Date:** \_\_\_\_\_

Tender No. \_\_\_\_\_ Date: \_\_\_\_\_

**OIL INDIA LIMITED**

\_\_\_\_\_  
\_\_\_\_\_

**Dear Sirs,**

*We, M/s \_\_\_\_\_, have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India and on sub-contracting to contractors from such-countries, we certify that we are not from such a country/or if from such a country, have been registered with the Competent Authority and will not sub-contract any work to a contractor from such countries unless such contractor is registered with the Competent Authority. We hereby certify that we fulfil all requirements in this regard and is eligible to be considered. [wherever applicable, evidence of valid registration by the Competent Authority shall be attached]*

Yours faithfully,  
For (type name of the firm here)

Signature of Authorized Signatory

Name:

Designation:

Phone No.

Place:

Date:

(Affix Seal of the Organization here, if applicable)

**Exhibit – III**

**ADDITIONAL UNDERTAKING BY BIDDER IN CASES OF SPECIFIED TRANSFER OF TECHNOLOGY**

(To be typed on the letter head of the bidder)

**Ref. No** \_\_\_\_\_

**Date:** \_\_\_\_\_

Tender No. \_\_\_\_\_ Date: \_\_\_\_\_

**OIL INDIA LIMITED**

\_\_\_\_\_  
\_\_\_\_\_

*We, M/s \_\_\_\_\_, have read the clause regarding restrictions on procurement from a bidder having Transfer of Technology (ToT) arrangement. We certify that we do not have any ToT arrangement requiring registration with the competent authority.*

OR

*We, M/s \_\_\_\_\_, have read the clause regarding restrictions on procurement from a bidder having Transfer of Technology (ToT) arrangement. We certify that we have valid registration to participate in this procurement. [Evidence of valid registration by the Competent Authority shall be attached]*

Yours faithfully,  
For (type name of the firm here)

Signature of Authorised Signatory

Name:

Designation:

Phone No.

Place:

Date:

(Affix Seal of the Organization here, if applicable)

*Note: This form should be returned along with offer duly signed.*

**Annexure 4(A): Invitation and Declaration for Negotiations**

*(Refer Para 5.11.7)*

**Invitation for Negotiations**

*(On letterhead of the procuring entity)*

Ref. No: \_\_\_\_\_

Date:\_\_\_\_\_

To,

M/s.

Sub: Tender No ----- for the services of -----

Dear Sir/Madam,

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

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

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

Yours faithfully,

(Authorised Officer)

Enclosure:

- i) Form of Declaration
- ii) Form of Revised Offer

**FORM OF DECLARATION**

**(To be signed and submitted before start of negotiations)**

**(On company letterhead)**

Ref No: \_\_\_\_\_

Date: \_\_\_\_\_

To,

M/s.

Sub: Tender No-----for the services of-----

Ref: Your invitation for negotiations No: dated:

Dear Sir/Madam,

\_\_\_\_\_ is duly authorised on behalf of M/s. \_\_\_\_\_  
to declare that in the event of failure of the contemplated negotiations relating to Tender  
No. \_\_\_\_\_  
my/our original price against the tender shall remain open for acceptance.

Yours faithfully,

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

Place: \_\_\_\_\_

Date: \_\_\_\_\_

**Annexure 4(B): Format of Revised Offer in Negotiations**

*(Refer Para 5.11.7)*

**Revised Offer in Negotiations**

*(On company letterhead)*

From.....

Full address.....

**To** .....

Sir/Madam,

Sub: **Tender No** -----**for the services of** -----

Ref: Your invitation for negotiations no: dated:

A. On further discussions with your representatives on ..... in response to your letter no ..... dated....., we are not prepared to reduce the rates already quoted in the original tender, which will remain valid up to.....

Or

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

B(2) I/ we am/are aware that the provisions of the original bidding document remain valid and binding on me. I/we agree to abide by this tender on the revised rate quoted by me/us, it is open for acceptance for a period of \_\_\_\_\_(additional validity required to be mentioned by Procuring officer) days from this date, i.e., up to\_\_\_\_\_ and in default of my/our doing so, I/we will forfeit the earnest money deposited with the original tender/attached herewith.

