ऑयल इंडिया लिमिटेड

(भारत सरकार का उद्यम)

Oil India Limited

(A Government of India Enterprise)

MANUAL FOR PROCUREMENT OF CONSULTANCY & OTHER SERVICES

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ABBREVIATIONS AND ACRONYMS

AAEC	Appreciable Adverse Effect on Competition	DFPR	Delegation of Financial Power
BC (selling)	Bill for Collection Selling (Foreign Exchange) Rate	DG	Director General
BDS	Bid Data Sheet	DGS&D	Directorate General of Supplies and Disposals
C&AG	Comptroller and Auditor General (of India)	DPIIT	Department for Promotion of Industry and Internal Trade
C(F)A	Competent (Financial) Authority	DSC	Digital Signature Certificate
CAPEX	Capital Expenditure (model of acquisition/procurement)	EC	Evaluated Cost
CBI	Central Bureau of Investigation	ECS	Electronic Clearing System
CCI	Competition Commission of India	EMD	Earnest Money Deposit
CEC	Consultancy Evaluation Committee	EoI	Expression of Interest (Tender)
CIPP	Code of Integrity for Public Procurement	EPF	Employee Provident Fund
CMC	Contract Management Committee	ESI	Employee State Insurance
CPO	Central Purchasing Organizations	FA(&CAO)	Financial Adviser (and Chief Accounts Officer)
CPPP	Central Public Procurement Portal	FEMA	Foreign Exchange Management Act
CRAC	Consignee Receipt and Acceptance Certificate	FM	Force Majeure
CV	Curriculum Vitae	FTP	Full Technical Proposal
CVC	Central Vigilance Commission	GCC	General Conditions of Contract
CVO	Chief Vigilance Officer	GeM	Government Electronic Market
GeMAR&PTS	GeM Availability Report and Past Transaction Summary	LEC	Lowest Evaluated Cost
GFR	General and Financial Rules, 2017	LoI	Letter of Invitation
GoI	Government of India	LTE	Limited Tender Enquiry
GTE	Global Tender Enquiry	MSME	(Ministry of) Micro Small and Medium Enterprises
HOD	Head of the Department	MSMED	Micro, Small and Medium Enterprises Development Act, 2006
HUF	Hindu Undivided Family	NGO	Non Government Organisation
ICT	Information & Communications Technology	NIC	National Informatics Centre
IEM	Independent External Monitor	NIT	Notice Inviting Tender
IP	Integrity Pact	OPEX	Operating Expense (model

ISO	International Organization for Standardization
IT	Information Technology
ITB	Instructions to Bidders (may in some instances be called Instructions to Tenderers - ITT)
ITC	Instructions to consultants
JV	Joint Venture (Consortium)
L-1	Lowest Bidder
LCC	Life Cycle Costing
LCS	Least Cost System
LD	Liquidated Damages
REoI	Request for Expression of Interest
RTI	Right to Information (Act)
SBD	Standard Bidding Document
SCC	Special Conditions of Contract
SHG	Self Help Group
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)
TCO	Total Cost of Ownership
ToR	Terms of Reference
UAM	Udyam Aadhaar Memorandum
URC	Udyan Registration Certificate

	of acquisition/ procurement)
PA	Procurement Agent(s)
PAN	Personal Account Number
PPD	Procurement Policy Division
PPP-MII	Public Procurement (Preference to Make in India), Order
PQB	Prequalification Bidding
PSARA	Private Security Agencies Regulation Act, 2005
(C)PSU/PSE	(Central) Public Sector Undertaking/ Enterprise
QCBS	Quality and Cost Based Selection
(S)RfP	(Standard) Request for Proposals (Document)
VfM	(Best) Value for Money
WOL	Whole of Life (Cost) or Total Cost of Ownership TCO

PROCUREMENT GLOSSARY

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

i) "Bid" (including the term '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), 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 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) "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;

xiv) "Inventory" means any material, component or product that is held for use at a later time;

xv) "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.

xvi) "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;

xvii) "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;

xviii) "Notice inviting tenders" (including the term 'Invitation to bid' or 'request for proposals' in certain contexts) means a document and any amendment thereto published or notified by the Company, which informs the potential bidders that it intends to procure goods, services and/or works.;

xix) "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;

xx) "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;

xxi) "Procurement" or "public procurement" (or 'Purchase', or 'Government Procurement/ Purchase' in certain contacts) 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;

xxii) "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";

xxiii) "(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);

xxiv) "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;

xxv) "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.

xxvi) "Company" means Oil India Limited;

xxvii) "Prospective bidder" means anyone likely or desirous to be a bidder;

xxviii) "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;

xxix) "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;

xxx) "Registered Supplier" means any supplier who is on a list of registered suppliers of the Company;

xxxi) "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;

xxxii) "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;

xxxiii) "Subject matter of procurement" means any item of procurement whether in the form of goods, services or works or a combination thereof;

xxxiv) "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 CONSULTANCY / OTHER SERVICES

1.1 Procurement Rules and Regulations; and this Manual

The Ministries / Departments have been delegated full powers to make their own arrangements for procurement of goods and services, that are not available[6] on Government e-Marketplace (GeM). These powers have to be exercised as per the Delegation of Power (DOP) 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 the Constitution of India, which stipulates that contracts legally binding on the Government have to be executed in writing by officers specifically authorized to do so. The Constitution also enshrines Fundamental Rights (In particular Article 19 (1) (g) - Right to carry on a Profession) which have implications for Public Procurement. Further, the Indian Contract Act, 1872, 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.

1.3 Applicability of this Manual

1.3.1 This manual is applicable to procurement of all "Services" defined by exception as any subject matter of procurement other than goods or works, except those incidental or consequential to the service, and includes physical, maintenance, professional, intellectual, training, consultancy and advisory services or any other service classified or declared as such by a Procuring Entity but does not include appointment of an individual made under any law, rules, regulations or order issued in this behalf. It includes 'Consultancy Services' and 'Other (Non-consultancy) Services'. **If the generic word "Services' is used in this manual, it implies both Consultancy and other services taken together.**

These guidelines would not be applicable to projects funded by World Bank and other International Funding Agencies, as, such external aid/ loans etc.

received are covered under the applicable policies/ legal agreements executed as permitted under Rules 264 of GFR 2017.

This manual will not be applied for procurements of services 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 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 for E&P job under Production Sharing Contract (PSC) as the same are guided by the terms and conditions of the PSC.

1.3.2 "Consultancy services" means any subject matter of procurement (which as distinguished from 'Non- Consultancy Services' involves primarily non-physical project-specific, intellectual and procedural processes where outcomes/deliverables would vary from one consultant to another), other than goods or works, except those incidental or consequential to the service, and includes professional, intellectual, training and advisory services or any other service classified or declared as such by a Procuring Entity but does not include direct engagement of a retired Government servant. These Services typically involve providing expert or strategic advice e.g., management consultants, policy consultants, communications consultants, Advisory and project related Consulting Services which include, feasibility studies, project management, engineering services, finance, accounting and taxation services, training and development etc.

Procurement of IT Projects should normally be carried out as Procurement of Consultancy services, as the outcomes/deliverables vary from one service provider to another. The IT Projects may include:

i) bespoke software development;
ii) cloud based services and
iii) composite IT system integration services involving design, development, deployment, commissioning of IT system including supply of hardware, development of software, bandwidth and operation/maintenance of the system for a define period after go-live etc.

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

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

1.3.5 If the other services involve construction, fabrication, repair, maintenance, overhaul, renovation, decoration, installation, erection, excavation, dredging, and so on, of Civil assets, then it should be handled as procurement of Works.

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

1.3.7 For sake of simplicity, this Manual for Procurement of Consultancy and Other Services is written from the point of view of procurement of Consultancy Services. A separate Chapter at the end covers the Outsourcing/ Procurement of Other (non- consultancy) Services, and points out areas where policies and procedures are different for such outsourcing/ procurements. However generic word 'Service(s)' wherever used implies both Consultancy and other services taken together.

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

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

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

i. **Right Quality:** Procurement aims to buy just the right quality that will suit the needs - no more and no less - with clear specification of the Company's requirements, proper understanding of functional value and cost, understanding of the bidder's quality system and quality awareness. The concept of the right balance of quality can be further refined to the concept of utility/value. For the Right Quality, Technical

Specification is the most vital ingredient. In public procurement, it is essential to give due consideration to Value for Money (VfM) while benchmarking the specification.

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

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

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

v. **Right Source:** Similarly, the source of delivery of Goods, Works and Services of the requirement must have just right financial capacity and technical capability for our needs (demonstrated through satisfactory past performance of contracts of same or similar nature). Buying a few packets of printer paper directly from a large manufacturer may not be the right strategy. On the other hand, if our requirements are very large, buying such requirements through dealers or middlemen may also not be right.

1.6 Fundamental Principles of Public Procurement

Fundamental Principles of Public Procurement and other additional obligations of procuring authorities in public procurement can be organized into five fundamental principles of public procurement, which all procuring authorities must abide by and be accountable for:

i) **Transparency Principle:**

All procuring authorities are responsible and accountable to ensure transparency, fairness, equality, competition and appeal rights. This involves simultaneous, symmetric and unrestricted dissemination of information to all likely bidders, sufficient for them to know and understand the availability of bidding opportunities and actual means, processes and time-limits prescribed for completion of registration of bidders, bidding, evaluation, grievance redressal, award and management of contracts. It implies that such officers must ensure that there is consistency (absence of subjectivity), predictability (absence of arbitrariness), clarity, openness (absence of secretiveness), equal

opportunities (absence of discrimination) in processes. In essence Transparency Principle also enjoins upon the Procuring Authorities '*to do only that which it had professed to do as pre-declared in the relevant published documents and not to do anything that had not been so declared'*. As part of this principle, the Company should ensure that offers should be invited following a fair and transparent procedure and also ensure publication of all relevant information on the Central Public Procurement Portal (CPPP).

ii) **Professionalism Principle**

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

In reference to the above two principles - Transparency and Professionalism Principle, it may be useful to refer to the following:

Fundamental principles of public buying (for all procurements including procurement of works) - Every authority delegated with the financial powers of procuring goods in public interest shall have the responsibility and accountability to bring efficiency, economy and transparency in matters relating to public procurement and for fair and equitable treatment of suppliers and promotion of competition in public procurement.

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

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

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

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

Where applicable, the technical specifications shall, to the extent

practicable, be based on the national technical regulations or recognized national standards or building codes, wherever such standards exist, and in their absence, be based on the relevant international standards. In case of Government of India funded projects abroad, the technical specifications may be framed based on requirements and standards of the host beneficiary Government, where such standards exist. Provided that a Company may, for reasons to be recorded in writing, adopt any other technical specification.

Note: *Wherever Indian Technical specifications and Quality Certifications exists, the same should be prescribed. In rare or exceptional cases where, despite the existence of Indian technical specifications, it is intended to specify foreign Technical Certifications and Accreditations, reasons in writing for adoption of such other technical specifications must be recorded.*

c) Care should also be taken to avoid purchasing quantities in excess of requirement to avoid inventory carrying costs;

d) offers should be invited following a fair, transparent and reasonable procedure;

e) the procuring authority should be satisfied that the selected offer adequately meets the requirement in all respects;

f) the procuring authority should satisfy itself that the price of the selected offer is reasonable and consistent with the quality required;

g) at each stage of procurement the concerned procuring authority shall weigh all the considerations while taking the procurement decision.

h) Company shall prepare Annual Procurement Plan before the commencement of the year and the same should also be placed on its website"

i) Notwithstanding anything contained above, Government of India (GoI) may, by order in writing, impose restrictions, including prior registration and/or screening, on procurement from bidders from a country or countries, or a class of countries, on grounds of defence of India, or matters directly or indirectly related thereto including national security; no procurement shall be made in violation of such restrictions.

iii) **Broader Obligations Principle**

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

a) Preferential procurement from backward regions, weaker sections

and MSEs, locally manufactured goods or services, to the extent specifically included in the 'Procurement Guidelines'; and

b) Reservation of procurement of specified class of goods from or through certain nominated CPSEs or Government Organizations, to the extent specifically included in the 'Procurement Guidelines'.

c) Support to broader social policy and programme objectives of the Government (for example, economic growth, strengthening of local industry - Make-In-India, Ease of Doing Business, job and employment creation, and so on, to the extent specifically included in the 'Procurement Guidelines');

d) Facilitating administrative goals of other Departments of Government (for example, ensuring tax or environmental compliance by participants, Energy Conservation, accessibility for People With Disabilities etc. to the extent specifically included in the 'Procurement Guidelines').

e) Procurement policies and procedures must comply with accessibility criteria like PP-MII, PP-MSE, Restriction of procurement from any bidder from a country which shares a land border with India, etc. as mandated by the Government from time to time. Some of the policies currently in force are provided in Appendix.

iv) **Extended Legal Responsibilities Principle**

Procuring authorities must fulfil additional legal obligations in public procurement, over and above mere conformity to the mercantile laws (which even private sector procurements have to comply with). The Constitution of India has certain provisions regarding fundamental rights and public procurement. Courts have, over a time, taking a broader view of Public Procurement as a function of 'State', interpreted these to extend the responsibility and accountability of public procurement Authorities. Courts in India thus exercise additional judicial review (beyond contractual issues) over public procurement in relation to the manner of decision making in respect of fundamental rights, fair play and legality. Similarly, procuring authorities have also the responsibility and accountability to comply with the laws relating to Governance Issues like Right to Information (RTI) Act and Prevention of Corruption Act, and so on. Details of such extended legal obligations are given in Appendix 1.

v) **Public Accountability Principle**

Procuring authorities are accountable for all the above principles to several statutory and official bodies in the Country - the Legislature and its Committees, Central Vigilance Commission, Comptroller and Auditor General of India, Central Bureau of Investigations and so on- in addition to administrative accountability. As a result, each individual public procurement transaction is liable to be scrutinised independently, in isolation, besides judging the overall outcomes of procurement process over a period of time. Procuring authorities thus have responsibility and accountability for compliance of rules and procedures in each individual

procurement transaction besides the achievement of overall procurement outcomes. The concerned procuring authority shall weigh all the considerations while taking the procurement decision. The records must be preserved, retained in easily retrievable form and made available to such oversight agencies. The Company shall therefore maintain and retain audit trails, records and documents generated or received during its procurement proceedings, in chronological order, the files will be stored in an identified place and retrievable for scrutiny whenever needed without wastage of time. The documents and record will include:

a) documents pertaining to determination of need for procurement;

b) description of the subject matter of the procurement;

c) Statement of the justification for choice of a procurement method other than open competitive bidding;

d) Documents relating to pre-qualification and registration of bidders, if applicable;

e) Particulars of issue, receipt, opening of the bids and the participating bidders at each stage;

f) Requests for clarifications and any reply thereof including the clarifications given during pre-bid conferences;

g) Bids evaluated, and documents relating to their evaluation; and

h) Contracts and Contract Amendments

i) Complaint handling, correspondences with clients, consultants, bank.

1.7 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.

