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MANUAL FOR PROCUREMENT OF CONSULTANCY SERVICES

(Second Edition, 2025)

Government of India
Ministry of Finance
Department of Expenditure

Manual for Procurement of Consultancy services

(Second Edition, 2025)

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Department of Expenditure

FOREWORD
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As part of initiatives to enhance transparency, fairness, competition, value for money, and good governance in public procurement, the Department of Expenditure, Ministry of Finance, released the Manuals for Procurement of Consultancy and Other Services alongside Manuals for Works and Goods in 2017/2019 (later updated in 2022). The Second Edition of the Manual for Procurement of Goods· was published in 2024. These manuals have shaped procurement practices and are widely trusted by professionals and training institutions.

2. Since their publication, various developments - policy insights, stakeholder discussions, the Covid pandemic, the Methodology for Assessment of Procurement (MAPS-II) Report (2020), Model Tender Documents for Goods, Non-consultancy and Consultancy Services, FTA dialogues, the new DFPR 2024, amended GFR 2017, and the new Mediation Act - have necessitated a comprehensive revision of the manuals.

3. The procurement of Consultancy Services assumes importance in the increasingly complex environment in which Government agencies now operate. This manual emphasizes ease of business for service providers and clarity for procurement professionals. Topics such as applicability to various entities, procurement categorization, strategies for larger procurements, conflict of interest, outsourcing of procurements, auto bid extensions, interest-free advance payments, new forms of performance securities, capping price variations and liquidated damages, and some special types of Consultancies among others, have been updated.

4. I would like to ·acknowledge the outstanding work done by the team led by Shri Chinmay Pundlikrao Gotmare (Joint Secretary), Shri Sanjay Aggarwal (ex-Advisor, PPD) and the efforts of Shri Anil Kumar (Deputy Secretary, PPD), Shri Sher Bahadur (Under Secretary, PPD), Shri Girish Bhatnagar (Sr. Consultant}, and Shri Vikram Rajvanshi (Procurement Specialist, PPD). This was a truly collaborative effort, and I would like to thank Ministries, Departments, other Organizations, and individuals who reviewed the drafts of the Manual and provided their valuable input.

5. I am confident, this· updated manual would help in streamlining the process of procurement of consultancy services. Your feedback and comments are always welcome.

(**Vumlunmang Vualnam**)
Secretary (Expenditure)

Date: 20.06.2025

Preface

1. **Compliance**: This Manual adheres to the relevant laws, GFR, and clarifications/ OMs issued by the Procurement Policy Division, Department of Expenditure, Ministry of Finance ('the Ministry') up to April 2025. In case of inconsistencies between this Manual and prevailing law or GFR, the extant law and GFR shall prevail. However, the provisions of this Manual shall prevail in case of discrepancies with the clarifications/ OMs issued till April 2025 by the Ministry. Procuring entities are advised to stay informed about any further changes in the relevant law, GFR, and clarifications/ OMs from the Ministry.

2. **Interpretation**:

a) Any mention of writing or written includes matter in digital communications (including email), manuscript, typewritten, lithographed, cyclostyled, photographed, or printed - under or over signature or seal or digitally acceptable authentication, as the case may be.

b) Words in the singular include the plural and vice-versa. Words importing the masculine gender shall be taken to include other genders. Words importing persons include any company or any association/ body of individuals/ companies and vice-versa.

c) Any reference to any legal Act, Government Policies or orders shall be deemed to include all amendments to such instruments, from time to time, till date.

d) Sentences containing 'may' are to be considered desirable or good practices which procuring entities are encouraged to implement.

e) Sentences containing 'should'/ 'shall' are required to be followed.

f) Sentences containing "allowed" indicate an optional course of action to be decided upon on merits.

3. **Manual for Procurement of Goods as a Comprehensive Reference:** The 'Manual for Procurement of Goods, 2024' is written to be a comprehensive reference. Other Manuals (Works, Consultancy and Non-consultancy Services) are self-sufficient from the point of carrying out a procurement, however common topics relevant for deeper understanding of the fundamentals of procurement are included only in brief in these manuals, giving reference to relevant details in the 'Manual for Procurement of Goods, 2024'.

4. **Manuals and Model Tender Documents:** Model Tender Documents (MTD) for Procurement of Goods, and Non-consultancy Services were issued in 2021 and that of Consultancy Services was issued in 2023. These complement the respective procurement manuals since the MTDs contain additional details on many topics that the Manuals can accommodate. Therefore, Procuring Officials are urged to read both Manuals and MTDs in tandem for better understanding.