Yours faithfully,

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

## **Checklist/ Formats**

**OIL INDIA LIMITED**  
**Purchase Requisition Checklist (Goods)**  
*(To be filled up by Indenting/User Department)*

F-4

Sr. No.	Description	Whether incorporated in PR
1	Description of Goods mentioned	Yes/No
2	PR Value and basis of Cost Estimate maintained in header text [Principles of Cost Estimation].	Yes/No
3	Purchasing group and Purchase Organization checked and are mentioned in PR	Yes/No
4	Whether the items are intended to be used in PEL/ML areas?	Yes/No
5	Whether Inst & Comm of the indented item is applicable?	Yes/No/NA
5A	If yes, whether the no. of days required for installation jobs from the date of communication of site readiness to the supplier is clearly defined?	Yes/No
6	If Annual Maintenance Contract (AMC) of the indented item is required, mention the period? [for type tick mark whichever is relevant]	_____ Years
6A	Comprehensive Maintenance Contract (CMC)	<input type="checkbox"/>
6B	Non-Comprehensive Maintenance Contract (NCMC)	<input type="checkbox"/>
7	Whether Third Party Inspection of the indented item is required?	Yes/No/NA
8	Whether the specifications of the items are exactly same as that contained in the Budgetary Quotation / Last Purchase Order?	
9	In case the list of spares is required in the tenders involving capital items, whether prices of such spares will be considered for priced evaluation or not?	Yes/No
10	Whether the OEM of the indented item is of Indian Origin or of Foreign Origin?	Yes/No
11	For Indigenous PR, <b>GeM Product id</b> provided	Yes/No
11A	<b>GeM Product id</b> does not exist for the PR item	<input type="checkbox"/>
12	Whether applicable 'Procurement Source Code' under 'Customer Data' tab selected (except Proprietary Stock PR)?	Yes/No
13	Check Procurement source code is entered correctly in the PR [to attract correct release strategy as per DoP]	Yes/No
14	Applicability of MSEs	Yes/No/NA
	• Exclusively for MSEs	<input type="checkbox"/>
	• MSE Benefit as per Public Procurement Policy for MSE	<input type="checkbox"/>
15	Special Operational Urgency mentioned (If applicable)	Yes/No
16	For PR with "Urgency Tag", whether brief justification/reason for urgency is mentioned.	Yes/No
17	Location of Delivery mentioned	Yes/No
18	Attachments (approval/drawing/any other important documents) are uploaded through "Document Management System (DMS)" of the PR.	Yes/No
19	Delivery period mentioned	Yes/No
20	BEC/BRC for the PR attached	Yes/No/NA

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## OIL INDIA LIMITED

21	Complete specification attached	Yes/No
22	Special Terms & Conditions (if applicable) attached	Yes/No/NA
23	Warranty Period mentioned	Yes/No
24	Pre-Bid requirement stated, if required	Yes/No
25	Requirement Justification provided	Yes/No
26	Drawing/Sketch, if applicable (attached)	Yes/No/NA
27	Budget provision and Expenditure Sanction with fund allocation mentioned	Yes/No /NA
28	For limited tender basis beyond the threshold limit for limited tender, whether approval of competent authority obtained and the names of the parties to whom the limited tender is to be sent is specified in PR.	Yes/No/NA
29	For single source/nomination basis, whether approval of competent authority obtained with full justification as to resorting to nomination basis tender.	Yes/No
30	For proprietary basis, whether approval of competent authority obtained and certified in the PR itself that the item-is proprietary in nature and there is no other alternative.	Yes/No/NA
31	Time schedule for utilization of material/equipment being procured including schedule of readiness of the front/site for erection and commissioning, if any	Yes/No
32	PR released and approved from competent authority as per DOP	Yes/No
33	For furniture PR's, whether the item would be procured as per existing circular of Planning Department?	Yes/No/NA
34	For medicine PR's, whether approval of Drug Purchase Committee attached?	Yes/No/NA
35	Whether the tendered items are splittable	Yes/No
36	Whether the HSN Code of the items has been incorporated in the PR?	Yes/No
37	In case of multiple line items in PR, whether the items/services are to be procured from the same source or not?	Yes/No
38	Any other	Yes/No

Signature			
Name			
Date			
Designation			
	PRP BY	CHK BY	REV BY

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**OIL INDIA LIMITED**  
**Purchase Requisition Checklist (Services/Works) F-4**  
*(To be filled up by Indenting/User Department)*

Sr. No.	Description	Whether incorporated in PR
1	Description of Works/Services mentioned	Yes/No
2	Whether requirement is for Works Contract	Yes/No/NA
3	PR Value and basis of Cost Estimate maintained in header text [Principles of Cost Estimation]. Cost should be excluding GST component	Yes/No
4	Purchasing group and Purchase Organization checked and are mentioned in PR as per the nature of procurement & required Group of Buyers	Yes/No
5	Whether the services are intended to be used in PEL/ML areas?	Yes/No
6	Whether latest minimum labor wages are complied with or not	Yes/No
7	For Indigenous PR, GeM Category of Services provided	Yes/No
7A	GeM Category of Services does not exist for the PR item/services	<input type="checkbox"/>
8	Whether applicable 'Procurement Source Code' under 'Customer Data' tab selected?	Yes/No
9	Check Procurement source code is entered correctly in the PR [to attract correct release strategy as per DoP]	Yes/No
10	Internal estimate is sent to Contracts department separately in sealed envelope clearly indicating PR No.	Yes/No
11	Service Line Items and quantities in the PR is matching with the IE format	Yes/No/NA
	• Exclusively for MSEs	<input type="checkbox"/>
	• MSE Benefit as per Public Procurement Policy for MSE	<input type="checkbox"/>
	• No MSE Benefit Clause (in case of Works contract, QCBS etc.)	<input type="checkbox"/>
12	Special Operational Urgency mentioned (If applicable)	Yes/No
13	For PR with "Urgency Tag", whether brief justification/reason for urgency is mentioned.	Yes/No
14	First time procurement mentioned - Whether approval of Competent authority obtained	Yes/No/ NA
15	Location of Works/Services mentioned	Yes/No
16	Firm Period of contract in case of Works/Services	Yes/No
17	Attachments (approval/drawing/any other important documents) are uploaded through "Document Management System (DMS)" of the PR.	Yes/No
18	Mobilization period mentioned	Yes/No
19	BEC/BRC for the PR attached	Yes/No/NA
20	Complete Scope of work / specification attached	Yes/No
21	Priced Bid Format / SOR attached	Yes/No/NA
22	Special Terms & Conditions (if applicable) attached	Yes/No/NA
23	Defect liability Period/Warranty Period mentioned	Yes/No
24	Pre-Bid requirement stated, if required	Yes/No