1.8 Preferential/Mandatory Purchase from certain sources

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

Note: *Before considering any Purchase Preference mentioned below, the Procuring officer should check the latest directives in this regard for necessary action. Purchase Preference provision shall invariably be part of the Tender.*

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

From time to time, the Government of India (Company) lays down procurement policies to help inclusive national economic growth by providing long-term support to micro, small and medium enterprises and disadvantaged sections of society. The Procurement Policy for Micro and Small Enterprises, 2012 [amended 2018 and 2021] has been notified by the Government in exercise of the powers conferred in Section 11 of the Micro, Small and Medium Enterprises Development (MSMED) Act, 2006. Details of the policy along with the amendments issued from time to time are available on the MSME website.

i) Micro and Small Enterprises (MSEs) registered under Udyam Registration are eligible to avail the benefits under the policy.

ii) ii) MSEs may also be given relaxation in prior turnover and prior experience criteria during the tender process, subject to meeting of quality and technical specifications.

iii) If subcontract is given to MSEs, it will be considered as procurement from MSEs. Procurement of the material / services from sub-vendors (who fall under the category of MSEs) by suppliers / vendors / contractors against the orders placed by OIL can also be considered as part of achievement of target of procurement of MSEs, provided such procurements are traceable. Accordingly, the following Clause shall be

incorporated in the tender document:

"If against an order placed by OIL, successful bidder(s) (other than Micro / Small Enterprise) is procuring materials / services from their sub-vendor who is a Micro or Small Enterprise (having valid Udyam Registration) with prior consent in writing of the purchasing authority / engineer in charge, the details like Name, Registration No., Address, Contact No. details of material and value of procurement made, etc. of such enterprises *shall be furnished by the successful bidder at the time of submission of invoice / bill."*

iv) In tender, participating Micro and Small Enterprises (MSE) quoting price within price band of L1+15 (fifteen) per cent shall also be allowed to supply a portion of requirement by bringing down their price to L1 price in a situation where L1 price is from someone other than a MSE and such MSE shall be allowed to supply at least 25(twenty five)* per cent of total tendered value. The 25(twenty five) per cent quantity is to be distributed proportionately among bidders, in case there are more than one MSEs within such price band.

***Note**:*
Notwithstanding the minimum procurement percentage mandated vide Govt. Notification under PPP, OIL shall endeavour to place order for 100% of the tendered quantity on the qualified MSE bidders in order for OIL to achieve the overall presently mandated procurement target from MSEs.

v) To develop MSE vendors so as to achieve their targets for MSEs procurement, Company shall take necessary steps to develop appropriate vendors by organizing Vendor Development Programmes (VDPs) or Buyer-Seller Meets focused on developing MSEs for procurement through the Government e-Marketplace (GeM) portal. For enhancing participation of MSEs owned by SCs / STs / Women in the procurement process, the Company shall take the following steps:

- Conducting Special Vendor Development Programmes / Buyer-Seller Meets for SC / STs and Women.

- Conducting Outreach programmes in collaboration with National Small Industries Corporation (NSIC) to cover more and more MSEs from SC / STs under its schemes of consortia formation;

vi) In order to comply with the provisions relating to enhancing participation of MSEs, Spheres / Projects shall conduct Periodical Interactive Meets with vendors for resolution of their issues, besides educating them about OIL's tendering procedure.

vii) 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 8th December, 2017, on which the monthly as well as annual procurement details shall be uploaded by the Company.

viii) 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.

ix) Ministry of MSME has launched the MSME 'Samadhaan' Portal for Delayed Payment Monitoring System in which the MSE vendors / suppliers / contractors can raise grievances in case of delay in payment by Central Government Ministries / Departments and CPSUs.

x) The government vide office memorandum no. 21(1)/2014-MA dated 12.02.2015 have intimated that in the situation of L-1+15% and subsequent matching of L-1 price, CPSUs may take more than 20% supplies from micro and small enterprises as per their previous procurement pattern on case to case basis for which the Ministry has no objection.

xi) HoD-C&P, FHQ shall be the Nodal Officer for implementation of the policy and redressing grievances.

1.9 Preference to Make in India

To encourage 'Make in India' and promote manufacturing and production of goods and services in India with a view to enhancing income and employment, 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 2. Suitable clause(s) to be incorporated in the tenders for applicability of the policy.

1.10 When is Procurement of Services justified

1.10.1 Consultancy Services: Engagement of consultants may be resorted to in situations requiring high quality services for which the Company does not have requisite expertise. Approval of the competent authority should be obtained before engaging consultant(s). Procurement of Consultancy Services can be justified on consideration of:

i) The inadequacy of Capability or Capacity of required expertise in-house;

ii) The need to have qualified consultant for providing a specialized high quality service;

iii) Need for impartial advice from a consultant (acting independently from any affiliation, economic or otherwise) to avoid conflicts of interest;

iv) The need in some cases for Transfer of Knowledge/ Training/ Capacity and capability building as a by-product of such engagement;

v) Need to acquire information about/ identifying and implementing new methods and systems;

vi) Need for planning and implementing organizational change

vii) There may be internal capacity/ capability to do the job but there are considerations of economy, speed and efficiency in relation to additional requirement/ commitment/ usage of;
   a) Staff/ Management/ Organization;
   b) Technological and Material Resources;
   c) Money, and
   d) Time/ Speed of execution.

1.10.2 Other Services (Non-consultancy): In the interest of economy, efficiency and to provide more effective delivery of public services GFR, 2017 permits procurement/ outsourcing of auxiliary and support services. Approval of the competent authority is to be obtained before engaging service providers. Need of procurement of other services may be justified on consideration of:

i) Economy, speed and efficiency and more effective delivery of public services relating to additional requirement/ commitment/ usage of:
   a) Staff/ Management/ Organization;
   b) Technological and Material Resources;
   c) Money, and
   d) Time/ Speed of execution.

ii) An administrative policy decided by the Company to outsource specific (class of) services;

1.11 Principles for Public Procurement of Services

1.11.1 Other principles of Public Procurement as mentioned in 1.6 above are also equally applicable to Procurement of consultancy/ other services. To ensure value for money during procurement of consultancy and other services, the following additional principles shall be considered:

i) Services to be procured should be justifiable in accordance with Para 1.10 above;

ii) In case of Consultancy & Other services: Well-defined scope of work/ Terms of Reference (ToR - description of services) and the time frame, should be determined consistent with the overall objectives of Company.

iii) Equal opportunity to all qualified service providers/ consultants to compete should be ensured;

iv) Engagements should be economical and efficient*;*

v) Transparency and integrity in the selection process (that is, proposed, awarded, administered, and executed according to highest ethical standards) and;

vi) Additionally, in procurement of consultancy services, consultants should be of high quality, in line with justification as per para 1.10 above

1.11.2 In Procurement of Consultancy, these considerations can be best addressed through unrestricted competition among qualified shortlisted firms or

individuals in which selection is based on the quality of the bid/proposal offered by the consultant and, where appropriate, on the cost of services to be provided. Hence Procurement of Consultancy needs to be done in a two stage process.

However procurement of other services is done by a *simpler process akin to those of* procurement *of Goods and Works. These are detailed in Chapter 9.*

1.12 The Law of Agency - applicable to Procurement of Consultancy and other Services

Laws which are applicable to Public Procurement of goods equally apply to Procurement of Consultancy and other services. These are detailed in Appendix 1. Legally speaking consultants/ service provider would be an Agent of the Principal/ Client/ Procuring Entity, to carry out the service/ assignment on its behalf. Such a relationship is covered by The Law of Agency (Section 182 to section 238, of the Indian Contract Act, 1872) and hence there exists a Principal/ Procuring Entity and Agent relationship between Procuring Entity and such *consultant*/ service provider. As per this law, the Procuring Entity 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 answerable for such violations, under certain circumstances. There is a need to be aware of such eventualities. Standard Bidding Documents should take care of this aspect.

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.

1.14 Procurement Cycle

The entire process of procurement and implementation of Consultancy and other services shall include the following steps:

i) In-Principle Approval: As a first step towards procurement of services, a formal written brief Proposal and Justification for the Services should be prepared. The User should prepare in simple and concise language a proposal outlining the requirement, purpose/ objectives/ scope and the outcomes of the assignment and justify the assignment based on analysis of in- house available capacity/ capability. Justifications for procurement of Consultancies/ Services as given in Para1.10 may be kept in view. It is the basic document for initiating procurement of services.

Based on the above, in-principle management approval for initiating procurement of the services shall be obtained by User Department from the Competent Authority (CA) as per DoP against the rough estimated cost. User shall also obtain necessary budget approval as applicable.

ii) **Preparation of Scope of Work (SoW) / Terms of Referenece (ToR)**:

The user Department shall then prepare the Scope of Work/ToR explaining the purpose/ objectives of the assignment, scope of work, activities, tasks to be performed, respective responsibilities of the Company and the Contractor / Consultant, expected results, and deliverables of the assignment. ToR is important for an understanding of the assignment and its correct execution to ensure that the objectives of assignment are achieved. It reduces the risk for the Procuring Entity of unnecessary extra work, delays, and additional expenses of the Procuring Entity. In addition, it helps reduce for the bidders the risk of ambiguities during the preparation of bidder's proposals, contract negotiation, and execution of Consultancy. Bidders qualifying criteria, Price bidding format and any other documents required for clarity of the scope of the service shall be prepared at this stage.

With the above detailed scope, Internal Cost Estimate shall be prepared following guidelines given in Company's approved Cost Estimation Manual.

The User Department shall raise PR incorporating the above and forward to C&P Department along with the Internal Estimate.

i) In case of Procurement of Consultancy Services - Short list of consultants - EoI formulation, publication, receipt of bids and evaluation;

ii) **Bid Invitation and Award of Contract:** Preparing bid documents, publication, receipt and opening of bids; consideration of quality; Evaluation of financial proposals; Selection of winning proposal; Negotiations and award of the contract to the selected firm; and

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

************End of Chapter 1***********

CHAPTER 2

CONSULTANTS, SERVICE PROVIDERS AND GOVERNANCE ISSUES

2.1 Types of consultants/ service providers

The term consultants/ service providers includes a wide variety of private and public entities, including Consultancy firms, engineering firms, Architectural Firms/ consultants, construction management firms, management firms, procurement agents, inspection agents, auditors, investment and merchant bankers, universities/ educational institutions, research institutions, government agencies, nongovernmental organizations (NGOs) and individuals/experts or their joint ventures. These can be grouped as:

2.1.1 Consortium of consultants/ service providers

In large and complex assignments consultants/ service providers may associate with each other to form a consortium to complement their respective areas of expertise, to increase the technical responsiveness of their proposal, and make larger pools of experts available or for other reasons. Such an association may be for the long term (independent of any particular assignment) or for a specific assignment. The consortium may take the form of a Joint Venture (JV) or a sub consultancy. Bid documents should clearly specify whether JVs are allowed to bid (in case of complex and large assignments. Maximum number of partners in JV shall be limited (say - three) and specified in the tender. In case of JV /Consortium bidding is allowed, prevalent standard clauses are to be inserted in the tender.

Conflicting Association: A firm shall submit only one proposal, either individually or as a JV partner in another proposal. If a firm, including a JV partner, submits or participates in more than one proposal, all such bids shall be disqualified. This does not, however, preclude a firm from participating as a sub-consultant or an individual consultant to participate as a team member in more than one proposal when circumstances justify but only if permitted by the RfP document.

2.1.2 Consultancy or Service Providing Firms

These firms provide project preparation services, project implementation supervision services, training, advisory services, and policy guidance. Such firms are normally classified as either international - firms that have international experience and are capable of undertaking work at international level at international rates; or national - firms that may not have international exposure and normally undertake assignments only within that country, usually at significantly lower rates.

2.1.3 Individual consultants/ service providers

Individual consultants or service providers are recruited for similar activities as Consultancy/ Service providing firms when a full team is not considered necessary. They may be independent experts not permanently associated with any particular firm, or they may be employees of a firm

recruited on an individual basis. They may also be employees of an agency, institution, or university. They are normally recruited for project implementation supervision, training, provision of specific expert advice on a highly technical subject, policy guidance, special studies, compliance supervision, or implementation monitoring. Individual consultants/ service providers are not normally recruited for project preparation unless the proposed project is simple and, generally, a repeat of an already established and successful project. If more than three experts are required, then the assignment should normally be undertaken by a team from a firm. As with firms, individual consultants/ service providers are classed as either international or national, depending on their level of expertise and their international experience and exposure.

2.1.4 Specialized Agencies and Institutions

Specialized agencies or institutions (including Government/ Semi-Government agencies, universities and professional institutions) may also from time to time be recruited to provide Consultancy/ other services. These services may be provided by individuals (as discussed above) or by teams. Nonetheless, there are at times distinct advantages to using such agencies. Experts and teams from such agencies and institutions may undertake a variety of roles across the whole field of possible Consultancy and other services. These may range from project preparation through project supervision and policy advice to project benefit monitoring and evaluation.

2.1.5 Non-governmental Organizations (NGO)

There may be distinct advantage in use of Nongovernmental organizations (NGOs) in Projects which emphasize experience in community participation and in-depth local knowledge - for example, Projects related to Corporate Social Responsibility (CSR).

2.1.6 Retired Government Servant

Rule 177 of GFR, 2017, says that the consulting services do not include direct engagement of retired Government servants. They should not be engaged against regular vacant posts as consultant under this rule. Retired Government servants can be engaged only for the specific task and for specific duration as consultant. They should be assigned clear output related goals.

2.2 Code of Integrity for Public Procurement (CIPP)

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;

2.2.1 Conflict of Interest in case of consultants

i) The consultant is required to provide professional, objective, and impartial advice, at all times holding the Procuring Entity's interests paramount, strictly avoiding conflicts with other assignments or his/its own corporate interests, and acting without any consideration for future work.

ii) The consultant has an obligation to disclose to the Procuring Entity any situation of actual or potential conflict that impacts its/his capacity to serve the best interest of its client/Procuring Entity. Failure to disclose such situations may lead to the disqualification of the consultant or termination of its/his contract during execution of the assignment.

iii) Without limitation on the generality of the foregoing, and unless stated otherwise in the tender document, the consultant shall not be hired under the circumstances set forth below:

a) **Conflicting activities:** a firm that has been engaged by the client to provide goods, works, or non-consultancy services for a project, or any of its affiliates, shall be disqualified from providing

Consultancy service resulting from or directly related to those goods, works, or non- Consultancy services. Conversely, a firm hired to provide consultancy services for the preparation or implementation of a project, or any of it affiliates, shall be disqualified from subsequently providing goods or works or no consultancy services resulting from or directly related to the consultancy services for such preparation or implementation.

b) **Conflicting assignments:** Consultants (including its experts and sub-- consultants) or any of their affiliates shall not be hired for any assignment that, by its nature, may be in conflict with another assignment of the consultant for the same or for another Procuring Entity.

2.2.2 Unfair Competitive Advantage in case of consultants

Fairness and transparency in the selection process require that the consultants or their affiliates competing for a specific assignment do not derive an unfair competitive advantage from having provided consultancy services related to the assignment in question. Such unfair competitive advantage is best avoided by full transparency and by providing equal opportunity so that all firms or individuals interested or involved have full information about a service assignment and its nature, scope, and background information. To that end, the tender document and all information would be made available to all short listed consultants simultaneously.

2.2.3 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.

2.2.4 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 / contractor/consultant, 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.