5. **Annexures:** Voluminous details from various orders/ websites are relegated to annexures to maintain an uninterrupted flow of text on a topic. Since these orders/ websites undergo frequent revision, it would be easier to update the annexures than the body of the Manual.

6. An attempt has been made in this edition of Manuals to illustrate some topics with relevant examples.

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Acronyms

The following acronyms are used throughout this Manual[1]:

AMRCD Administrative Mechanism for Resolution of CPSEs

AITB Additional Instructions to Bidders

BDS Bid Data Sheet

BG Bank Guarantee

BNS Bhartiya Nyaya Sanhita (BNS), 2023 (see IPC also)

BOC Bid Opening Committee

BOQ "Bill of Quantities" (refers to the Price Schedule in Excel sheet)

BSD Bid Securing Declaration (in lieu of Bid Security, if permitted)

C(F)A Competent (Financial) Authority

CBI Central Bureau of Investigation

CCI Competition Commission of India

CEC Consultancy Evaluation Committee

CEO Chief Executive Officer

CIPP Code of Integrity for Public Procurement

CMC Contract Monitoring Committee

CoI Conflict of Interest

CPPP Central Public Procurement Portal

CPSE Central Public Sector Enterprise

CV Curriculum Vitae

CVC Central Vigilance Commission

CVO Chief Vigilance Officer

DFPR Delegation of Financial Power

DoE Department of Expenditure (Ministry of finance)

DPIIT Department for Promotion of Industry and Internal Trade

DSC Digital Signature Certificate

E-BG Electronic Bank Guarantee

EMD Earnest Money Deposit

EoI Expression of Interest (Tender) – see also REoI

EPF Employee Provident Fund

ESI Employee State Insurance

FA Framework Agreement (Forward Auction, Financial Adviser)

FA (&CAO) Financial Adviser (and Chief Accounts Officer)

FM Force Majeure

FTP Full Technical Proposal

GCC General Conditions of Contract

GeM Government e-Marketplace

GFR General Financial Rules, 2017

GST (CGST/ IGST/ SGST) (Central/ Integrated/ State) Goods and Services Tax

GSTIN GST Identification Number

GTE Global Tender Enquiry

H-1 Highest Scoring Bidder

HSN Harmonized System of Nomenclature

ICB International Competitive Bidding

IEM Independent External Monitor

IoT Internet of Things

IPC Indian Penal Code, 1860 (This law has been replaced by Bhartiya Nyaya Sanhita (BNS), 2023 from 1st July 2024)

IPR Intellectual Property Rights

ISO International Organization for Standardization

ITC Instructions to consultants

JV Joint Venture (Consortium)

L1 lowest acceptable bidder who is techno-commercially responsive.

LCC Life Cycle Cost

LCS Least Cost System

LD Liquidated Damages

[1] The main acronym is listed first, and alternatives are listed in bracket thereafter. Alternative meanings in certain contexts, if any, are listed in the brackets, after main meaning. Acronyms within brackets is not considered for sort-order.

LEC Lowest Evaluated Cost

LoA Letter (Notification) of Award (also called Letter of Intent (LoI, in some contexts)

LTE Limited Tender Enquiry

MHA Ministry of Home Affairs

MII Make in India (Order)

MoF Ministry of Finance

MSA Mediated Settlement Agreement

MSE Micro and Small Enterprise

MSME(D) Micro, Small and Medium Enterprises (Development Act, 2006)

MSP Mediation Service Provider

MTD (SBD) Model Tender Document (Standard Bid Document)

NCB National Competitive Bidding

NGO Non-Government Organisation

NIC National Informatics Centre

NIT Notice Inviting Tender

NSCS National Security Council Secretariat

OTE Open Tender Enquiry

PA Procurement Agent(s)

PAN Personal Account Number

PBG Performance Bank Guarantee, also see SD.