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## OIL INDIA LIMITED

25	Requirement Justification provided	Yes/No
26	Drawing/Sketch, if applicable (attached)	Yes/No
27	Budget provision and Expenditure Sanction with fund allocation mentioned	Yes/No
28	For limited tender basis beyond the threshold limit for limited tender, whether approval of competent authority obtained and the names of the parties to whom the limited tender is to be sent is specified in PR.	Yes/No/NA
29	For single source/nomination basis, whether approval of competent authority obtained with full justification as to resorting to nomination basis tender.	Yes/No
30	For proprietary basis, whether approval of competent authority obtained and certified in the PR itself that the item/services is proprietary in nature and there is no other alternative.	Yes/No
31	GCC of tender studied and deviations/exclusions from GCC (In respect of Insurance Clauses, HSE Clauses. LD/Penalty Clauses etc. and wherever applicable) mentioned in the SCC for Service PR	Yes/No/NA
32	PR released and approved from competent authority as per DOP	Yes/No
33	In case of civil service PR	
33A	Whether tender is reserved for OIL registered contractors as per IPM clause 43.4 (i)	Yes/No
33B	If yes, class of contractors for which the tender is reserved -(A/B/C/D)	A / B / C / D
33C	In case of open tender, whether necessary exemption clause for registered contractors is incorporated as per IPM clause 43.4 ( ii) and (iii)	Yes/No
	Whether the tendered items are splittable	Yes/No
34	Whether the SAC Code of the item/services has been incorporated in the PR?	Yes/No
35	Any other	Yes/No

Signature			
Name			
Date			
Designation			
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## OIL INDIA LIMITED

### Bid Evaluation Criteria Checklist (To be filled up by C&P Department)

F-5

Sr. No.	Tender Check Points	Whether incorporated in BEC/BRC
1	PR Checked and found that all the necessary parameters are maintained and released in the system	Yes/No
2	In-principle approval obtained, if applicable [First Time procurement (other than spares) or Nomination]	Yes/No
3	Cost-Estimation provided [For Services in sealed envelope]	Yes/No/NA
4	<b>BRC Technical Clauses to be checked – maintained in the BEC</b>	
•	Technical Experience Criteria [Eligibility Criteria as per Manual / Approval]	Yes/No
•	Similar Works/Goods Definition (if applicable)	Yes/No/NA
•	Supporting documents Requirements	Yes/No
•	JV Clause (if applicable)	Yes/No/NA
•	Parent Subsidiary Clause (if applicable)	Yes/No/ NA
•	Sister/Co-Subsidiary Clause (if applicable)	Yes/No/ NA
•	Consortium Clause (if applicable)	Yes/No/ NA
•	Mobilization/Delivery Requirements Clause	Yes/No
•	Any other technical qualification criteria	Yes/No
5	<b>BRC Financial Clauses to be checked – maintained in the BEC</b>	
•	Annual Financial Turn-over Criteria	Yes/No
•	Net Worth Criteria	Yes/No
•	Working Capital Criteria (if applicable)	Yes/No/ NA
•	Bid Capacity Clause (if applicable)	Yes/No/ NA
•	Supporting documents Requirements	Yes/No
•	Consortium/Parent/Subsidiary clause (if applicable)	Yes/No/ NA
•	Any other financial qualification criteria	Yes/No
6	<b>BRC Commercial Criteria</b>	
•	Bid Security Amount and Validity	Yes/No
•	Bid validity	Yes/No
•	Integrity Pact (if applicable)	Yes/No
•	Digital Signature class & type (if applicable)	Yes/No/ NA
•	TPI Document Verification Clause (if applicable)	Yes/No/ NA
•	Clause related to submission of technical and price bid separately in two bid tenders	Yes/No
•	Local Content Clause	Yes/No
7	<b>Price Evaluation/Award Criteria</b>	

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## OIL INDIA LIMITED

•	Award Criteria	Yes/No
•	Purchase Preference Clause to MSE Bidders	Yes/No
•	Purchase Preference Clause with Local Content	Yes/No
•	Splitting Provision (if splittable)	Yes/No/ NA
•	Price Matching Criteria (if applicable)	Yes/No
8	<b>Bid Evaluation Criteria</b>	
•	Document Authenticity Clause/Undertaking	Yes/No
•	Compliance of the competition act, 2002	Yes/No/NA
9	<b>Customs Duty Clause</b>	Yes/No
10	Integrity Pact (if applicable)	Yes/No/ NA
11	Land Border Sharing Clause	Yes/No
12	Any other	