2.2.5 Conduct of Public Servants in Public Procurement - Risks and Mitigations

Risk	*Mitigation*
Hospitality: Hospitality (including facilitation of travel, lodging, boarding and entertainment during official or unofficial programs) from suppliers/ contractors/ consultants/ service providers may tend to cross the limits of ethical/ occasional/ routine/ modest/ normal business practice. Officials sent to firm's premises for inspections/ meetings may mistakenly presume entitlement to hospitality from the firm, even if other arrangements are available at the location.	Hospitality must never be solicited, directly or indirectly. The frequency, scale and number of officials availing hospitality should not be allowed to identify the recipient in a public way with any particular supplier/ contractor/ consultant/ 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.
Gifts: Gifts from suppliers/ contractors/ consultants/ service providers may tend to cross the limits of ethical/ occasional/ routine/ modest/ normal business practice, especially on festive season. Since the value of the gift may not be known to the recipient, it may cause inadvertent violation of Conduct rules.	Gifts must never be solicited, directly or indirectly. An official should not accept and retain gifts more valuable than the limit as laid down in the conduct rules. 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. Cash, gift cheques or any vouchers that may be exchanged for cash may not be accepted regardless of the amount. Any gift received inadvertently in violation of above, must immediately either be returned or else to the notice of the HoD of the Department.
Private Purchases from Official Suppliers/ contractors/ consultants/ service providers: Officials may mistakenly consider it innocuous to seek discounts in private procurements from suppliers/ contractors/ consultants/ service providers having official dealings or its associates (especially against Rate Contracts).	Officials must not seek or accept special facilities or discounts on private purchases (particularly same items which are being ordered officially) from contractors, suppliers/ contractors/ consultants/ service providers (including Rate Contract holders) with whom they have official dealings.

Sponsorship of Events: Procuring Officials may mistakenly consider it innocuous to seek financial favours (donations, advertisements for souvenirs, and contributions in cash or kind) in relation to sponsoring of cultural, social, charitable, religious, or sporting events, in the false belief that since he/she is personally not benefitted, it would not be a violation of CIPP.	Officials must never get involved in any non-official pecuniary transaction with the contractors, suppliers/ contractors/ consultants/service providers including soliciting of sponsorship for unofficial and private cultural, social, sporting, religious, charitable or similar organisations or events from.

2.3 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 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:

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. Undertaking (as part of Fall Clause) by the Bidders that they have not and will not sell the same material / equipment at prices lower than the bid price;

v. Foreign bidders to disclose the name and address of agents and representatives in India and Indian Bidders to disclose their foreign principals or associates;

vi. Bidders to disclose the payments to be made by them to agents / brokers or any other intermediary;

vii. 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;

viii. Integrity Pact lays down the punitive actions for any violation;

ix. **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).

x. **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.

xi. **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.

The Central Vigilance Commission (CVC) vide circular no. 04/06/23 dated 14.06.2023 has published revised SOP for adoption of Integrity Pact (IP). CVC has also directed for adoption and implementation of the IP as per the revised SOP. The revised SOP is as Appendix 9.

2.4 Debarment of Suppliers/ contractors/ consultants/ service providers:

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

2.5 Safeguarding Procuring Entity's Interests during debarment of suppliers:

Contractors/ consultants/ service providers are important assets for the procuring entities and punishing delinquent suppliers/ contractors/ consultants/ service providers 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 contractors/ consultants/ service providers 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 contractors/ consultants/ service providers 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.

***********End of Chapter 2***********

CHAPTER 3

TYPES OF CONTRACTS AND SYSTEMS OF SELECTION OF CONSULTANTS

3.1 Types of Contracts

There are different basis for linking payments to the performance of services (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 assignment. 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 along with risks and mitigation measures. Mostly used types of contracts are:

i) Lump sum (Firm Fixed Price) contract;
ii) Time based (Retainer-ship) contracts;
iii) Percentage (Success Fee) contract;
iv) Retainer-ship cum Success fee based contract;
v) Indefinite delivery contract.

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

3.2 Lump Sum (Firm Fixed Price) Contract

3.2.1 The lump sum (firm fixed price) contract is the preferred form of contract and under normal circumstances, this form of contract shall be used. Consultant's proposal is deemed to include all prices - no arithmetical correction or price adjustments are allowed during evaluation. Lump sum consultancy contracts are easy to administer because there is fixed price for a fixed scope and payments are linked to clearly specified outputs/ milestones/ deliverables such as reports, documents, drawings, bills of quantities, software programs and so on. In view of Risks mentioned below this type of contracts are widely used for simple planning and feasibility studies, environmental studies, detailed design of standard or common structures, preparation of data processing systems, and so forth.

3.2.2 Lump Sum Contracts - Risks and Mitigations

Risk	*Mitigation*
The quality and Scope of the Output/deliverables is not linked to the payment. There may be tendency for the consultant/ service provider to cut corners on quality and scope of the output/ deliverables by saving on resources employed. Disputes may arise due to different possible interpretations of quality and scope of assignment.	Lump sum service contracts should be used mainly for assignments in which the quality, scope and the timing of the required output of the consultants/ service providers are clearly defined. The contract should include provision for evaluation of quality and scope of deliverables and certificate for its acceptability may be recorded. Payment should be made only against certificate of acceptance of deliverables.
Time over-run: As time is not linked to the payment. There may be tendency for the consultant/ service provider 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 output per month is in line with planned and estimated time-line.

3.3 Time-Based (Retainer-ship) Contract

3.3.1 In Time-based (Retainer-ship) contracts payments are based on agreed hourly, daily, weekly, or monthly rates for staff (who in consultancy contracts are normally named, but not so in other services) and on reimbursable items using actual expenses and/or agreed unit prices. These are also called as retainer ship contracts, since the consultant/ service provider are retained for a pre-decided period. The rates for staff include salary, social costs, overhead, fee (or profit), and, where appropriate, special allowances. This type of contract is appropriate when Lump sum contract is not feasible due to difficulties in defining the scope and the length of services, either because the inputs required for attaining the objectives of the assignment is difficult to assess or because the services are tied up to activities by others for which the completion period may vary.

Because of risks and mitigations mentioned below, this type of contract is widely used for complex studies, supervision of construction, advisory services, and most training assignments etc.

3.3.2 Time-Based Contracts - Risks and Mitigations

Risk	*Mitigation*
The quality and Scope of the Output/deliverables as in Lump-sum Contracts, is not linked to the payment. There may be tendency for the consultant/ service provider to cut corners on quality, scope and timing of the output/ deliverables by saving on resources employed. Disputes may arise due to different possible interpretations of quality and scope of assignment.	The contract should include provision for evaluation of quality and scope of deliverables and certificate for its acceptability may be recorded. Payments should be released only against such certificates.
Performance in each time period is not linked to the payment. There may be tendency for the consultant/ service provider to use paid staff in a dilatory and un-productive manner.	Contracts need to be closely monitored and administered by the 'Procuring Entity' to ensure that the progress of assignment is commensurate with the time spent and that the resources for which payment is claimed have actually efficiently and productively been deployed on the assignment during the period. A system of monthly reporting of payouts and quantum of work achieved by the consultant/ service provider to CA should be instituted to enable supervision.
Time and Cost over-run is a major risk in Time-based contracts, as the payment is based on time and delay may result in unanticipated benefit to the consultant and the assignment may get delayed.	This type of contract should include an upper limit of total payments to be made to the consultants/ service providers for the assignment to safeguard against excessive prolonging of time and payments. After this limit is reached, or the period of completion is exceeded, CA should review justification for extension of the contract.

3.4 Percentage (Success/ contingency Fee) Contract

3.4.1 Percentage (Success/ Contingency Fee) contracts directly relate the fees paid to the consultant/ service provider to the estimated or actual project cost, or the cost of the goods procured or inspected. Since the payment is made after the successful realisation of objectives, it is also called success (or contingency) fee contract. The final selection is made among the technically qualified consultants/ service providers who have quoted the lowest percentage while the notional value of assets is fixed.

Due to Risks and mitigations discussed below, these contracts are commonly used for appropriate architectural services; procurement and inspection agents.

3.4.2 Percentage Contracts - Risks and Mitigations

Risk	*Mitigation*
The quality and Scope of the Output/ deliverables as in Lump-sum Contracts, is not linked to the payment. There may be tendency for the consultant/ service provider to cut corners on quality and scope of the output/ deliverables by saving on resources employed.	The contract should include provision for evaluation of quality, scope and the timing of deliverables and certificate for its acceptability may be recorded. Payment should be made only against certificate of acceptance of deliverables.
Time over-run: As time is not linked to the payment. There may be tendency for the consultant/ service provider 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 output per month is in line with planned and estimated time-line.
Bias against Economic solutions: Since the percentage payment is linked to the total cost of the project, in the case of architectural or engineering services, percentage contracts implicitly lack incentive for economic design and are hence discouraged.	Therefore, the use of such a contract for architectural services is recommended only if it is based on a fixed target cost and covers precisely defined services.

3.5 Retainer and Success (Contingency) Fee Contract

3.5.1 In Retainer and Success (Contingency) fee contracts the remuneration of the consultant includes a retainer (time based, monthly payment) and a success fee (Percentage based), the latter being normally expressed as a percentage of the estimated or actual Project cost. Thus, this type of contract is a combination of Time Based and Percentage Contracts.
Due to risks and mitigations discussed below, Retainer and contingency fee contracts are widely used when consultants (banks or financial firms) are preparing companies for sales or mergers of firms, notably in privatization operations. It can also be used for assignments related to organizational restructuring/ change.

3.5.2 Retainer-ship and Contingency Fee Contracts - Risks and Mitigations

Risk	*Mitigation*
All Risks as applicable to both Percentage Contracts and Time Based contracts are encountered in this case	Same mitigation strategies as in both Percentage and Time Based contracts may be adopted in this case.

3.6 Indefinite Delivery Contract (Price Agreement)

3.6.1 These contracts are used when Procuring Entity need to have "on call" specialized services, the extent and timing of which cannot be defined in

advance. This is akin to the system of 'Rate Contracts' or framework contracts in the procurement of Goods. There is no commitment from Procuring Entity for the quantum of work that may be assigned to the consultant/ service provider. The Procuring Entity and the firm agree on the unit rates to be paid, and payments are made on the basis of the time/ quantum of service actually used. The consultant/ service provider shall be selected based on the unit rate quoted by them for providing the services.
These are commonly used to retain "advisers" or avail services 'on-call' - for example; expert adjudicators for dispute resolution panels, institutional reforms, procurement advice, technical troubleshooting, Document Management, Taxi Services, Temporary Manpower Deployment and so forth - normally over a period of a year or more.

3.6.2 Indefinite Delivery Contracts - Risks and Mitigations

Risk	***Mitigation***
Risk of over-utilization: Indefinite Delivery Contracts are at risk of being over- utilized in excess of actual need since the scrutiny of service need may not be as intense as in case of other types of contracts.	The need assessment of utilized services should be subject to some scrutiny, to ensure that there is no abnormal unexplainable trend in utilization. Such contracts need to be closely monitored and administered by the 'Procuring Entity' to ensure that the there is no indiscriminate or unwarranted usage and a maximum contract value may be laid down to keep control over usage and approval of CA may be obtained to extend it beyond such limit. A system of monthly reporting of payouts and quantum of work achieved by the consultant/service provider to CA should be instituted to enable supervision. In the report a monthly payout benchmark may be kept, above which the report may be required to be sent to a level above CA
The quality and Scope of the Output/ deliverables as in Lump-sum Contracts, is not linked to the payment. There may be tendency for the consultant/ service provider to cut corners on quality, scope and timing of the output/ deliverables by saving on resources employed.	The contract should include provision for evaluation of quality and scope of deliverables and certificate for its acceptability may be recorded. Payments should be released only against such certificates.
Performance in each time period is not linked to the payment. There may be tendency for the consultant/ service provider to	Contracts need to be closely monitored and Administered by the 'Company' to ensure that the progress of assignment is commensurate with

use resources in a dilatory and un- productive manner.	the time spent and that the resources for which payment is claimed have actually efficiently and productively been deployed on the assignment during the period. A system of monthly reporting of payouts and quantum of work achieved by the consultant/ service provider to CA should be instituted to enable supervision.
Time and Cost over-run is a major risk in such contracts, as the output may not be achieved in the estimated time.	This type of contract should include an upper limit of total payments to be made to the consultants/ service providers to safeguard against excessive prolonging of time and payments. After this limit is reached, or the period of completion is exceeded, CA should review justification for extension of the contract.

3.7 Systems of Selection of Consultant / Service Provider

3.7.1 Since the quality and scope of a consultancy assignment are not tangibly identifiable and consistently measurable, the technical and financial capability of consultants becomes an important, though indirect determinant, for quality and scope of performance. In such a situation value for money is achieved by encouraging wide and open competition among equally competent consultant. Thus, selection of consultants is Therefore, normally done in a two stage process. In the first stage, likely capable sources are shortlisted, if need be through an 'Expression of Interest' (EoI).

3.7.2 The relative importance of Quality and Price aspects may vary from assignment to assignment depending on complexities/ criticality of quality requirements, internal capability of Procuring Entity to engage and supervise the assignment, as well as the value of procurements. Hence different methods of selection of consultants/ service providers are designed to achieve appropriate relative importance (weightage) of Quality and Price aspects. Selection of such method is normally preceded by an assessment of the capacity of the user to engage and supervise the implementation of proposed assignment and the method chosen depends to some extent on such assessment.

3.7.3 The methods for selection of consultants are as below

i) Price based System - Least Cost Selection (LCS)
ii) Quality and Cost Based Selection (QCBS);
iii) Direct Selection: Single Source Selection (SSS) [Nomination or proprietary basis]

3.7.4 Unlike Procurement of Consultancy Services, procurement of other services is done by a simpler process akin to those of procurement of Goods and Works. In procurement of other (non-consultancy) services normally system of selection used is lowest price (L-1) basis as in procurement of Goods/

works for technically responsive offers. Under very special circumstances Single Source Selection may also be used. However, in highly technical and complex services, where quality is important (say in studies like seismic surveys, airborne data acquisition etc) where use of QCBS system appears to be called for, it may be better handled as a consultancy contract.

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 indentor.

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

3.8 Price based System - Least Cost Selection (LCS)

3.8.1 In this method of selection, consultants/ service providers submit both a technical proposal and a financial proposal at the same time. Minimum qualifying marks for quality of the technical proposal are prescribed as benchmark and indicated in the tender along with a scheme for allotting marks for various technical criteria/ attributes. A simplified bid evaluation criteria (BEC)may also be used instead of a marking Scheme.

3.8.2 Any bidder that meets the BEC is declared as technically qualified for opening of their financial bids. The evaluation of bids are done as per the procedure mentioned under two bid system of tendering defined in chapter 7 of Procurement of Goods Manual. No weightage is given to marks/ ranking of the Technical proposal while evaluating the price bids

3.8.3 LCS is considered suitable for recruiting consultants/ service providers from firms in assignments that are of a standard or routine nature (such as engineering design of non-complex works) where well established practices and standards exist. It is the simplest and the quickest system of selection and under normal circumstances, this method of evaluation shall be used as default since it allows for minimum satisfactory technical efficiency with economy. Justification must be provided by user if a selection method other than LCS is to be used.