PPD Procurement Policy Division - under the Department of Expenditure, Ministry of Finance

PPP-MII Public Procurement (Preference to Make in India), Order

PQB Prequalification Bidding

PQC Pre-qualification Criterion

PSICs Public Sector Insurance Companies

PSU Public Sector Undertaking

PVC Price Variation Clause

QCBS Quality and Cost Based Selection

RBI Reserve Bank of India

RCM Reverse Charge Mechanism

REoI Request for Expression of Interest – see also EoI

(S)RfP (Standard) Request for Proposals (Document)

RTGS Real Time Gross Settlement

RTI Right to Information (Act)

SCC Special Conditions of Contract

SD Security Deposit, also see PBG

SFMS Structured Financial Messaging System

SLA Service Level Agreement

SLTE Special Limited Tender Enquiry

SoPP Schedule of Procurement Powers

SoR Schedule of Rates

SSS/ STE Single Source Selection/ Single Tender Enquiry

STP Simplified Technical proposal

TC (TPC/ TEC) Tender Committee, also called Tender Purchase Committee or Tender Evaluation Committee

TCO Total Cost of Ownership – also see WOL

TCS Tax Collected at Source

TDS Tax Deducted at Source

TIA Tender Inviting Authority

ToR Terms of Reference

UAM[2] Udyam Aadhaar Memorandum

UIN Unique Identity Number

URC Udyan Registration Certificate

URDG Uniform Rules for Demand Guarantees

VfM (Best) Value for Money

WOL Whole of Lice (Cost) – also see TCO

[2] replaced by Udyam Registration Certificate (URC w.e.f. 01.07.2020)

Procurement Glossary

Unless the context dictates otherwise, the following definitions shall apply throughout this Manual [3]:

1. “Agent” is a person employed to do any act for another or represent another in dealings with a third person. In the context of public procurement, an Agent is a representative participating in the Tender Process or Execution of a Contract for and on behalf of its principals;

2. “Allied firms” (including the term ‘affiliates’/ ‘affiliated firm’, ‘sister concern’, ‘associated firm’, ‘related party’ in different contexts) of a bidder/ contractor (Principal firm, includes Joint Venture Company) is a firm/ concern that comes within the sphere of effective influence of the principal firm, based on – i) Principal Firm being a proprietary firm owns it, ii) Principal firm being a partnership firm, has common (all or majority of) partners, or any one of partners having profit share of 20% or more iii) Common Management (say majority of director) with the Principal firm; iv) Partners or directors of the principal firm have a majority interest in the management; v) Principal firm has a controlling voice by owning substantial or majority (20% or more) shares; vi) Principal firm directly or indirectly controls or is controlled by or is under common control, by way of any agreement/ MoU or otherwise, v) is a successor/ subsidiary to the principal firm or vice-a-versa; vii) have common offices/ manufacturing facilities with the Allied Firm;

3. "Bid" (including ‘tender’, ‘offer’, ‘quotation’ or ‘proposal’ in certain contexts) means an offer to supply goods, services or execution of works made in accordance with the terms and conditions set out in a document inviting such Bids;

4. "Bidder" (including ‘consultant’, ‘tenderer’, ‘contractor’, supplier or ‘service provider’ in certain contexts) means any eligible person or firm or company, including a consortium (that is an association of several persons, or firms or companies), participating in a procurement process with a Procuring Entity;

5. "Bidder registration document" means a document issued by a Procuring Entity, including any amendment thereto, that sets out the terms, conditions of registration proceedings, and includes the invitation to register;

6. "Bid security" (‘Earnest Money Deposit’(EMD), or ‘Bid Security Declaration’ in certain contexts) means security from a bidder securing obligations arising from its Bid, i.e., to avoid: the withdrawal or modification of its Bid within the validity, after the deadline for submission of such Bids ; failure to sign the resulting contract or failure to provide the required security for the performance of the resulting contract after its Bid has been accepted; or failure to comply with any other condition precedent to signing the contract specified in the solicitation documents.;

7. “Bill of Quantities” (including ‘Price Schedule’ or ‘BOQ’ in certain contexts) means the priced and completed Bill of Quantities forming part of the bid;

8. “Central Public sector enterprise” (CPSEs or CPSUs) means a body incorporated under the Companies Act or established under any other act in which the Central Government or other CPSEs have a majority ownership of 51% or more;

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

9. “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 the Public Procurement (Preference to Make in India), Order 2017(as revised in 2024)[4];

10. “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(as revised in 2024)[5];

11. “Competent authority” (or Competent Financial Authority) means an authority to which powers of approval in various stages of procurement process or execution of a resultant contract is delegated by or under General and Financial Rules (GFR), Delegation of Financial Power Rules (DFPR), Schedule of Procurement Powers (SoPP) or any other general or special orders issued by the Government of India;