Signature			
Name			
Date			
Designation			
	PRP BY	CHK BY	REV BY

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## OIL INDIA LIMITED

### Content of Tender Documents (To be filled up by C&P Department)

F-6

The main sections of the Tender documents are:

1. Forwarding Letter / Notice Inviting Tender (NIT)
2. Instruction to Bidders (ITB)
3. Bid Evaluation Criteria
4. Technical Specifications (including Drawings) /Scope of Work and Quality Assurance  
(Inspections and Tests)
5. General Condition of Contract (GCC)
6. Special Conditions of Contract (SCC) (Redundant/obsolete clauses of GCC may be  
modified/deleted through a separate section in SCC)
7. Health, Safety and Environment
8. Schedule of Rates (SOR)
9. Standard formats
  - i) Bid Form / Cover Letter
  - ii) Price Bid Format / Price Schedule / SOQ / SOR
  - iii) Import declaration format
  - iv) Statement of Compliance
  - v) Bid Security / EMD and Performance Bank Guarantee
  - vi) Technical Evaluation Sheet for BEC / BRC
  - vii) Integrity Pact
  - viii) Contract Agreement Form
  - ix) Format of Undertaking Towards Submission of Authentic Information/Documents
  - x) Letter of Authority & Authorization for attending Bid Opening Others
  - xi) Schedule of company's plants, materials, and equipment (Responsibility matrix, if  
applicable)
  - xii) Any other proforma/annexure

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## OIL INDIA LIMITED

### Check List for Tender Preparation (To be filled up by C&P Department)

F-7

Sr. No.	Tender Check Points	Check before floating Tick (✓)
1	PR Checked and found that all the necessary parameters are maintained and released in the system	
2	In-principle approval obtained, if applicable [First Time procurement or Nomination or proprietary]	
3	Cost-Estimation obtained in sealed envelope (NA for Goods)	
4	EMD/ Bid Security incorporated as mentioned in Contract & Purchase Manual	
5	Bid validity Incorporated	
6	PBG clause incorporated (including validity of PBG and submission timeline)	
7	Pre-Bid (if applicable) (Tentative Date, Time & Venue)	
8	Pre-bid query submission deadline	
9	Mobilization (including interim mobilization/demobilization/staggered mobilization) / delivery clause incorporated	
10	Applicable Instruction to Bidders (ITB) incorporated and to be reckoned from defined categorically in tender	
11	Duration of contract, extension provisions, commencement of operation defined categorically in tender i.e. LOA/Mobilization Notice	
12	Provision of mutually agreed rates, terms, and conditions under extension provision (if any) kept in tender	
13	BEC/BRC checked and found in line with Contract & Purchase Manual or approval obtained from competent authority as per DoP wherever applicable	
14	Applicable SCC, Technical Specification including Scope of Work has been incorporated	
15	Applicable HSE incorporated	
16	Applicable / Required Insurance Clause incorporated	
17	Applicable LD & Penalty clauses incorporated	
18	Standard GCC incorporated	
19	Price bid format Incorporated	
20	Defect liability period / Warranty Clause (if any)	
21	Integrity pact Incorporated (If applicable)	
22	MSE clause incorporated (if applicable)	
23	Local content clause incorporated as per Govt. Policy	
24	Payment Terms clause incorporated	
25	Taxes & duties clause incorporated	
26	Third Party Inspection & Testing etc. incorporated	
27	Settlement of Dispute / Dispute Resolution clause incorporated	
28	Banning Clause incorporated	
29	Force Majeure clause incorporated	

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## OIL INDIA LIMITED

30	Set-off clause incorporated	
31	Price Variation Clause & formula (if applicable) incorporated	
32	Sub-Contractors Clause	
33	All forms including EMD & PBG format, Contract Agreement format, bid form declaration, Letter of Authority for attending a Pre-bid Conference/ Bid Opening etc. have been checked and incorporated.	
34	Third Party Document verification clause (if applicable)	
35	Whether short bidding period required i.e. less than bidding time as per IPM and approval of the same has been obtained	
36	In case of Global Tender:	
	i) Whether GTE approval obtained for tender below INR 200 Cr.	
	ii) Whether NOC from Ministry of Steel obtained for Tender for steel items	
	iii) Land border sharing clause incorporated (applicable for indigenous tenders as well)	
	iv) Whether Item checked from exemption list of Ministry of Electronics & Information Technology (MEITY).	
	v) Whether Customs duty Clause incorporated	
	vi) Whether clause in regard of Regulation of Indian Agents/Associates of foreign principles incorporated	
	vii) Whether Item checked from exemption list of Ministry of Health and Family welfare (MOHFW).	

<b>Signature:</b>		
<b>Name:</b>		
<b>Date:</b>		
<b>Designation:</b>		
	<b>Checked by</b>	<b>Checked by*</b>
	<b>(Tender floating officer – C&amp;P)</b>	<b>(Sectional-Head – C&amp;P)</b>

**\*Note: Checked by Sectional Head – C&P is not required for tenders valuing up to Rs. 2 Crores.**

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## OIL INDIA LIMITED

### Pre-Bid Meeting Minutes Format (To be filled up by C&P Department)

F-8

Tender No.