3.8.4 Least Cost Selection - Risks and Mitigations:

Risk	*Mitigation*
Technical criteria may not be relevant to realization of quality of assignment.	Technical criteria selected should be relevant and proportional to then requirement of quality of assignment and the selection process should be rigorous enough to ensure that on one hand no technically unsatisfactory bids should be able to get past a loose criteria and on the other hand no technically satisfactory offer should get ruled out by tight criteria.
Marking Subjectivity: The scheme of marking or its application may be subjective.	It is important to lay down as objective scheme of marking as possible. Cases where subjectivity is unavoidable (as in evaluation of methodology etc), a system of grading responses and their marking may be laid down in the bidding documents. Procuring Entity should also have a system of conciliation and moderation of widely disparate markings by different members of evaluation committee.

3.9 Quality and Cost Based Selection (QCBS)

3.9.1 In QCBS selection, minimum qualifying marks, as benchmark for quality of the technical proposal is prescribed and indicated in the tender along with a scheme for allotting marks for various technical criteria/ attributes. During evaluation of technical proposal, quality score is assigned out of the maximum 100 (hundred) marks, to each of the responsive bids, as per the scheme laid down in the Tender. The consultants/ service providers who are qualifying as per the technical evaluation criteria are considered as technically responsive, and the rest would be considered technically nonresponsive and are not processed further. Financial Bids are then opened for only the eligible and responsive offers and ranked as per the quoted rates. Separate–weightages are given for technical and commercial bids of a bidder. The weightages are presently given as per Company's internal circular OIL 62/C&P/219 dated 13.09.2023 (Appendix 7) as mentioned below:

Type of Consultancy bidder	**Weightage Non-Financial (Quality): Financial(Cost)**
Hiring of Consulting Firms or Consultant as individual	70:30

However, in specific cases with approval of the concerned Functional Director, Quality to cost ratio of 80:20 can be adopted

For open tender, the minimum qualifying score towards technical proposal

shall be 75%.

For limited tender, there will be no minimum qualifying score towards technical proposal.

For works & Non-Consultancy services, guidelines as per circular OIL 62/C&P/79 dated 23.03.2022 shall prevail.

However, latest circular is to be referred in this regard while processing tenders.

3.9.2 The proposed weightages for quality and cost shall be specified in the tender. The total score shall be obtained by weighing the quality and cost scores and adding them as below:

Total Score (Evaluated score) =

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

where

C = Evaluated Bid Price

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

T = the total Technical Score awarded to the Bid

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

X = weightage for the Price as specified in the BDS

The bid with the highest total score (evaluated score) is considered as the best bid and is recommended for award of the contract.

In the event of two or more bids having the same highest total score (evaluated score), the bid scoring the highest mark against quality criteria will be recommended for award of contract. Even then, if there is tie, a draw of lots will be resorted to arrive at the recommended bidder.

In case of GeM tenders, it shall be guided by GeM GTC.

3.9.3 This method of selection shall be used for highly technically complex and critical assignments where it is justifiable to pay appropriately higher price for higher quality of proposal.

3.9.4 QCBS - Risks and Mitigations

Risk	*Mitigation*
Inappropriate Selection of QCBS: There is a possibility that QCBS system is selected where LCS or other systems would have been more appropriate considering the quality requirements or the capability of Procuring Entity to monitor the assignment.	Selection of QCBS should be justified and applied only under circumstances mentioned above.
Weightage of Technical: Cost may not be proportional to quality requirements	Weightage different from 70:30 (seventy: thirty) should be adequately examined and justified.
Technical criteria may not be relevant to realization of quality of assignment.	Technical criteria selected should be relevant and proportional to the requirement of quality of assignment and the selection process should be rigorous enough to ensure that on one hand no technically unsatisfactory bids should be able to get past a loose criteria and on the other hand no technically satisfactory offer should get ruled out by tight criteria.
Marking Subjectivity: The scheme of marking or its application may be subjective.	It is important to lay down as objective a scheme of marking as possible. Cases where subjectivity is unavoidable (as in evaluation of methodology etc), a system of grading responses and their marking may be laid down in the bidding documents. Procuring Entity should also have a system of conciliation and moderation of widely disparate markings by different members of evaluation committee.

3.9.5 Direct Selection: Single Source Selection (SSS) (Nomination):

Under some special circumstances, it may become necessary to select a particular consultant/ service provider where adequate justification is available for such single-source selection in the context of the overall interest of Company. The selection by SSS/ nomination is permissible 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;

iii) situations where execution of the assignment may involve use of proprietary techniques or only one consultant has requisite expertise;

iv) At times, other PSUs or Government Organizations are used to provide technical expertise. It is possible to use the expertise of such institutions on a SSS basis;

v) 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 Company. User department shall provide full justification for single source selection and obtain approval of the competent authority as per DoP, which is to be forwarded to C&P Deptartment along with the PR before resorting to such single-source procurement.

vi) User department shall ensure fairness and equity while selecting the single source.

vii) User Department shall also ensure that:

a) the prices are reasonable and consistent with market rates for tasks of a similar nature; and

b) the required consultancy services are not split into smaller sized procurement.

3.10 Emergency Purchase: Company declared Emergency

i) The natural calamity, explosion, fire, flood, civil disturbances, war, cyclones, blow out, and earthquake endangering the plant, property and lives or any operational emergency which may result in safety hazard / loss of property if not attended /repaired shall be referred to as emergency (declared as per Powers of Emergency stipulated in DoP).

ii) In case of emergency normal procurement procedure shall not be applicable. Concerned User Departments shall take all required decisions in respect of procurement of materials / works / services to deal with emergency with normal prudence and transparency.

iii) All actions shall be taken in accordance with Delegation of Power (DOP) for emergency procurement (presently under Section D of DOP). No separate approval is required for regularization/ processing of payment

iv) Prior Financial sanction is not necessary in case of emergency procurement.

v) Detailed justification for resorting to such emergency purchases should be recorded at the time of processing the proposal for approval of competent authority as per DOP.

vi) Quantity to be purchased shall be restricted to the minimum essential and the procurement shall be accounted for immediately by submitting Pre-receipted indent along with the Inspection Report, Invoice, Delivery

Challan and Purchase Order, to the C&P Department for raising GRN.

vii) C&P departments in all spheres / projects need to ensure that the items purchased as emergency procurement are issued and certified by user that they have been put in utilization. Delay in consumption of such items, if any, are to be reported by the concerned Department to concerned HOD / Project Head, with reasons.

All works/purchase/ consultancy contracts awarded on a nomination basis should be brought to the notice of the Management through Monthly report.

3.10.1 SSS - Risks and Mitigations

Risk	***Mitigation***
Inappropriate Selection of SSS: There is a possibility that SSS system is selected where LCS or other systems would have been more appropriate considering the quality requirements or the capability of Procuring Entity to monitor the assignment. The assignment may be split into parcels to avoid competitive selection systems or to avoid obtaining higher level approvals for SSS.	Full justification for single source selection should be recorded in the file and approval of the competent authority (as per DoP) obtained before resorting to such single-source selection. In direct selection, the Procuring Entity should ensure fairness and equity and the required consultancy/ other services are not split into smaller sized procurement to avoid competitive processes.
Cost may be unreasonably High: The single consultant/ service provider is likely to charge unreasonably high price.	User Department must have a procedure in place to ensure that the prices are reasonable and consistent with market rates for tasks of a similar nature. If necessary negotiations may be held with the consultants/service providers to examine reasonableness of quoted price.

3.11 Fixed Budget - based Selection (FBS) for consultancy services:

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 services required is simple and/or repetitive and can be precisely defined; and

(ii) the budget can be reasonable 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.

3.11.1 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 as per criteria announced in the Tender. 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 empaneling through suitable quality criteria. Thereafter, selection of a specific consultant for a specific assignment from such panel shall be based on timeliness, practicability, number of other assignments already given to that consultant in the past, etc. In such cases the budget for each assignment is also to be fixed.

************End of Chapter 3***********

CHAPTER 4

PREPARING FOR PROCUREMENT OF CONSULTANCY SERVICES

For Consultancy services of high value and complex nature following process may be followed, if felt necessary, for firming up the PR

4.1 Preparation of Terms of Reference (ToR)

4.1.1 ToR is akin to Description, Quantity and Technical Specification in Procurement of Goods. This is the first step in the selection of the consultants once a need has been identified. The ToR should explain the purpose/ objectives of the assignment, scope of work, activities, tasks to be performed, respective responsibilities of the Procuring Entity and consultant, expected results, and deliverables of the assignment. ToR is important for an understanding of the assignment and its correct execution to ensure that the objectives of assignment are achieved.

4.1.2 The ToR should be comprehensive and unambiguous. However, it should not be too detailed and inflexible, so that competing consultants may be in a position to propose their own methodology and staffing. Bidders shall be encouraged to comment on the ToR in their proposals. The ToR shall include:

i) Company's background and Project background;

ii) Purpose and Service Outcomes Statement of the assignment; (refer to chapter 1)

iii) Detailed scope of work Statement including schedule for completing the assignment;

iv) Expected requirement of key professionals and kind of expertise;

v) Capacity-building programme and transfer of knowledge, if any;

vi) Deliverables - List of reports (or documents, data, maps, surveys, designs, drawings), schedule of deliveries, and period of performance;

vii) Background material, Data, reports, records of previous surveys, and so on, available and to be provided to the consultant;

viii) Facilities such as local conveyance, office space, office machines, secretarial assistance, utilities, local services, etc., which would be provided to the consultant by the Company;

ix) Institutional and organisational arrangement; and

x) Procedure for review of the work of consultant after award of contract.

4.1.3 A sample template for developing a ToR is given at Annexure 4. It should cover following aspects:

i) **Detailed Scope of Work**

As part of the ToR, at its simplest, the 'Detailed Scope of Work ' will contain the type and volume of activity to be undertaken and the time-frame of activity involved to achieve the Purpose and Service Outcomes as envisaged. Starting from end-outcomes backwards, the process to achieve the outcomes is broken down into a discrete number of interrelated tasks, which the consultant will have to undertake. In consultancy Services, the 'Detailed Scope of Work' should describe only the activities, not the approach or methodology by which the results are to be achieved, since these are the task of the consultants. However, suggestions may be provided on the approach or the methodology that the consultants could or should use to execute the assignment. After the tasks are identified, a logical sequencing of the tasks must be determined. Usually a simple bar chart (or Gantt-chart) is the best way to illustrate required outputs over time and their relationship to each other. The 'Detailed Scope of Work ' contains such a sequence of tasks over a timeline and also tangible outputs and activities such as reports, workshops, or seminars.

ii) **Expected requirement of key professionals and kind of expertise**

Except in very complex Consultancies, it is desirable to not to distinguish the tasks of individual experts but instead to prepare a longer and more detailed description of what the Consultancy team, as a whole, will provide without splitting up tasks. These are generally known as "activity based" ToR as opposed to "position-based" ToR. The ToR would list a range of tasks without regard to who will have the responsibility to undertake them. In most of the cases, where the number of experts is small, the work to be done is not clearly defined, and a degree of flexibility is required- this is acceptable. In Consultancy services, Key professionals are usually named and their credentials carry weightage in technical evaluation.

iii) **Deliverables and Reports Requirements**

The assignments deliverables and reporting should be clearly specified. In particular, for inception and progress reports, there should be a balance between keeping the Company well informed and not forcing consultants to spend an excessive amount of time preparing minor reports. The ToR should indicate the format, frequency, and content of reports as well as the number of copies, the language, and the names of the prospective recipients of the reports. Depending on the assignment, the following reports may be required;

a) **Inception Report:** This report should be submitted preferably within six weeks after the commencement date. Any major

inconsistency in the ToR, staffing problems, or deficiency in Company's assistance that have become apparent during this period should be included. The inception report should bring to Company's attention major problems that might affect the direction and progress of the work.

b) **Progress Reports:** These reports keep the user department regularly informed about the progress of the assignment. They may also provide warnings of anticipated problems or serve as a reminder for payment of invoices due. Depending on the assignment, the frequency of submission of progress reports may be decided.

c) **Interim Reports:** If the assignment is phased, interim reports are required to inform the user department of preliminary results, alterative solutions, and major decisions that need to be made. Since the recommendations of an interim report may affect later phases of the assignment and even influence the results of the project, user department should discuss the draft interim reports with consultants. User department should review and approve draft interim report on expeditious basis.

d) **Final Report:** The final report is due at the completion of the assignment. User department and consultants should discuss the report while it is still in draft form. The consultants alone are responsible for their findings; although changes may be suggested in the course of the discussions, consultants should not be forced to make such changes. If the consultants do not accept comments or recommendations from the user department, these should be noted in the report. The consultants should include in the report the reasons for not accepting such changes.

iv) Background material, records of previous surveys etc. available and to be provided to the consultant. This would vary from project to project, but transparency demands that such information should be transparently and equitably shared with all prospective bidders.

v) Facilities such as local conveyance, office space, secretarial assistance etc., which can be provided to the consultant. This aspect has a great bearing on the cost that will be quoted by the bidders. This can have implications in vitiating the selection process either way - a facility to be provided may not get declared or a declared facility may not be provided ultimately. So, great care and reality check is necessary, while preparing this statement.

vi) **Procedure for review of the consultancy after award of contract**

In consultancy services, the Company's representative to monitor the service, and procedure for review and approval of work of the consultant after the award of contract should also be declared and adhered to.

4.2 Estimating Costs, Setting the Budget, and Seeking Approval

With the above detailed ToR, Internal Cost Estimate shall be prepared based on Company's approved Cost Estimation Manual.

A mismatch between the cost estimate and the ToR is likely to mislead consultants on the desired scope, depth, and details of service required, and this could lead to serious problems during contract negotiations or during implementation of the assignment.

4.3 Finalizing and Approval of the ToR

The scope of the work described in the ToR shall be in line with the available budget. User Department shall obtain in-principle approval based on the above ToR. Accordingly, PR should be prepared and forwarded along with the Internal Estimate to C&P Department for procurement of the consultancy service.

4.4 Developing a Procurement Plan

In case the Consultancy is a part of a larger project/ works in which there be other components of work, Goods or services, the user department shall ensure that there is a synchronized procurement plan for all the various components of the project. For example, if a consultant is required for a large road project construction supervision, the entire sequence of preparation of the feasibility report, detailed design and bidding document, time required for inviting bids for construction work, and award of contract has to be taken into account so that the construction supervision consultant is mobilized before the award of the construction contract.

************End of Chapter 4***********

CHAPTER 5

SHORTLISTING STAGE IN PROCUREMENT OF CONSULTANCY SERVICES

5.1 Shortlisting of qualified consultants - Expression of Interest (EoI)

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

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

5.1.3 Hiring of Consultancy Services above Rs 25 Lakhs:

For procurement of Consultancy Services above Rs 25 *(Rupees Twenty- five)* Lakhs shortlisting is to be done through an open Expression of Interest (EoI). The EoI shall be published on OIL's website / GeM Portal / Central Public Procurement Portal (CPPP). Attention of known reputed consultants may also be separately drawn wherever possible. The advertisement must include, among other things, the last date of submission of EoI, contact information of the Company with the name of contact person, and so on. In case it is felt that likely consultants may not be available in India, the EoI process may be done on Global Tender Enquiry (GTE) process, subject to Govt. approval as applicable (tender value < 200 Cr).