12. “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 a non-physical nature – may not be standardised and would vary from one consultant to another. It may include small works or supply of goods that are incidental or consequential to such services; (Rule 177 of GFR 2017)

13. “Contract” (including ‘Procurement Contract', ‘Purchase Order’, ‘Supply Order’, ‘Withdrawal Order,’ ‘Work Order’, ‘Consultancy Contract’, ‘Contract for Services’, ‘Rate Contract’, ‘Framework Agreement’, ‘Letter of Award, ‘Agreement’, ‘Repeat Order’, or a ‘Formal Agreement’ in certain contexts), means a formal legal agreement in writing relating to the subject matter of Procurement, entered into between the Procuring Entity and the supplier, service provider or contractor on mutually acceptable terms and conditions and which are in compliance with all the relevant provisions of the laws of the Country;

14. “Contractor” (including the terms ‘Supplier’ or ‘Service Provider’ or ‘Consultant’ or ‘Firm’ or ‘Vendor’ or ‘Manufacturer’ or ‘Successful Bidder’ in certain contexts) means the person, firm, company, or a Joint Venture with whom the contract is entered into and shall be deemed to include the contractor's successors (approved by the Procuring Entity), agents, subcontractor, representatives, heirs, executors, and administrators as the case may be unless excluded by the terms of the contract;

15. “Contract Value” (or Contract Price) means the full and final monetary amount that the procuring entity is obligated to pay to the contractor under the terms of the contract, ensuring that no additional costs are incurred beyond the agreed sum. It is an all-inclusive figure that covers the base price of the goods, services, or works being procured, along with all applicable taxes/ surcharges (such as Goods and Services Tax – GST etc), customs duties, freight, transportation, installation, commissioning, warranties, maintenance, and any other incidental charges;

16. “e-Procurement” means the use of information and communication technology (specially the internet) by the Procuring Entity in conducting its procurement processes with

4 Notified vide Order No. P-45021/2/2017-PP (BE-II)-Part(4)Vol.II issued by Department of Promotion of Industry and Internal Trade dated 19.07.2024

5 Notified vide Order No. P-45021/2/2017-PP (BE-II)-Part(4)Vol.II issued by Department of Promotion of Industry and Internal Trade dated 19.07.2024

bidders for the acquisition of goods (supplies), works and services with the aim of open, non-discriminatory, and efficient procurement through transparent procedures;

17. "Goods" (including the terms ‘Stores’, ‘Material(s)’ in specific contexts) includes all articles, material, commodity, livestock, medicines, furniture, fixtures, raw material, consumables, spare parts, instruments, hardware, 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 intangibles, products like technology transfer, licenses, patents, software or other intellectual properties (but excludes books, publications, periodicals, etc., for a library), procured or otherwise acquired by a procuring entity. Procurement of goods may include certain small work or some services, which are incidental or consequential to the supply of such goods, such as transportation, insurance, installation, commissioning, training, and maintenance etc. (Rule 143 of GFR 2017);

18. “Intellectual Property Rights” (IPR) refers to the owner’s rights against unauthorised possession/ exploitation by others of its tangible or intangible intellectual property. It includes rights to Patents, Copyrights, Trademarks, Industrial Designs, and Geographical indications (GI);

19. "Invitation to (pre-)qualify" means a document including any amendment thereto published by the Procuring Entity inviting offers for pre-qualification from prospective bidders;

20. "Invitation to register" means a document including any amendment thereto published by the Procuring Entity inviting offers for bidder registration from prospective bidders;

21. “Letter of Award” (including ‘Letter of Intent’ or ‘Notification of Award’ in certain contexts) means the letter or memorandum communicating to the contractor the acceptance of his bid for award of the contract;

22. “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;

23. "Model Tender (Bidding) Document(s)" (including ‘tender (enquiry) documents’ or ‘Request for Proposal Documents’ – RfP documents, or ‘Standard Bidding Documents’ - SBD in certain contexts) means a document issued by the procuring entity, including any amendment thereto, that sets out the terms, conditions of the given procurement, and includes the invitation to bid. A Model (Standard) Tender (Bidding) Document is the model template to be used for preparing Tender Document after making suitable changes for specific procurement;

24. “Non-consultancy services” (or ‘Outsourcing of Services’) are defined by exclusion as those services that cannot be classified as Consultancy Services. These involve routine, repetitive physical, procedural, and non-intellectual outcomes for which quantum and performance standards can be clearly identified and consistently applied and are bid and contracted on such basis. It may include small works or a supply of goods or Consultancy, which are incidental or consequential to such services; (Rule 197 of GFR 2017)