Name of Work:

Date & Time:

Venue:

The pre-bid meeting was organized to address the queries raised by the bidders for the said tender within the pre-bid query submission deadline. OIL discussed and clarified the queries pointwise. The queries received & clarifications given, if any during the meeting are placed as **Annexure –I**. It was mentioned in the meeting that the final reply against each pre-bid query shall be published in tender portal and same will be treated as part of the Tender conditions and shall be binding to both OIL and Bidders.

The meeting ended with a vote of thanks to the chair.

OIL's Representative		Bidder's Representative		
Sr. No.	Signature, Name, Designation & date	Sr. No.	Signature, Name, Designation & date	Firm's Name
1		1		
2		2		
3		3		
4		4		
5		5		
6		6		
7		7		
8		8		
9		9		
10		10		

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**OIL INDIA LIMITED**  
**Technical Bid Opening Format**

F-9

(Not Applicable for GeM Tenders/Proprietary Tenders/Nomination tenders)  
*(To be filled up by C&P Department)*

Tender No.		EMD / Bid Security Amount & Validity	
Description of Works/Services/Good		Bid Closing Date / Time (Original)	
PR No.		Bid Closing Date / Time (Actual)	
Bid Validity		Bid Opening Date / Time (Actual)	

1. **Bids received before deadline.** The following bids were received by the closing deadline on \_\_\_\_\_ at \_\_\_\_\_ hrs. and were opened in presence of representatives of bidders.

Bid der No.	Bidder (s) Name	Bid Security Amount or exemption certificate	Bid Security Reference No. & Date	Organization name and Name against the DSC	Remarks
1					
2					

2. **Bidder/ Bidder's representatives.** The following Bidders' representatives attended the opening of bid.

No	Name of Bidder's Representative	Designation	Name of Bidder
1			

3. Matters transpiring during the opening of bids: *[any withdrawals, substitutions, modifications, complaints received, and/or clarifications made or announced by the bid opening committee should be recorded]:*

Signature:		Signature:	
Name & Designation:		Name & Designation:	
	(C&P Member)		(F&A Member)

**Note: Either Format F-9 or Tender Register to be maintained**

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**OIL INDIA LIMITED**  
**Commercial Scrutiny Report Format**  
**(Initial/Reviewed after representation)**  
**(To be filled up by C&P Department)**

F-10

Tender No.		Department	
Description of Works		Bid Closing Date (Original)	
		Bid Closing Date (Actual)	

Sl. no.	Description	As per NIT	M/s ....	M/s....
1	EMD / Bid Security (Amount & Validity)			
2	EMD / Bid Security exemption Certificate with validity			
3	Bid Validity Period			
4	Terms of Delivery (For procurement of goods/materials)			
5	Payment Terms (For procurement of goods/materials)			
6	Integrity Pact submitted			
7	Power of Attorney/ Authorization letter (Regarding authority for submission of bid) in prescribed format (for e-tender only)			
8	Digital Signature (Class, Type & (Organization name) (For E-Tender only)			
9	Declaration about bidder's financial standing i.e. the bidder should not be under liquidation, court receivership or similar proceedings, should not be bankrupt.			
10	Type of Bidding Entity (Proprietorship/ Partnership/ Pvt Ltd etc.)			
11	Declaration that bidder is not under holiday list/Delisted/Blacklisted/debarred in OIL			
12	Submission of undertaking by bidder for acceptance of tender T&C in prescribed format / No Deviation Format			
13	Exception & Deviations if any			
14	Undertaking towards Local Content and CA Certificate towards Local Content (as applicable)			
15	Undertaking towards submission of authentic information/documents submitted			
16	Purchase Preference sought (for e-tender only)			
17	Clarifications sought (if any)			
18	Response to clarifications			
19	Commercially Accepted/Rejected			
20	Reasons of Rejection			

Signature		
Name		
Date		
Designation	Prepared by (C&P)	Vetted by (F&A)

**Legend:** CA: Commercially Acceptable, CAN: Commercially not Acceptable, NQ: Not Quoted, NF: Not Furnished, NR: Not Required, OK: Bidder Complied

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### Financial Scrutiny Report Format

F-11

(Initial/Reviewed after representation)  
(To be filled up by F&A Department)

Tender Number:			Original Bid Closing Dt:				
PR No & Dept:			Actual Bid Closing Dt:				
Description of Tender:							
SL	Description	As per NIT	M/s _____	M/s _____ (Subsidiary)	M/s _____ (consortium)		
	Structure of the Bid	Self/Subsidiary/JVC/Consortium etc	Self	Parent/Holding Co: M/s.....	Leader: M/s _____	Member: M/s _____	Member: M/s _____
	Relevant Annexure - I/II....						
	AFS Undertaking Submitted	Yes / No					
	Conversion Rate	1 \$/£/€..... to ₹					
1	Operational Turnover	Financial Yr					
	Amount (₹/\$ in Lakhs/Cr)	Financial Yr   ₹ XXXXX					
	COMPLIED/NOT COMPLIED						
2	Networth as on	Date					
	Amount (₹/\$ in Lakhs/Cr)	+ ve / ₹ XXX					
	COMPLIED/NOT COMPLIED						
3	Documents						
	Document Type	CAC/AFS/OD					
	Document Date	DD-MM-YY					
	UDIN	YES / NO / NA					
4	Clarifications sought	yes / No					
5	Response to Clarification						
6	Acceptance / Rejection	FA / FNA					
7	Reasons for Rejection						
8	Remarks if any						
Signature:							
Name:							
Date:							
Designation:		PRP BY (F&A)	REV BY (F&A)	APP BY (F&A)			
<small>Legend:- CAC : CA Certificate, AFS: Audited Financial Statements, OD:Any other Document, FS: Financial Statements, FA: Financially Acceptable, FNA: Financially NOT Acceptable, NA: Not Applicable, NF: Not Furnished</small>							