5.1.4 No Global Tender Enquiry (GTE) up to Rs. 200 crores shall be invited or such limit as may be prescribed by the Department of Expenditure from time to time. In exceptional cases where Company feels that there are special reasons for inviting GTE, for tenders below such limit, it may record its detailed justification and seek prior approval for relaxation from the Competent Authority as per procedure specified by the Department of Expenditure vide OM No. F.12/17/2019-PPD dated 15.05.2020 and Consolidated Instructions regarding Global Tender Enquiry (GTE) upto Rupees 200 Crore notified by vide OM No. F.4/1/2021-PPD dated 30.06.2021 (Appendix 3) and amendments thereof.

5.1.5 Exemptions/Clarifications:

Various Ministries may time to time issue circulars for exemption to float GTE for a few categories of items for value of procurement upto Rupees 200 Crores. Procuring officer must refer such circulars for guidelines to be followed for floating tenders for such exempted items.

5.1.6 Adequate time should be allowed for getting responses from interested consultants.

5.1.7 Hiring of Consultancy Services below Rs 25 Lakhs:

5.1.8 In procurements of consultancy services below Rs. 25 *(Rupees Twenty five)* Lakhs, shortlisting is done without an Expression of Interest (EoI), The list of potential consultants/ service providers may be prepared based on existing known consultants or from other available sources PSUs/Ministries or Departments or Organisations involved in similar activities, Chambers of Commerce & Industry, Association of consultancy firms etc. The User Dept. should scrutinise and shortlist the prima facie eligible and capable potential consultants/service providers (not less than 3) from source. In case, minimum 03 prospective consultants are not located, EoI route as prescribed in para 5.1.3 above, may be followed.

If the complexity of the project so justifies, a formal EoI may be advertised as in above, even for procurements below Rs 25 *(Rupees Twenty five)* Lakhs.

5.1.9 Empanelment of consultants/service providers: For consultancy services which are required regularly, Empanelment of consultants/service providers may be carried out in a fair, transparent and equitable manner through EoI route. Performance of such empanelled consultants/service providers should be reviewed periodically. The list of registered consultants/service providers shall be updated on a regular basis.

Empaneled Consultants/service providers may also be de-listed based on their performance.

5.1.10 The EoI document shall contain following sections:

i) **Introduction:**

It shall include short description of the service, last date of submission; place of submission etc. and other salient information pertaining to the EoI etc.

ii) **Instructions to the consultants/service providers:**

It contains 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.

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

This may include brief purpose/objective statement; Service Outcomes Statement; broad scope of work including Time-frames;

inputs to be provided by the Company; and expected deliverables of the assignment. This shall also include the place of execution of the assignment. The request for EoI may not include the assignment ToR, The consultants may also be asked to send their comments on the objectives and scope of the work or service projected in the enquiry.

iv) **Pre-Qualification Criteria**

This should clearly lay down the qualification criteria which shall be applied by the Company for short listing the consultants. The EoI should ask for sufficient information so that the Company may evaluate the consultant's capabilities and eligibility to undertake the assignment. Information may include: (a) core business and years in business; (b) qualifications in the field of the assignment; (c) technical and managerial organisation of the firm; and (d) general qualifications and number of key staff. In addition, the consultants should indicate information relating to their eligibility and any conflict of interest that they know may impact objective performance and impartial advice for their services. Consultants should not be asked about their approach to the services or to submit any curricula vitae of key personnel, because these documents will be dealt with in the subsequent tender. No legal documents such as certificates of incorporation of the firm, powers of attorney or translations of standard brochures should be requested. Given the often-large number of submissions, the advertisement should stress the importance of brevity of the information to be sent.

5.2 Short List of consultants

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

5.2.2 It is seen that the process of shortlisting is one of the most difficult and time-consuming tasks in the selection process of a consultant. This could be eased by writing a clear Description of Service (objectives and Scope) and shortlisting criteria.

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

5.2.4 The short list of firms is required for the selection of consultancy services in

a competitive process with a minimum of three.

5.2.5 The Company shall short list all the consultants who qualify against the PQC.

5.2.6 EoI Evaluation report should be submitted to CA for approval and issue of subsequent tender.

5.2.7 Shortlisting - Risks and Mitigation

Risks	Mitigation
Conflict of interest situations: It is possible that conflict of interest situations are not reported or declared by the participating consultants (or sometimes by members of the evaluation committee).	These situations need to be dealt with by signing declarations by TC members while putting up the proposal for shortlisting of consultants
Qualifications leasing: Local Bidders with insufficient qualifications may show association with well qualified (foreign or local) consultants, just to use their qualification documents to get the contract. These well-qualified consultants lease their qualification - but do not or only minimally contribute experience or key personnel at the execution stage.	This issue needs to be dealt with from the EoI stage by very clearly identifying the qualified applicant and putting on record/ contract the guaranteed contribution from the partner with qualification.

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

CHAPTER 6

SELECTION OF CONSULTANTS BY COMPETITIVE PROCESS

6.1 The Evaluation Process

The selection process for consultants generally includes the following steps:

i) Preparation and floating of tender:
ii) Pre-bid/pre-tender meeting (if required);
iii) Receipt of bids;
iv) Evaluation of technical bids: consideration of quality;
v) Public opening of financial/priced bids;
vi) Evaluation of financial/priced bids;
vii) Selection of the winning bids;
viii) Negotiations with the selected bidder, if required; and
ix) Award of the contract to the selected firm.

6.2 Preparation and floating of the Tender

6.2.1 Technical and financial bids from the consultants are obtained through the tender document which is issued only to the short listed consultants. The tender document may contain the following sections:

i) Notice Inviting tender(NIT);
ii) Instructions to Bidders (ITB);
iii) Bid Evaluation Criteria;
iv) Terms of Reference (ToR);
v) List of key experts required for the assignment;
vi) Requirement of qualifications and experience of the firm and key experts;
vii) Criteria of proposal evaluation and selection procedure;
viii) Agreement form/SLA of the contract, including General Conditions of Contract and Special Conditions of Contract;
ix) Proposed procedure to be followed pertaining to mid-term review of the progress of the work and review of the final draft report.
x) Priced bid format.

The above are indicative and all of the sections may not be mandatory to be part of a consultancy tender/contract.

6.3 Notice Inviting Tender (NIT)

This document shall state the intention of the Company to enter into a contract for the provision of consultancy services, and shall have details of the Company, and date, time, and mode of submission of bids etc.

6.3.1 Instructions to Bidders (ITB)

The ITB contains all necessary information that would help the consultants prepare responsive bids, Standard information including clauses relating to the procedure of bid submission, relating to pre-bid meeting, for seeking clarifications, and so on. The assignment/job specific information will be prepared separately and include the date and time of bid submission,

contact address etc. The ITB shall also specify the bid validity period.

6.3.2 Bid Evaluation Criteria (BEC):

The tender document shall bring in as much transparency as possible to the selection procedure by providing detailed information on the evaluation process and the qualification criteria.

6.3.3 Technical and Financial Bids:

i) The technical bids, submitted by the bidders/consultants should generally include the following (but not limited to):

   a) Declaration on eligibility, acceptance of Code of Integrity in Public Procurement etc.

   b) Compliance to BEC conditions and submission of required documents as per BEC.

   c) Power of attorney

   d) Comments and suggestions on ToR

   e) Description of approach and methodology and work plan for performing the assignment;

   f) Work schedule and planning for deliverables; and

   g) Team composition, key expert's inputs, attached CVs.

   h) Format for Comments/ modifications suggested on proposed form of contract.

ii) The financial bids shall consist of the quoted rates as per price bidding format that may include (wherever applicable) Remuneration payable and Reimbursable expenses amongst others.

6.3.4 Important Provisions of Tender/Contracts

i) **Currency:** Under normal circumstances, all the contracts should be based on Indian Rupees only. In GTE tenders, Foreign Bidders are allowed to quote price (and get paid) in RBI's notified basket of foreign currencies - US Dollar or Euro or Pound Sterling or Yen etc., in addition to the Indian Rupees - except for expenditure incurred in India (including agency commission if any) which should be stated in Indian Rupees. Indian Bidders are to quote in INR only.

ii) **Price Variation:** In case of long-term contracts where price escalation is envisaged during the contract period, an appropriate clause incorporating, inter-alia, a suitable price variation formula should also be provided in the tender documents, to calculate the price variation between the base level and scheduled delivery date. It is best to proactively provide our own PVC in the tender document to discourage different bidders quoting different formulae

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

iii) **Payment Provisions:** Payment provisions, including amounts to be paid, schedule of payments, and payment procedures, shall be indicated in the tender and incorporated in the contract. Payments may be made at regular intervals (as under time-based contracts) or for agreed outputs (as under lump sum contracts).

iv) **Advance Payment:**

Interest Bearing Advance: Request for advance payment shall not be normally considered. However, depending on merit and at the sole discretion of OIL, advance payment may be agreed at an interest rate of 1% above the prevailing Bank rate (CC rate) of State Bank of India compounding on quarterly basis from the date of payment of the advance till recovery/refund.

Advance payment if agreed to by the Company shall be paid only against submission of an acceptable Bank Guarantee whose value should be equivalent to the amount of advance plus the amount of interest estimated by OIL on the basis of contractual delivery period without further reference. Such BG shall be valid for two months beyond the delivery period of the Contract/Purchase Order.

Interest Free Advance: If Company agrees for interest free advance, such advance shall be paid only against submission of an acceptable Bank Guarantee whose value should be equivalent to 110% of the advance amount.

Such advance payments should not exceed 10% of the total order value.

Bank Guarantee shall be valid for 3 months beyond the delivery period incorporated in the order and same may be invoked in the event of Seller's failure to execute the order within the stipulated delivery period.

In the event of any extension to the delivery date, seller shall extend the validity of bank guarantee accordingly.

All approvals for sanctioning of advance payment shall be as per DoP.

Documents for Advance Payments

Documents, needed from the consultant/service provider for release of payment, are to be clearly specified in the contract. The paying authority should also verify the documents received from the supplier with corresponding stipulations made in the contract before releasing the payment.

v) **Bid Securities:** Detailed under "Earnest Money Deposit / Bid Security / Bid Bond" of Chapter 6 of Manual for Procurement of

Goods.

vi) **Performance Security:** Normally no Performance Security is required for consulting service contracts. However, in some of the consultancy service contracts, 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 service 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., 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, in such type of consulting contracts, Performance Security shall be 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. The calculation of Performance Security shall be as per the modalities detailed under "Performance Security" of Chapter 9.

Regarding applicability of Performance Security, the types of consultancy services are **differentiated** as under:

A. Type of Consulting Services where Performance Security is applicable are:

a) Project Management Consultant (PMC)/EPMC/EPCM

b) EIA consultant.

c) Architectural firm engaged for execution of any civil engineering project.

Note: *The performance security should be valid till 3 months beyond the warranty obligations/defect liability period of the EPC/construction contract*

B. Type of Consulting Services where Performance Security is not applicable are:

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.

vii) **Proposed form of contract:** The Tender Document shall include the Standard Agreement Form/SLA wherein all the chapters of the tender document that shall constitute the contract are mentioned.

viii) **Conflict of Interest:** The consultant shall not receive any other

remuneration from any source in connection with the same assignment except as provided under the contract. Consultants assisting a client in privatization of public assets shall neither purchase nor advise purchasers of such assets. Similarly, consultants hired to prepare ToR for an assignment shall not be hired for the assignment in question and shall not be in a conflict of interest situation as described in the Tender/contract.

ix) **Professional Liability:** The consultant is expected to carry out its/his assignment with due diligence and in accordance with the prevailing standards of the profession. Necessary provisions pertaining to limitation of liability are incorporated in Company's approved General Conditions of Contract (GCC).

x) **Staff Substitution of Key Professional:** During an assignment where key professionals are named in the contract, ~~if~~ substitution of such key personnel may be ~~is~~ necessary (for example, because of ill health or because a staff member proves to be unsuitable, or the member is no longer working with the consultant). Conditions governing such replacement shall be categorically specified in the tender.

xi) **Applicable Law and Settlement of Disputes:** The contract shall include provisions dealing with the applicable law, which should be the law applicable in India and the forum for the settlement of disputes - applicable Arbitration Clause and procedures. Such provisions are detailed in General Conditions of Contract of the Tender/Contract.

xii) **Training or Transfer of Knowledge:** If the assignment includes an important component of training or transfer of knowledge to the Company's personnel, the ToR shall indicate the objectives, nature, scope, and goals of the training programme, including details on trainers and trainees, skills to be transferred, timeframe, and monitoring and evaluation arrangements. The cost of the training programme shall be explicitly stated in the consultant's contract and in the price schedule budget for the assignment.

xiii) **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 time period, inspection, payment terms, obligations of the procuring entity and the suppliers timeframe/ milestones, tax implications, compliance framework for statutory and other norms, dispute resolution. Provisions/ clauses in the tender document should be clear to avoid differences in interpretation and possible time overrun, cost overrun and quality compromises. Model Tender Documents issued by the DoE may be used, with due customisation.

b) In tenders containing General Conditions of Contract (GCC), additional/ special conditions to be incorporated in the tender document, shall be need based and specific. The GCCs should not be altered and changes, if any, in conditions of contract should only be made through the Special Conditions of Contract.

c) 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.

d) Provision of price variation, wherever considered appropriate, as well as methodology for calculation of the same shall be clearly stipulated in the tender document.

e) Technical and Financial eligibility Criteria for the bidders are important in the public procurement process. They shall be clear and fair, having regard to the specific circumstances of the procurement. Appropriate parameters should be prescribed in the eligibility criteria for bidders, to enable selection of the right type of bidders in public interest, balancing considerations of quality, time and cost.

f) Open online tendering should be the default method to ensure efficiency of procurement. Public authorities should also keep the experience criteria broad based so that bidders with experience in similar nature of items/ goods can participate.

g) Pre-bid conference may be conducted for large value / complex nature of tenders. The Place and time of pre-bid conferences should be mentioned in the tender document and publicized through the Company website.

6.4 Pre-Bid Meeting

i) For some large value or complex assignments, a pre-bid meeting may be prescribed in the tender, if required. The date and time for pre-bid conference should normally be 7 to 10 (seven to ten) days after publication/issue of the tender and should be specified in the tender document. During this meeting, the scope of assignment, responsibilities of either parties or other details should be clearly explained to the prospective bidders so that there is no ambiguity later at the time of submission of technical/financial bids. Where some significant changes are made in the terms/scope of the tender as a result of the pre-bid meeting or otherwise considered necessary by the indenting department, a formal corrigendum to the tender may be issued, to all bidders. In such cases, it should be ensured that, after issue of the corrigendum, reasonable time (not less than 15 (fifteen) days) is available to the bidders to prepare/submit their bids. If required, the time for preparation and submission of bids may be extended, suitably.

ii) Pre- Tender Conference: In complex and innovative procurement cases or

where the procuring entity may not have the required knowledge to formulate tender provisions, a pre-Tender conference may help the procuring entity in obtaining inputs from the industry. Such conferences should be widely publicized so that different potential suppliers can attend.

iii) 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. Necessary budget for the pre-bid shall be arranged by Indenting Department.