### Financial Scrutiny Report Format

F-11

(Initial/Reviewed after representation)  
(To be filled up by F&A Department)

Tender Number:			Original Bid Closing Dt:			
PR No & Dept:			Actual Bid Closing Dt:			
Description of Tender:						
Sl	Description	As per NIT	M/s _____	M/s _____ (Subsidiary)	M/s _____ (consortium)	
	Structure of the Bid	Self/Subsidiary/JVC/Consortium etc	Self	Parent/Holding Co: M/s: _____	Leader: M/s _____	Member: M/s _____
	Relevant Annexure - 1/II....					
	AFS Undertaking Submitted	Yes / No				
	Conversion Rate	1 \$/€..... to ₹				
<b>1</b>	<b>Operational Turnover</b>	Financial Yr				
	Amount (₹/\$ in Lakhs/Cr)	Financial Yr ₹ XXXXX				
	COMPLIED/NOT COMPLIED					
<b>2</b>	<b>Networth as on</b>	Date				
	Amount (₹/\$ in Lakhs/Cr)	+ ve / ₹ XXX				
	COMPLIED/NOT COMPLIED					
<b>3</b>	<b>Documents</b>					
	Document Type	CAC/AFS/OD				
	Document Date	DD-MM-YY				
	UDIN	YES / NO / NA				
<b>4</b>	<b>Clarifications sought</b>	yes / No				
<b>5</b>	<b>Reponse to Clarification</b>					
<b>6</b>	<b>Acceptance / Rejection</b>	FA / FNA				
<b>7</b>	<b>Reasons for Rejection</b>					
<b>8</b>	<b>Remarks if any</b>					
Signature:						
Name:						
Date:						
Designation:		PRP BY (F&A)	REV BY (F&A)	APP BY (F&A)		
<small>Legend- CAC : CA Certificate, AFS: Audited Financial Statements, OD:Any other Document, FS: Financial Statements, FA: Financially Acceptable, FNA: Financially NOT Acceptable, NA: Not Applicable, NF: Not Furnished</small>						

**OIL INDIA LIMITED**  
**Technical Scrutiny Report Format**

F-12

(Initial/Reviewed after representation)  
 (To be filled up by Indenting/User Department)

Tender No.	Department	
Description of Works	Bid Closing Date (Original)	
PR No.	Bid Closing Date (Actual)	

S. No.	Clause / Sub-Clause No.	Description	As per NIT	Bidder 1		Bidder 2	
				Documents Submitted	Complied / Not Complied	Documents Submitted	Complied/ Not Complied
<b>1</b>		<b>Bid Evaluation Criteria (Technical)</b>					
i)		Structure of the Bid	Self/JV/Consortium/Subsidiary etc.	Document Ref.			
ii)		Technical Experience Criteria  Any other technical qualification criteria  Description of Similar Works		Document Ref. [PO/Contract No., Contract / Executed Value /Quantity, Completion / Execution Cert, Any other document required as per tender clause]			
iii)		Mobilization Requirements Clause		Document Ref.			
<b>2</b>		<b>Scope of Work/ Special Condition of Contract (SCC)</b>		Document Ref.			
3		Exception & Deviations, if any					
4		Clarifications sought (if any)					
5		Response to Clarifications					
6		Technically Accepted/Rejected					
7		Reasons for Rejection					

**Technical Scrutiny Report Summary:**

Signature			
Name			
Date			
Designation	PRP BY (Indenter/Scrutiny Committee)	REV BY(Indenter)	HOD (Indenter) (Min L-4 level)

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**OIL INDIA LIMITED**  
**Scrutiny Report Summary#**  
**(Initial/Reviewed after representation)**  
**(To be filled up by C&P Department)**

F-13

Tender No.		Department	
Description of Works		Bid Closing Date (Original)	
PR No.		Bid Closing Date (Actual)	

S. No.	Bidder	Commercial Scrutiny Report	Technical Scrutiny Report (*)	Financial Scrutiny Report (*)	Final Status (Acceptable/Rejected)	Bidder is MSME or PPLC or General
1	Bidder 1					
2	Bidder 2					
3	Bidder 3					

**# This is not applicable for Composite Bid and where Price Bid Opening Proposal are put up**

Notes:

1. In case of rejection of bids, Reasons of Rejection to be intimated to the Bidder(s)
2. If Technical Scrutiny Report having more than 1 acceptable bidder is forwarded through a L-4 authority and there is no deviation & exception to the tender conditions, Price Bids (in case of two-bid tenders) to be opened only after lapse of representation submission timeline against rejection, as per Company's policy.
3. For cases other than Note 2 above, approval of competent authority as per DoP is required for opening of price bids.