6.5 Receipt of Bids

Enough time should be allowed to the bidders to prepare their bids. If necessary, Company shall extend the deadline for submission of bids. The technical bids will be opened after bid closing date and priced bids shall be opened publicly only for those firms that have techno-commercially qualified. Any proposal received after bid closing time (Late Bids) shall not be considered. Report of Bid opening shall be prepared as per Checklist Format F9, as applicable.

6.6 Evaluation of Bids:

6.6.1 Evaluation of bids shall normally be carried out by user department. Marking of bids against Quality Parameters may be carried out through a committee where parameters are objective in nature. In case of subjective/artistic parameters and cases requiring domain knowledge, suitable domain/technical experts may be included in the committee for evaluation of the bids.

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

6.7 Evaluation of Cost:

After evaluation of quality has been completed, the Procuring Entity shall notify those consultants whose proposals did not meet the minimum qualifying standard or were considered non-responsive to the tender and/or ToR. The financial bids shall be opened publicly in the presence of representatives of the technically qualified consultants who choose to attend. No modification to financial bids is permitted. The Tender Officer shall record the Price Bid opening as per Checklist Format F 17.

6.7.1 For QCBS, the proposal with the lowest offered total price shall be given a financial score of 100 % (one hundred per cent) and other financial bids given scores that are inversely proportional to their prices. This methodology shall be specified in the tender.

6.7.2 For the purpose of comparing bids, the costs shall be converted to Indian Rupees as stated in the tender. The Tender shall specify the source of the exchange rate to be used and date of the exchange rate to be taken for

comparison of costs.

6.7.3 For the purpose of evaluation, the total cost shall include all taxes and duties for which the Company makes payments to the consultant and other reimbursable expenses, such as travel, translation, report printing, or secretarial expenses as indicated in the Tender.

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

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

6.8 Selection of the winning consultant

6.8.1 LCS Selection

Under the LCS procedures, the financial bids will be ranked in terms of their total evaluated cost. The least cost proposal will be ranked as L-1 and the next higher and so on will be ranked as L-2, L-3 etc. The least cost proposal (L-1) will be considered for award of contract. The TC will put up a proposal to the competent authority as per DoP with the recommendation that the least cost proposal (L-1) can be approved/ invited for negotiation (if required) or for final award of contract.

6.8.2 QCBS Selection

Under QCBS selection, the proposed weightages for quality and cost shall be specified in the tender. Priced bids with the lowest cost may be given a financial score of 100 (Hundred) and other proposals given financial scores that are inversely proportional to their prices w.r.t. the lowest offer. Similarly, bids with the highest technical marks (as allotted by the evaluation committee) shall be given a score of 100 (Hundred) and other proposals be given technical score that are proportional to their marks w.r.t. the highest technical marks. The total score, both technical and financial, shall be obtained by weighing the quality and cost scores and adding them up. On the basis of the combined weighted score for quality and cost, the consultant shall be ranked in terms of the total score obtained. The proposal obtaining the highest total combined score in evaluation of quality and cost will be ranked as H-1 followed by the proposals securing lesser marks as H-2, H-3 etc. The proposal securing the

highest combined marks and ranked H-1 will be invited for negotiations, if required and shall be recommended for award of contract. In the event two or more bids have the same score in final ranking, the bid with highest technical score will be H-1.

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

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

where

C = Evaluated Bid Price

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

T = the total Technical Score awarded to the Bid

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

X = weightage for the Price as specified in the BDS

The Bid with the best evaluated Bid Score (B) among responsive Bids shall be the considered for award of contract.

6.8.3 Single Source Selection (SSS/Nomination):

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

6.9 Negotiations and Award of Contract

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

Financial negotiations shall only be carried out if, due to negotiations, there is any change in the scope of work which has a financial bearing on the final prices or if the costs/cost elements quoted are not found to be reasonable. In such negotiations, the selected firm may also be asked to justify and demonstrate that the prices proposed in the contract are not out of line with the rates being charged by the consultant for other similar assignments. However, in no case such financial negotiation should result in an increase in the financial cost as originally quoted by the consultant and on which basis the consultant has been called for the negotiations. If the negotiations with the selected consultant fail, the Procuring Entity shall cancel the bidding procedure and re-invite the bids.

6.10 Rejection of All Proposals, and Re-invitation

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

6.11 Confidentiality

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

6.12 Tender, Evaluation and Award Stage - Risks and Mitigation

Risks	***Mitigation***
No key expert proposed from the main qualified partner in JV: It is seen that though the shortlisting and contract is won by a JV on the basis of qualifications of the main qualified partner firm, but no key experts (nor team leader) are proposed from that firm. As consultancy assignment is an intellectual product, the effective contribution of the qualified partner firm can only come from experts (in particular the team leader) who have worked for sufficient time with the main qualified consultant.	RfP should specify that the team leader proposed should have worked for a sufficient number of years (say, two to three years) with the main qualifying firm. If this is not complied with it could be a ground for the proposal being termed as non-responsive.
Request for substitution of key experts at the time of contract negotiation: After the firm is invited for negotiation, it asks for substitution of key staff in the	Any request for substitution should be examined very closely and agreed only if permitted by the tender.

contract. This is an unacceptable practice unless the selection process is unreasonably delayed.	
Presence of one or more unsigned CVs in technical proposal: If a proposal contains one or more unsigned CVs, it should be scrutinised carefully. It can be that the CV is used without permission or commitment from the concerned key expert.	If few CVs are not signed by the key expert, the evaluation should be carried without considering these unsigned CVs and, if this firm is still a winner, clarification may be sought at the negotiation stage for resolution. In no case substitution of such key experts be agreed to at the contract negotiation stage. If most of the CVs are not signed by the respective proposed key experts, the proposal should be termed as non-responsive and rejected at the technical evaluation stage.

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

CHAPTER 7

SPECIAL TYPES OF ENGAGEMENTS

7.1 Single Source Selection (SSS)/nomination

7.1.1 Selection of consultants/ service providers on nomination basis does not provide the benefits of competition in regard to quality and cost, lacks transparency in selection, and could encourage unacceptable practices. The reasons for nomination and selection of a particular consultant must be recorded and approved by the CA as per the DoP. Single-source selection/nomination shall be used only in exceptional circumstance where it is inescapable over competitive selections as discussed in sub-paras below.

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

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

7.1.4 The user / indenting department shall provide a complete proposal fully substantiated / justified for selected vendor / contractor and the proposed methodology for award and shall obtain in-principle approval of competent authority as per DoP before resorting to procurement on nomination basis.

7.1.5 While selecting the consultant/ service provider under this method, the User Department shall ensure that the consultant/ service provider has the requisite qualification and experience to undertake the assignment. Normally the User Department shall adopt the same short listing criteria as applied to similar assignments while evaluating the EoI.

7.2 Selection of Individual consultants/ service providers

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

i) Teams of personnel is not required;

ii) No additional outside professional support is required, and

iii) The experience and qualifications of the individual are the paramount requirement.

7.2.2 The procedures for selecting individual consultants/ service providers entails the following:

i) Preparing a Consultancy and other services package including the ToR, time frame, number of person-months/man-days, budget, EoI Short-listing criteria and getting it approved by the CA;

ii) **Advertising:** Advertisement in such case should be published on Central Public Procurement Portal (CPPP) at www.eprocure.gov.in, Company website and on Government e-Market (GeM)

iii) **Method of Selection:** They shall be selected through comparison of qualifications of at least three candidates among those who have expressed interest in the assignment or have been approached directly by the Company. Capability is judged on the basis of academic background, experience, and, as appropriate, knowledge of the local conditions, such as local language, culture, administrative system, and government organisation. Selection will be carried out by the Evaluation Committee which will award marks for educational qualifications and experience and select the most suitable candidate for the assignment. The Evaluation Committee may also interview candidates and award marks for their performance in the interview and recommend the remuneration to be paid.

7.2.3 Direct Negotiation:

Individual consultants/ service providers may be selected on a direct negotiation basis with due justification in exceptional cases such as: (a) tasks that are a continuation of previous work that the consultant/ service provider has carried out and for which the consultant/ service provider was selected competitively; (b) emergency situations and (c) when the individual is the only consultant/ service provider qualified for the assignment. Individual consultants/ service providers may be (among others) independent consultants/ service providers; consultants/ service providers recruited from firms; or consultants/ service providers recruited from academic, government, or international agencies.

7.2.4 Staff or Associates of Consultancy/ service provider Firms: If the candidate is permanent staff or associates of a Consultancy firm the conflict of interest provisions described in these guidelines shall apply to the parent firm.

7.3 Selection of Specialized Agencies/ Institutions

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

7.3.2 In some cases, the agency or institution has access to special expertise or

special backup and support facilities that make it worthwhile considering recruitment on an SSS basis. In such cases, there must be full justification that the use of SSS is in the best interests of Procuring Entity.

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

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

7.4 Selection of Nongovernmental Organizations (NGO)

7.4.1 Nongovernmental organizations (NGOs) may also be engaged if they express interest and the Company finds their qualifications satisfactory. Selection may be done through EoI followed by single stage two bid or directly through single stage two bid tendering. Short lists may comprise NGOs entirely, where the assignments are typically attributed to NGOs (because they, for example, emphasize experience in community participation and in-depth local knowledge. In such selection, QCBS should be followed, and the evaluation criteria of bids should reflect the NGO-unique qualifications, such as the following:

i) History of work with grassroots communities and evidence of satisfactory performance;

ii) Familiarity with participatory development approaches and low-cost technologies;

iii) Experienced staff conversant with the cultural and socioeconomic dimensions of beneficiaries;

iv) Committed leadership and adequate management;

v) Capacity to co-opt beneficiary participation

7.4.2 Procuring Entities may select NGOs using SSS (Nomination), provided the approvals are obtained as per provision of DOP following laid down procedure for the same. For example, SSS may be adopted to hire a local NGO for a very small assignment in a remote area where only one NGO is available and competition is impractical.

7.5 Procurement Agents

Procurement agents (PAs) may be hired by the Procuring Entity to assist in carrying out procurement, to provide advice, or a combination of both. When PAs are specifically used as "agents" handling the procurement of specific items and generally working from their own offices, they are paid a percentage (either fixed or inversely proportional) of the value of the procurements handled or a combination of a percentage and a fixed fee. When PAs provide only advisory services for procurement or act as "agents" for a whole project in a specific Unit of Procuring Entity, they are usually paid based on the staff-months of effort provided, and they shall be selected following the appropriate procedures for other Consultancy assignments using QCBS and time-based

contracts, as specified for other Consultancy assignments.

7.6 Inspection Agents

Services of Inspection agencies are procured by Materials Department at the time of procurement of the materials.

7.7 Financial Advisors

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

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

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

i) a lump-sum retainer fee to reimburse the consultant/ service providers for services made available; and

ii) A success fee, which is either fixed or preferably expressed as a percentage of the value of the privatization transaction.

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

7.8 Auditors

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

************End of Chapter 7***********

CHAPTER 8

MONITORING CONSULTANCY/OTHER SERVICES CONTRACT

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 8***********

CHAPTER 9

PROCUREMENT (OUTSOURCING) OF OTHER SERVICES (NON-CONSULTANCY)

To make this chapter self-contained and complete some of the relevant paras are repeated wherever required. Any circumstances which are not covered in this chapter for procurement of non-consulting services, the Procuring Officer may refer to Manual of Policies and Procedures for Procurement of Works. In case, any circumstances/ principle/ procedure, are not available in this chapter or in the Manual for Procurement of Works, Procuring Officer may refer to the Manual for procurement of Goods. However, the provisions for procurement of consulting services are not to be referred.

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

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

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.

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

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

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

Covered in para 1.10 in Chapter 1.

9.3.1 **Period of Contract:** A very short period of contract would require spending needless administrative time in repeating the exercise at short intervals while a very lengthy contract period may affect service quality. Guidelines regarding time frame of contracts given under "Note on Section C" in Systems and Procedures of the DoP is to be referred to.

9.3.2 **Extension of Contract:** Contracts are generally to be awarded without provision of any extension period. However, extension provision wherever available should be availed before commencement of replacement Contract.

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

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

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

In Case of other than GeM tender, selection of Successful L1 is done through draw of Lots.

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

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

9.3.6 **Types of Contracts in Other (Non-consultancy) Services:** Procurement/ Outsourcing of other (non-consulting) Services depending on the nature of services can be either Lump-sum contracts, Time-based contracts, or unit (item/ service) rate based contract (as in case of Goods and Works - say Taxi Service on Km basis). Or it can be a mix of these. For occasionally but continually needed services, indefinite delivery contracts, based on time or unit (item/ service) rates may be appropriate. Detailed description of type of Contracts is given in Chapter 3 of this Manual.

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

9.4.1 Unlike Procurement of Consultancy Services, procurement of other services is done by a simpler process akin to those of procurement of Goods and Works. It is normally done in a Single Stage Process containing Technical and Financial bids. However in highly technical and complex services, where quality is important (say in studies like seismic surveys, airborne data acquisition etc) a EoI process i.e. Two Stage Two Bid System may be done on the lines of procurement of Goods and Works.

9.4.2 In procurements above Rs 25 (Rupees Twenty-Five) Lakhs, it should normally be an advertised Tender. For procurement of Rs 25 (Rupees Twenty-Five) Lakhs or below, Tender can be issued to a selected shortlist of likely service providers. To start with preparation of a list of potential service providers may be done on the basis of formal or informal enquiries from other Ministries or Departments or Organizations involved in similar activities, Chambers of Commerce & Industry, Association of consultancy firms etc. The Indenting Department should scrutinize the list of likely service providers as identified above and shortlist the prima facie eligible and capable service providers from the list. The number of service providers in this list should be more than three. To smoothen this shortlisting of service providers for projects below Rs 25 (Rupees Twenty-Five) Lakhs, empanelment of qualified service providers may be considered for frequently procured non-consultancy services, following a fair and transparent procedure.

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

9.5 One Stop Government e-Marketplace (GeM)

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

9.5.2 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.

9.5.3 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. Company shall endeavor to procure through GeM all those Goods and Services which are available in GeM. For updated GeM GTC following link may be referred: https://gem.gov.in/page/gtc.

9.6 For need assessment, In-Principle Approval, formulation of specifications/TOR/Scope of Work and procurement planning, detailed procedure is given under Chapter 1 of this Manual.

9.7 Procedure for Single Source Selection (SSS)

Should it become necessary, in an exceptional situation to outsource a job to a specifically chosen contractor, the CA's approval as per provision of DoP may be taken. In such cases the detailed justification, the circumstances leading to the outsourcing by choice and the special interest or purpose it shall serve shall form an integral part of the proposal.

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

In many small value procurement of other services, the service provider may neither be capable of handling the bidding process, nor would this be a cost-effective process for the Company. For procurement upto Rs 25,000 (Rupees Twenty Five Thousand only), the 'Direct Procurement without Quotation' mode of procurement used in Procurement of goods may very well be followed in such cases. Similarly for procurement of services upto Rs 2.5 Lakh (Rupees Two Lakh Fifty Thousand only), 'Direct Procurement by a Purchase Committee' (“Board of Officer) mode as used in procurement of Goods may be followed. In all such modes of procurement, the procedure prescribed in the Manual for Procurement of Goods may be followed.

9.9 Procedure for Procurements below Rs 25 (Rupees Twenty Five) Lakhs

For procurements below Rs. 25 Lakh (Rupees Twenty Five lakh), the User should prepare a list of likely and potential service providers on the basis of formal or informal enquiries from Organisations involved in similar activities, scrutiny of 'Yellow pages', and trade journals, if available, web site etc. The User Department should scrutinise the list of likely service providers as identified above, shortlist the prima facie eligible and capable contractors and raise PR recommending to issue Tenders to these shortlisted firms on a limited tender enquiry basis as per standard practice. The number of the contractors so identified for issuing Tender should be more than three. Services which are available on GeM have to be mandatorily procured through that portal (please refer to 9.5).

9.10 Procedure for higher Value of Procurements

For Procurements above the Rs 25 lakh (Rupees Twenty Five Lakh only), the NIT is to be uploaded on CPPP and Company's website (Other than GeM tenders). GeM tenders are published in GeM platform as well as in Company’s website. Attention of known reputed service providers may also be separately drawn wherever possible. Services which are available on GeM have to be mandatorily procured through that portal (please refer to para 9.5 above).

9.11 Preparation of the Tender Document

In procurement of other (non-consultancy) Services, a Standard Tender document should be basis for preparation of Bid Documents. The essential information/sections of Tender Document are as follows:

i) Notice Inviting Tender/Introduction

ii) Instructions to Bidders (ITB) which contains standard information for the Bidders. and data sheet (which contains assignment specific information);

iii) Bid Evaluation Criteria/ Bid Rejection Criteria (BEC/BRC)

iv) General Conditions of Contract (GCC)/ STC (in case of GeM tenders GCC and SCC are combined and called STC)

v) Special Conditions of Contract (SCC);

vi) Schedule of Rates/Quantity/Unit (SOR)

vii) Scope of Work (SOW) which shall comprise of the following:

a) Description of Service
b) Activity Schedule
c) Manpower Schedule: Assessment of Manpower for Deployment
d) Materials Schedule (indicating the specification and quantity of such materials/ consumables/ tools to be consumed/ deployed per unit activity/ day/ location/ per manpower deployed).
e) Essential Equipment: Any essential equipment, machinery that the service provider must have as a qualifying requirement along with specification, capacity, age of equipment etc.;
f) The statutory and contractual obligations to be complied with by the contractor.
g) Services & Facilities to be Provided by the Procuring Entity and respective obligations of the Procuring Entity and service provider

viii) Health, Safety and Environment

ix) Standard Formats (as applicable)

a) Service provider's Bid Cover Letter
b) Price Bid Format
c) Import declaration format
d) Statement of Compliance
e) Technical Evaluation Sheet for BEC / BRC
f) Integrity Pact Format of Undertaking Towards Submission of Authentic Information/Documents
g) Letter of Authority & Authorization for attending Bid Opening Others
h) Schedule of company's plants, materials, and equipment (Responsibility matrix, if applicable)
i) Any other proforma/annexure

j) Standard formats for the technical proposal (if required, as detailed in Chapter 6);
k) Standard Format for the Financial Proposal (if required, as detailed in Chapter 6);
l) Service Level Agreement / Contract Form
m) Securities Formats

- Bid Security (Bank Guarantee)
- Bank Guarantee for Advance Payment
- Performance Security (Bank Guarantee)

9.12 Important Provisions of ITB

It contains 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.

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-4 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 / Agents**

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 will be rejected.

g) A bidder or any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the contract that is the subject of the Bid;

h) Offers made by closely related sister companies. Bidders must proactively declare such sister / common business / management units in same / similar line of business.

9.13 Bid Evaluation Criteria (BEC-BRC):

9.13.1 The Bid Evaluation Criteria (BEC) is to be formulated while seeking the bids on open tender basis. The purpose of BEC is that only the competent bidders who can supply / execute the job and provide the services as per technical and commercial criteria, scope of the tender document, are shortlisted. The BEC shall have technical as well as commercial criteria for examining the bids. In case of limited tenders where vendor empanelment has not been done, the BEC shall be incorporated in such tenders also and uploaded in the OIL / Govt. websites so that any capable bidder may download and submit the bid.

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 6 to be referred.

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, financial standing etc. No bidder should be denied prequalification / post qualification for reasons unrelated to its capability and resources to successfully perform the contract.

9.13.2 Utmost care should be taken in formulating BEC so that the ultimate objective of purchasing function, i.e. procuring the required materials / services / works as per required specifications, delivery/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 / manufacturing / service 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.

9.13.3 FINANCIAL CRITERIA:

The following financial criteria should be included in open tender in order to ascertain financial soundness of the bidders:

<table>
<tr><th>Sl. No.</th><th colspan="2">Financial Criteria
(to be considered from the original bid closing date)</th></tr>
<tr><td rowspan="4">1.</td><td colspan="2">*Annual Turnover</td></tr>
<tr><td>Value</td><td>(i) 50% (*) of the estimated value for all cases where execution / delivery period is less than one year.

(ii) 50% (*) of the annualized estimated value for all cases where execution / delivery period is more than one year.</td></tr>
<tr><td>For consortium</td><td>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.</td></tr>
<tr><td>Period for consideration</td><td>In any of preceding 3 financial years</td></tr>
<tr><td>2.</td><td>*Net worth</td><td>Positive for preceding financial / accounting year.</td></tr>
</table>

* In case of service contracts up to a ceiling of Rs. 5 Crores, the turnover shall be 30% of the estimate, which are normally executed by local contractors; the socio-economic condition is also under consideration.

*__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 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.

9.13.4 TECHNICAL CRITERIA: This is a broad guideline for formulation of Technical Qualification Criteria.

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 -

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

One similar completed works costing not less than the amount equal to 80% (eighty percent) of the estimated cost;
Or
Two similar completed works each costing not less than the amount equal to 50% (fifty percent) of the estimated cost;
Or
Three similar completed works each costing not less than the amount equal to 40% (forty percent) of the estimated cost.

(b) In case of periodic nature of job:

At least one similar work of about 50% of annualized value of work under tender is to be considered.

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.

iv) In case of tenders for period nature of services, if the prospective bidder is executing such 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 will also be taken in to consideration provided that the bidder has submitted satisfactory work / supply / service execution certificate issued by end user.

v) A job executed by a bidder for its own organization / subsidiary cannot be considered as experience for the purpose of meeting BEC.

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.

For further modalities regarding approval/modification/amendment to BEC etc. Chapter 5 of Manual for Procurement of Goods is to be referred to.

9.14 Qualification Documents to be submitted:

To judge their qualification, all bidders should be asked to submit all the requisite information and documents as mentioned in the Tender document along with their bids:

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

9.16 Restrictions regarding Personnel Deployed: The quoted rates shall not be less than the minimum wage fixed/notified by the Government - where the service is performed and shall include all statutory obligations. However bids without any element of cost over and above such minimum wage (or below it) shall be treated as 'Nil' price quotation and would be rejected. The service provider shall be liable for all kinds of dues payable in respect of all personnel provided under the contract and the Procuring Entity shall not be liable for any dues for availing the services of the personnel. The service provider should ensure that persons to be deployed are not alcoholic, drug addict and not indulge in any activity prejudicial to the interest of the Procuring Entity. The service provider shall ensure to get the Police verification for all the manpower deployed by them and the contractor should ensure that the manpower deputed should bear good moral character. Suitable clause should be included in Tender document.

9.17 Liquidated Damages for Delay in Performance: The service provider shall pay liquidated damages wherever applicable to the Company. Suitable clause to be incorporated in the tender for delay in mobilization/completion of service as per the terms and conditions of the tender/contract. The total amount of liquidated damages shall not exceed the amount defined in the tender/contract.

9.18 Penalty for non-performance: If the service provider does not carry out the service as per terms and conditions of the contract it shall be considered as default on the part of the contractor and the contractor shall be liable to pay penalty. The contractor shall make good such default within the time specified by the Tender/Contract/Notice. Suitable clause in this regard shall be incorporated in the tender document.

9.19 Filling up the Priced Bid by the Bidders: The Bidder should be asked to fill in rates and prices for all items of the Services described in the Price Bidding

Format. Items for which no rate or price is entered by the Bidder will not be paid for by the Procuring Entity when executed and shall be deemed covered by the other rates and prices in the Activity Schedule. Bidding Documents should include a clause that "if a firm quotes NIL charges/ consideration, the bid shall be treated as unresponsive and will not be considered".

9.20 Price Adjustment:

In case of long-term contracts which are placed on Company's Offered Rate and where price escalation is envisaged during the contract period, an appropriate clause incorporating, inter-alia, a suitable price variation formula should also be provided in the tender documents, to calculate the price variation between the base level and scheduled delivery date. It is best to proactively provide our own PVC in the tender document to discourage different bidders quoting different formulae and different base dates, which may lead to problems on bringing their prices on a common comparable footing. Additionally, based on the need and requirement, this clause may be incorporated in quoted rate contracts judiciously recording the justification.

9.21 Receipt of Bids, Evaluation and Award of Contract:

Receipt and opening of Bids is done in a manner similar to procurement of Goods. The responsive bids should be evaluated, segregated, ranked and the successful bidder should be selected for placement of the contract, in a manner similar to Procurement of Goods/ Works. Thereafter award the Contract to the Bidder whose Bid has been determined as the lowest evaluated Bid price, provided the offer is determined in accordance with the bid documents to be techno-commercially acceptable.

9.22 Quality-cum-cost based Selection (QCBS) for Non- Consultancy Services:

QCBS method of selection maybe used for procurement of works and non-consultancy services 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 7.

9.23 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.

Submission of Performance Security:

Type of Contract	**Performance Security Amount**
Services up to an individual order value of Rs. 10 Lakhs.	Nil
OEM Service	Nil

Govt. Organizations (Other than PSU) / Departments/ Agencies / Autonomous Bodies under control of State / Central Government	Nil
Annual rate contract for services/AMC	10% of order value of individual release order.
Services above Rs. 10 Lakhs	**(A) For periodic nature contracts**: i. 10% of annualized contract value in case the contract period is more than 1 year ii. In case the contract period is 1 year or less the performance security shall be 10% of contract value **(B) For single job contracts:** 10% of contract value.
Consulting service contract	NIL / 10% of contract value. For applicability, Para 6.3.4 (vi) of this manual to be referred.

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

Note:

1. *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*

2. *In special cases of long duration Contracts, subject to prior management approval, Performance Security of 2.5% may be taken initially and balance 7.5% may be retained to make it total 10% of contract value/annualized contract value (as applicable) within one year period.*

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.

9.24 Special type of engagements:

9.24.1 Transport Service Contracts: Contracts are finalized for following categories of Transport services:

a. Light passenger/utility vehicles.

b. Heavy & medium passenger vehicles.

c. Trucks / Water Tankers.

d. Crude Oil Tankers/ Bowsers.

e. Material handling and transportation equipment/vehicles like cranes, tractor trailers etc.

9.24.2 The requirement of Passenger vehicles, Utility Vehicles, Pick-up and Ambulance is large in numbers and taking quoted rate and splitting by price matching is not feasible, these requirements are tendered by OIL on offered rate basis. It is also a CSR obligation on the part of OIL considering the socio-economic condition in the region. Accordingly, it is considered that one vehicle in case of passenger vehicle is allocated to one applicant.

9.24.3 The terms and conditions of the tenders against transport contracts is similar to other contracts.

9.24.4 Light passenger vehicles, Utility Vehicles, Pick-up and ambulances at the rates offered by OIL:

Light passenger vehicles (like Cars, Sumo/Bolero, Utility vehicles), Pick-ups & Ambulances shall be hired on one-applicant-one-vehicle basis at the rates offered by OIL from individuals only without seeking any financial and experience eligibility criteria. In case of hiring of light passenger vehicles and Ambulances etc. on one-applicant-one-vehicle basis; no bid documents shall be issued and the interested participants should apply in prescribed application format along with the other requisite documents during the application receipt period. NIT, application format, Contract Terms & Conditions shall be made available on OIL's website. The applications so received shall be examined for its acceptability as per the provision of NIT. Also, in such cases where the number of applicants are more than the requirement, the selection shall be done through Draw of Lots and the short listed applications shall be scrutinized after Draw of Lots.

Basic steps involved in processing shall be:

a. Issue of NIT & application format, Contract Terms & Conditions.

b. Receipt of applications in separate counters if number of applicants are more. Contract Department shall arrange for temporary application receiving counters. Alternatively provision can also be

made for receipt of applications through online mode.

c. Draw of Lots for short listing of applicants. In Draw of Lots, members from Indenting Department, Finance Department and Contracts Department shall be present. Applicants' notice shall be drawn to attend the Draw of Lots and attending applicants or any person (public) shall be randomly asked to pick up the number in Draw of Lots. List of provisionally selected applicants including waiting list applicants (if necessary) duly signed by company representatives attending the Draw of Lots shall be displayed in the Notice Board after the Draw of Lots.

d. Scrutiny of short listed applications with respect to application rejection criteria by indenting department. The scrutiny report to be vetted by Finance Department wherever necessary.

e. Normally applicants are not required to submit Bid Security along with the application. However, once short listed vide Draw of Lots they shall be required to submit Bid Security of Rs. 10,000 along with other documents.

f. All the applicants short-listed vide Draw of Lots are required to submit additional documents like Affidavits etc. which shall be further scrutinized jointly by Indenting Department, Finance Department and Contracts Department.

g. Contracts Department to process Tender Committee Resolution recommending award of contract to the eligible short listed applicants and place it before the competent authority for approval.

h. Issuance of LOA to the approved applicants (contractors).

i. Signing of Formal Contract Agreement by the contractors after submission of Performance Security.

j. Placement of vehicles at Indenting Department.

9.24.5 Buses (Big & Mini) at Rates Offered by OIL:

In case of hiring of Buses (Big & Mini Bus), tenders shall be floated at rates offered by OIL with financial and other eligibility criteria. In case the number of acceptable bidders exceeds the required numbers, the selection of bidders shall be done through Draw of Lots amongst the bidders fulfilling the eligibility criteria. The bidders are required to submit Bid Security along with their offers. In case of buses there may be allocation of two nos. of buses to one bidder.

9.24.6 Readily Available Trucks at Rates Offered by OIL:

In case of hiring of Trucks, tender shall be floated at rates offered by OIL with eligibility criteria (other than financial) given by OIL. In case the number of acceptable bidders exceeds the required numbers, the selection of contractors shall be done through Draw of Lots amongst the bidders fulfilling the eligibility criteria. The bidders are required to submit Bid

Security along with their offers.

9.24.7 Crude Oil Tankers / Bowser at Rates Offered by OIL:

In case of hiring of Crude Oil Tankers/ Bowsers, tender shall be floated at rates offered by OIL with financial, technical eligibility criteria given by OIL. In case the number of acceptable bidders exceeds the required numbers, the selection of contractors shall be done through Draw of Lots amongst the bidders fulfilling the eligibility criteria. The bidders are required to submit Bid Security along with their offers.