Signature:		
Name:		
Date:		
Designation:	Officer (C&P) (Prepared by)	Section-Head (C&P) (Reviewed by)

\*Input from Technical & Financial Scrutiny report duly approved by Head of Indenting department and/or L4 authority of Indenting department.

\*\* If required as per the DoP provisions

**Legend: CA: Commercially Acceptable, CNA: Commercially not Acceptable, TA: Technically Acceptable, TNA: Technically not Acceptable, FA: Financially Acceptable, FNA: Financially not Acceptable, NQ: Not Quoted, NF: Not Furnished, NR: Not Required, OK: Bidder Complied**

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**OIL INDIA LIMITED**  
**Format for Recommendation for Price Bid Opening F-14**  
*(To be filled up by C&P Department)*

**Approving Authority**

Tender No.	:	
Description of Works/Item	:	
PR No.	:	
EMD / Bid Security Amount & Validity	:	
Pre-Bid Meeting (Date & Venue)	:	
Original Bid Closing Date	:	
Actual Bid Closing Date	:	
No. of extensions/ Corrigendum/Addendum if any	:	
Actual Bid Opening Date	:	
Approval obtained citing reasons of extension	:	
Bid Validity	:	
No. of bidders to whom enquiry issued (limited) / No. of Prospective bidders (NIT) whose attention drawn	:	

- Justification of requirement:
- Details of bidders who have submitted their bid within due date & time:

Sr. No.	Name of Bidders
i.	
ii.	

- Details of Regrets /Holiday with reason

Sr. No.	Name of Bidders
i.	

- Summary of post bid clarifications and recommendation about the Acceptance/Rejection of bidders under Techno-Commercial Scrutiny Report based on Commercial Bid Scrutiny Report , Financial Bid Scrutiny Report and Scrutiny Report Summary :

- Details of bidders **not qualified** for priced bid opening.

Sr. No.	Name of Bidders	Bid Status (for details Ref to enclosed Scrutiny report)			Reasons of rejection
		Experience/Technical	Commercial	Financial	
i.					
ii.					

- Details of bidders **qualified** for priced bid opening.

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## OIL INDIA LIMITED

Sr. No.	Name of Bidders
i.	
ii.	

7. Details about the representation against rejection received from bidder, if any:

8. Action on representation:

9. Exception/Deviation quoted:

10. Any other points:

11. Recommendation:

12. DOP Reference:

Proposing Authority:

Signature:			
Date:			
Designation:			
	TC Member (C&P Department)	TC Member (User Department )	TC Member (F&A Department)

Approving Authority:

Signature:	
Date:	
Designation:	
	TC Member (C&P Department) <small>( Approving Authority from User as per DOP)</small>

**Note: Price Bids will be opened only after lapse of representation submission timeline against rejection of bids, as per Company's policy.**

Suggestion: Approving Authority should be from Indenting/ User Department of Appropriate level as per DOP

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**OIL INDIA LIMITED**  
**Template for informing bidder about rejection of bid**      **F-15**

(Not Applicable for GeM Tenders)  
*(To be filled up by C&P Department)*

Ref. No.....

Date:

To,  
(Vendor's Name & Address)  
Email:-

Subject: **Bid Rejection** against Tender No..... and description.....

Ref: Bidder's E-Bid No. & other all relevant correspondences

We appreciate your interest in collaborating with our company. Your Techno-Commercial bid no.....against Tender no..... has been evaluated and after scrutiny of the same, we regret to inform you that your Techno-Commercial bid doesn't meet the criteria as specified in the aforesaid Tender.

Reasons of rejection (along with Tender Clause reference):

We thank you for showing interest in our Tender. If you have any representations about the rejection of your bid, please reach out to the undersigned within ... [Cut-off date and time shall be mentioned as per Company's policy].

Regards,

OIL INDIA LTD

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OIL INDIA LIMITED

Template for informing bidder about opening of Price bid F-16

(Not Applicable for GeM Tenders)  
*(To be filled up by C&P Department)*

Ref. No.....

Date:

To,  
(Vendor's Name & Address)  
Email:

Subject: **Intimation for Price-bid opening** against Tender No..... and description.....

Ref: Bidder's E-Bid No. & other all relevant correspondences

We appreciate your interest in collaborating with our company. Your Techno-Commercial bid no.....against Tender no..... has been evaluated.

Now, we would like to inform you that Price-bid of the above tender is scheduled to be opened on.....(Date) at.....(Time & Venue). You or your authorized representative with authorization letter (as per prescribed format given in Tender) may attend the same.

Regards,

(OIL INDIA LTD)

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**OIL INDIA LIMITED**  
**Price Bid Opening Format**  
**(Not Applicable for GeM Tenders)**  
*(To be filled up by C&P Department)*

F-17

Tender No.		EMD / Bid Security Amount & Validity	
Description of Works/Services/Goods		Technical Bid Opening Date / Time	
		Price Bid Opening Date / Time	
Bid Validity		No. of Qualified Bids	

1. The following Price Bids were opened in presence of representatives of Techno-Commercially qualified bidders, who attended

Sr. No.	Bidder (s) Name and Vendor Code	Total Price*		Remarks
		Amount(s)	Currency(ies)	
1				
2				

**If total Price is not mentioned in the Offer, Total Price Column not to be maintained.**

2. **Bidder's representatives.** The following Bidders' representatives attended the opening of Price bid:

No	Name of Bidder	Bidder(s) Designated Representative's name	Designation	Signature
1				
2				

3. Remarks :

<b>Signature:</b>		<b>Signature:</b>	
<b>Name &amp; Designation:</b>		<b>Name &amp; Designation:</b>	
	(C&P Member)		(F&A Member)

**Note: Either F-17 or Tender Register to be maintained**

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**OIL INDIA LIMITED**  
**Summary of Comparative Statement Format F-18**  
 (Not Applicable for GeM Tenders)  
 (To be filled up by C&P Department)

1	Description of Work/Item	
2	Tender No.	
3	PR No.	
4	Type of Tender	

As per Price -Scheduled				Internal Estimate		Bidder-1			Bidder-2		
Line-item no.	Description.	Unit	Qty	Rate (INR)	Total Amt (INR)	Rate (INR)	Total Amt (INR)	% variation w.r.t. IE	Rate (INR)	Total Amt (INR)	% variation w.r.t. IE
Total/Item wise Cost for comparison of inter-se-ranking											
GST .....											
Total including GST											
Inter-se-ranking											
% Above / Below/at par of Internal Estimate											
Total quoted value within L1+15% or L1+20%											

**Note: if any**

Signature:		
Name:		
Date:		
Designation:		
	C&P Member	F&A Member

Note:

- 1.0 The members will be the concerned tender opening officers/representative of the level as per manual.
- 2.0 IF generated from SAP, the same will be used instead of this format

**Format for Recommendation for Award / Negotiation / Cancellation F-19**  
 (To be filled up by C&P Department)

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## OIL INDIA LIMITED

1.0 Details of Tender:

Tender No.	:	
Description of Works/Item	:	
PR No.	:	
EMD / Bid Security Amount & Validity	:	
Pre-Bid Meeting (Date & Venue)	:	
Original Bid Closing Date	:	
No. of extensions/ Corrigendum/Addendum, if any	:	
Approval obtained citing reasons of extension	:	
Actual Bid Closing/ Opening Date	:	
Bid Validity	:	
No. of bidders to whom enquiry issued(limited)/ No. of Prospective bidders (NIT) whose attention drawn	:	
Applicability of Purchase Preference clause to the bidders		
Estimated Amount (Duly vetted by Cost Estimate committee as per Cost Estimation Manual enclosed at...)	:	

2. Preamble:

2.1 Justification of requirement:

2.2 \*Budget Availability:

2.3 Utilisation Plan (For procurement of goods/materials):

3 Details of bidders who have submitted their bid within due date & time:

Sr. No.	Name of Bidders
i.	
ii.	

4 Details of Late Bids/ Holiday /Regrets with reason /not quoted

Sr. No.	Name of Bidders
	Referred Technical / Unpriced Bid Opening Statement

5 Summary of post bid clarifications and recommendation about the Acceptance/Rejection of bidders under Techno-Commercial Scrutiny Report based on Commercial Bid Scrutiny Report ,Financial Bid Scrutiny Report and Scrutiny Report Summary: (attached as per F12)

6 Details of bidders **not qualified** for price bid opening (approval copy at.....):

Sr. No.	Name of Bidders	Bidder's Acceptable Status (for details Ref to enclosed Scrutiny report)	Reasons for not considering

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## OIL INDIA LIMITED

	Experience/Technical	Commercial	Financial	
i.				

7 Details of bidders **qualified** for price bid opening (approval copy at.....):

Sr. No.	Name of Bidders
i.	

8 Date of Intimation of Reasons of Rejection to Bidders:

9 Details about the representation received from Bidder, if any against rejection:

10 Action on representation:

11 Approval for Priced Bid Opening (if applicable)

12 Price bid opening date & time (after lapse of representation submission timeline):

13 Details about the representation received from bidder, if any after price bid opening:

14 Action on representation:

15 Tabulation / Comparative statement (CS enclosed at.....) :

16 Recommended Bidder (Name, Value & Terms and conditions):

17 Terms and conditions (Deviations) of the recommended bidder, if any:

18 Reasonableness of Price w.r.t Internal Estimate / Last Order Rate:

19 Any other information:

20 Recommendation for Award / Negotiation / Cancellation of Tender

21 DoP reference:

Declaration: It is declared that none of the Tender Committee Members have any conflict of interest with the parties recommended for Award.

Proposing Authority:

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## OIL INDIA LIMITED

Signature:			
Date:			
Designation:			
	TC Member (C&P Department)	TC Member* (User Department )	TC Member (F&A Department)

\*Budget availability may be confirmed by the Proposing Member of User Department during circulation of the award proposal as per current practice

Approving Authority:

Signature:	
Date:	
Designation:	
	TC Approving Authority as per DoP

Note: TC Proposing and Approving Authority should be as per appropriate level as per DOP

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**\*\*\*\*\*END OF CHECKLIST/ FORMATS\*\*\*\*\***