9.24.8 Procedure for Draw of Lots:

In case of tenders where the no. of applicants / bidders are more than the requirement, selection of short-listed applicants / bidders shall be done through Draw of Lots. Notification regarding the Draw of Lots of the subject tender is to be given in the NIT itself. In Draw of Lots, members from Indenting Department, Finance Department and Contracts Department shall be involved. Draw of Lots shall be conducted by Tombola cages and no. of Tombola cages to be used shall depend upon the no. of participants in the Draw of Lots. Attending applicants or any interested public shall be allowed to pick up the numbers allotted for Draw of Lots against the applicants / bidders. The list duly signed by company representatives attending the Draw of Lots and approved by Head-Contracts of selected applicants / bidders through Draw of Lots shall be displayed in the Notice Board after the Draw of Lots. Audio & Video recordings of Draw of Lots proceedings shall be done subject to availability of such systems. Also if feasible, provision for live streaming over internet of Draw of Lots can be made.

9.24.9 Offered rates by OIL based on internal estimate.

The rates to be offered by OIL to the applicants / bidders for their acceptance shall be prepared by a committee and approved by competent authority as per DoP. Such rate will be incorporated in the tender document for the information of applicant / bidder.

9.24.10 In case of Hiring Transport Services/Logistics Equipment for the following categories the normal tendering procedure shall be followed:

a. Hiring of cranes

b. Hiring of Tractors

c. Hiring of Tractor-Trailer units

d. Chemical Transportation.

e. Rig Movement.

f. Tubular Transportation.

g. Water Tankers

h. Any other services related to Transport/Logistics Equipment.

The above provision is based on present practice in OIL. However, regarding finalizing the award based on the offered rate / quoted rate, in case of a specific situation the category of the vehicle above may be shifted vice versa with due reasoning.

9.25 Service Level Agreement (SLA) / Agreement form:

The Tender Document shall include the Standard SLA / Agreement Form wherein all the chapters of the tender document that shall constitute the contract are mentioned.

9.26 Monitoring the Contract

Before commencement of the Services, User Department should nominate an officer/ form a Committee to be involved throughout in the conduct of the contract and to continuously monitor the performance of the contractor. In this regard chapter-8 may be referred, which is broadly applicable to both Consultancy and Non-consultancy services.

************End of Chapter 9***********

APPENDICES

Appendix-1: 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 Ill - '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.

"Part Ill - 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."

1.2 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.

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-operativeSocietiesActandSocietiesRegistrationActarealsoartificial 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 void able 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 off act 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 actor 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 contractmay 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 is 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, 1973andlndian 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-1***************

Appendix-2: 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: 16th 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 1st 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
Tel: 23063211
rajesh.gupta66@gov.in

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 23rd 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.

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
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 31st 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

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
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
24th July, 2020

Order (Public Procurement No. 3)

Subject: Clarification to Order (Public Procurement No.1) dated 23rd 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 23rd 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.

Example1: 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 23rd 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

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

Appendix-3: 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 1st 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.

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: 09 .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 6th 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 03rd August, 2021 for brining 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 03rd 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**.

3.3 Proposals are to be simultaneously sent to the following:

(i) Cabinet Secretariat, email: ca4-cabsec@gov.in,

(ii) Department for Promotion of Industry & Internal Trade (DPIIT) emails: manmeet.nanda@ias.nic.in & rajesh.gupta66@gov.in, and

(iii) Department of Expenditure, email: kanwal.irss@gov.in and 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).

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

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

Appendix-4: 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 hall 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 –

iv) Corrections/ Cutting/ overwriting/ additions are to be initialled by tender opening officer.

v) Number of corrections on each page of the bid (s) will also be recorded by tender opening officers.

vi) 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.

vii) Any ambiguities in rates quoted by tenderers, in words or figures must be clearly indicated.

viii) 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.

ix) Discount of any type, if indicated separately shall be initialled by tender opening officers.

x) 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.

xi) 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.

xii) 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-4***************

Appendix-5: 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
भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)
प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

सं. 4455] नई दिल्ली, शुक्रवार, नवम्बर 9, 2018/कार्तिक 18, 1940
No. 4455] NEW DELHI, FRIDAY, NOVEMBER 9, 2018/KARTIKA 18, 1940

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:—

1. (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।

2. 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।

3. 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

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

Uploaded by Dte. of Printing at Government of India Press, Ring Road, Mayapuri, New Delhi-110064
and Published by the Controller of Publications, Delhi-110054.

MANOJ KUMAR VERMA
Digitally signed by MANOJ KUMAR VERMA
Date: 2018.11.10 08:53:57 +05'30'

F.No. 1(3)/2018-MA, Part-III
Government of India
Office of Development Commissioner
(Micro, Small & Medium Enterprises)
(Public Procurement Policy)

Dated: 25th 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 27th 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, 25th 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 8th 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 8th 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.

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 d*t. 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 SI. No. 202 of the list of reserved items under the Public Procurement Policy for MSEs Order-2012.Accordingly, the description of SI. 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

Sl. No.	Sl. No. at the List of Items	Description
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. Cumblies & 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. Gumtape
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, envelops, 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. Skiboots & 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 laundary 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. Trollies - 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 Wiremash
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

Sl.No.	Item Description
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 29th 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 18th May, 2023 on the subject mentioned above for information and strict compliance.

Encl : As stated

(Kailash Bhandari)
Deputy Director
Tel : 2436-6247

Copy to :- Shri Kanwalpreet, Director, Department of Expenditure, Room No. 264-C, North Block, New Delhi.

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

264-C, North Block, New Delhi.
18.05.2023.

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:

Category	Terminology
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 be 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.

18/5/2023

(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.

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.

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***************End of Appendix-5***************

Appendix-6: 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-6****************

Appendix-7: QCBS parameters weightage

आज़ादी का अमृत महोत्सव

ऑयल इंडिया लिमिटेड
(भारत सरकार का उद्यम) पंजीकृत कार्यालय: दुलियाजान, असम
Oil India Limited
(A Government of India Enterprise) Registered Office 'Duliajan, Assam

प्लॉट. न. 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, वेबसाईट / Website : www.oil-india.com

Ref: OIL 62/C&P/219 **Date: 13.09.2023**

From	:	**General Manager (C&P)-HoD, Corporate office**
To	:	**All Executives of C&P Department, All Spheres**
Sub	:	**Amendment to QCBS Policy (Quality and Cost Based Selection)**

Reference is invited to OIL's Circular No. OIL 62/C&P/79 dated 23.03.2022 (copy enclosed) issued on 'Adoption of revised terms & conditions for tenders in line with the current situation' regarding Quality and Cost Based Selection (QCBS).

2.0 As per the resolution of the 144th Executive Council (EC) Meeting, held on 31.08.2023, Competent Authority has accorded approval for adoption of the following QCBS evaluation methodology in case of Hiring of Consultancy Services from Consulting Firms as well as Individual Consultants: -

a) Uniform weightage for Non-financial (Quality) and Financial (Cost) parameters in the ratio of 70:30 shall be adopted. However, in specific cases with the approval of the concerned Functional Director, Quality to Cost ratio of 80:20 can be adopted.

b) For open tender, the minimum qualifying score towards technical proposal shall be 75%.

c) For limited tender, there will be no minimum qualifying score towards technical proposal.

3.0 For Works & Non-Consultancy services, the guidelines mentioned in the earlier circular no. OIL 62/C&P/79 dated 23.03.2022 shall continue to prevail.

4.0 All concerned are requested to be guided accordingly.

(Bintyma Sharma)
General Manager (C&P)-HoD
For Chairman & Managing Director

ऑयल इंडिया लिमिटेड
(भारत सरकार का उद्यम) पंजीकृत कार्यालयः दुलियाजान, असम
Oil India Limited
(A Government of India Enterprise) Registered Office 'Duliajan, Assam
प्लॉट. न. 19, सेक्टर 16-ए, नोएडा-201 301 उत्तर प्रदेश
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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

2.	**Works and Non-Consultancy Services:** (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

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 valued 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 bemet 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 envelop 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.
29th 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 27th 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.

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.

(13)

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

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.

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

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

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:-

(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.

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.

15.2.11Joint 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.

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

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.

29.10.2021

(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.

********************End of Appendix-7*******************

Appendix-8: Performance Security against Consulting Service Contract

ऑयल इंडिया लिमिटेड
(भारत सरकार का उद्यम) पंजीकृत कार्यालय: दुलियाजान, असम
Oil India Limited
(A Government of India Enterprise) Registered Office "Duliajan, Assam

प्लॉट. न. 19, सैक्टर 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, वेबसाईट / 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.

1

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-8*******************

Appendix-:9 Integrity Pact - SoP

सत्यमेव जयते

केन्द्रीय सतर्कता आयोग
CENTRAL VIGILANCE COMMISSION

सतर्कता भवन, जी.पी.ओ. कॉम्पलैक्स,
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-9**************

ANNEXURES

Annexure 1: Procurement Guidelines (Refer Para 1.1)

Hierarchy Level	Procurement Guidelines
I - Statutory Framework	The Constitution of India Indian Contract Act, 1872; Sale of Goods Act, 1930 and Mercantile Laws Laws relevant to Public Procurement (Right To Information Act, 2005; The Micro, Small and Medium Enterprises Development Act, 2006; Prevention of Corruption Act, 1988)
II - Rules and Regulations	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
III - Ministry of Finance's Manuals	Ministry of Finance's Manual of Policies and Procedures for the Procurement of Good / Works and Consultancy Services (including non-consultancy services)
IV - Procuring Entities' Codes/ Manuals and Standard Bidding Documents	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 Ill 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

b) Department of Promotion of Industry & Internal Trade (DPIIT) email: manmeet.nanda@ias.nic.in&rajesh.gupta66@gov.in

c) Department of Expenditure, email: kanwal.irss@gov.in and sudesh.kumar85@gov.in

Table-1

Sl. No.	Particulars	Remarks
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 *(substituted) for the proposed item under GTE?*	
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 15th 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), D/o Expenditure (via Email ID: 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.

Year of contract	Item	Contract No. & date	Supplier	Quantity of Supply with unit	Rate per unit	Completion date of contract	Country of Origin of goods	Local content in%

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-2 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

Exihibit - 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)

Exihibit – 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)

Exihibit – 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: Terms of Reference (ToR) Sample Format

(*Refer Para 4.1.3*)

1. Description of Assignment

2. Procuring Entity's Organisation Background

3. Assignment Background

4. Statement of Purpose/ Objectives

5. Statement of Assignments Outcomes

6. Detailed Scope of Work and Time-lines
   a. Tasks, Activities, dependencies, bar chart and Gantt Chart, Milestones
   b. Place of Assignment and Touring Requirements if any
   c. Length and Duration of assignments

7. Team Composition and Qualification Requirements for the Key Experts (and any other requirements which will be used for evaluating the key experts under the Bid data sheet)

8. Capacity Building, Training and Transfer of Knowledge, if any

9. Deliverables, Reporting Requirements and Time Schedule for Deliverables [If no reports are to be submitted, state here "Not applicable."]
   a. Format, frequency, and contents of reports; dates of submission
   b. Number of copies, and requirements for electronic submission (or on computer media)
   c. Persons (indicate names, titles, submission address) to receive them;

10. Background material, Data, reports, records of previous surveys, and so on, to be provided to the consultant (Mention a caveat about reliability of material provided and need for the consultant to verify and crosscheck vital aspects)

11. Facilities such as local conveyance, office space, office machines, secretarial assistance, utilities, local services, etc., which would be provided to the consultant by the Procuring Entity (Specifically mention, what facility/ utilities would not be provided and also, charges if any for facilities offered)

12. Institutional and organisational arrangement
    a. Counterpart Project Manager and Team
    b. Consultancy Management Committee
    c. Chain of Command for reporting

13. Procedure for review of the work of consultant after award of contract

Annexure 5(A): Invitation and Declaration for Negotiations

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 5(B): Format of Revised Offer in Negotiations

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

**************END OF ANNEXURES****************

Checklist/ Formats

OIL INDIA LIMITED

Purchase Requisition Checklist (Goods) F-4

(To be filled up by Indenting/User Department)

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)	☐
6B	Non-Comprehensive Maintenance Contract (NCMC)	☐
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, **GeM Product id** provided	Yes/No
11A	**GeM Product id** does not exist for the PR item	☐
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	☐
	• MSE Benefit as per Public Procurement Policy for MSE	☐
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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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 splitable	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

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	☐
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	☐
	• MSE Benefit as per Public Procurement Policy for MSE	☐
	• No MSE Benefit Clause (in case of Works contract, QCBS etc.)	☐
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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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 splitable	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			
	PRP BY	CHK BY	REV BY

OIL INDIA LIMITED

Bid Evaluation Criteria Checklist F-5

(To be filled up by C&P Department)

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	**BRC Technical Clauses to be checked – maintained in the BEC**	
•	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	**BRC Financial Clauses to be checked – maintained in the BEC**	
•	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	**BRC Commercial Criteria**	
•	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	**Price Evaluation/Award Criteria**	

•	Award Criteria	Yes/No
•	Purchase Preference Clause to MSE Bidders	Yes/No
•	Purchase Preference Clause with Local Content	Yes/No
•	Splitting Provision (if splitable)	Yes/No/ NA
•	Price Matching Criteria (if applicable)	Yes/No
8	Bid **Evaluation Criteria**	
•	Document Authenticity Clause/Undertaking	Yes/No
•	Compliance of the competition act, 2002	Yes/No/NA
9	**Customs Duty Clause**	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

OIL INDIA LIMITED

Content of Tender Documents F-6

(To be filled up by C&P Department)

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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Check List for Tender Preparation F-7

(To be filled up by C&P Department)

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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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).	

Signature:		
Name:		
Date:		
Designation:		
	Checked by	**Checked by***
	(Tender floating officer – C&P)	**(Sectional-Head – C&P)**

***Note: Checked by Sectional Head – C&P is not required for tenders valuing up to Rs. 2 Crores.**

OIL INDIA LIMITED

Pre-Bid Meeting Minutes Format F-8

(To be filled up by C&P Department)

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		

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/Goo		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.

Bidder 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 F-10

(Initial/Reviewed after representation)

(To be filled up by C&P Department)

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	Reponse 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)

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

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	Reponse 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)

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

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
1		**Bid Evaluation Criteria (Technical)**					
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.			
2		**Scope of Work/ Special Condition of Contract (SCC)**		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# F-13

(Initial/Reviewed after representation)

(To be filled up by C&P Department)

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	:	

1. Justification of requirement:
2. Details of bidders who have submitted their bid within due date & time:

Sr. No.	Name of Bidders
i.	
ii.	

3. Details of Regrets /Holiday with reason

Sr. No.	Name of Bidders
i.	

4. 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 :

5. 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.					

6. Details of bidders **qualified** for priced bid opening.

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) (Approving Authority from User as per DOP)

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

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

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)

OIL INDIA LIMITED

Price Bid Opening Format F-17

(Not Applicable for GeM Tenders)

(To be filled up by C&P Department)

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 :

Signature:		**Signature:**	
Name & Designation:		**Name & Designation:**	
	(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)

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

		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:

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

**************END OF CHECKLIST/ FORMATS****************