25. “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 (as revised in 2024)[6];

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

27. "Outsourcing of Services" means deployment of outside agencies on a sustained long-term (for one year or more) for performance of Non-consultancy services which were traditionally being done in-house by the employees of Ministries/ departments (e.g., Security Services, Horticultural Services, Janitor/ Cooking/ Catering/ Management Services for Hostels and Guest Houses, Cleaning/ Housekeeping Services, Errand/ Messenger Services, and so forth). Besides outsourcing, Non-consultancy services also include procurement of short-term stand-alone services;

28. "Parties": means the parties to the contract are the "Contractor" and the Procuring Entity, as defined in this clause;

29. "Performance Security" (includes the terms 'Security Deposit' or 'Performance Bond' or 'Performance Bank Guarantee' or other specified financial instruments in certain contexts) means a monetary guarantee to be furnished by the successful Bidder or Contractor in the form prescribed for the due performance of the contract;

30. "Place of Supply" means the specific location where Goods are delivered to the Buyer, taken on board a conveyance, or otherwise supplied; and where Services or Works are performed or executed during the term of the Contract. This location is crucial not only for determining the time of completion of such delivery, performance, or execution but also for ensuring compliance with relevant tax laws and other regulations applicable to its jurisdiction.

31. "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;

32. "Pre-qualification document" means the document including any amendment thereto issued by a Procuring Entity, which sets out the terms, conditions of the pre- qualification bidding, and includes the invitation to pre-qualify;

33. "(Public) Procurement" (including 'Government Procurement' or 'Public-Private Partnership' in certain contexts) means acquisition by way of purchase, lease, license or otherwise, either using public funds or any other source of funds (e.g. grant, loans, gifts, private investment etc.) of goods, works or services or any combination thereof, by a procuring entity, whether directly or through an agency, but does not include any acquisition of goods, works or services without consideration, and the term "procure" or "procured" or "purchase"/ "purchased" shall be construed accordingly;

34. "(Public) Procurement Guidelines" means guidelines applicable to Public Procurement, comprising a hierarchy of Statutory framework, Rules and Regulations, Manuals of Procurement and Procurement Documents as detailed in Annexure 1 of the Manual for Procurement of Goods, 2024;

35. "Procurement Officer" means the officer signing the Letter of Award (LoA) and/or the contract on behalf of the Procuring Entity;

6 Notified vide Order No. P-45021/2/2017-PP (BE-II)-Part(4)Vol.II issued by Department of Promotion of Industry and Internal Trade dated 19.07.2024

36. "Procurement Process" means the process of Procurement extending from the assessment of need, Bid Invitation Process, Bid Evaluation and Award of Contract to the Contract Management. It also covers issue of invitation to pre-qualify or to register or to bid, as the case may be;

37. “Procuring authority” means the officer who finally approves, as well as those officials and committee members (including Associated/ Integrated Finance, technical departments, besides any other) who submit the notes/ reports to approve any decision;

38. "Procuring Entity" means the entity in any Ministry or Department of the Central Government or a unit thereof or it's attached or subordinate office or CPSE to which powers of Procurement have been delegated and handles the entire procurement process, ensuring efficiency, transparency, fair treatment of suppliers, and the promotion of competition;

39. “Procuring Organisation” means the Organisation for which the procurement is done to fulfil its stated objectives, assigned duties/ obligations/ responsibilities/ functions, and activities in alignment with desired policy outcomes;

40. "Prospective bidder" means anyone likely or desirous to be a bidder;

41. "Public Private Partnership" means an arrangement between a public 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, where there is predefined allocation of risk between the private sector and the public entity and the private entity receives performance-linked payments that conform (or are benchmarked) to specified and predetermined performance standards, deliverables or Service Level agreements measurable by the public entity or its representative;

42. "Rate contract " (or the term ‘framework agreement’ in certain contexts) means an agreement between a Central Purchase Organisation or Procuring Entity with one or more bidders, valid for a specified period of time, which sets out terms and conditions under which specific procurements can be made during the term of the agreement and may include an agreement on prices which may be either predetermined or be determined at the stage of actual procurement through competition or a predefined process allowing their revision without further competition;

43. “Registering authority” means an authority which registers bidders for different categories of procurement;

44. "Registered Supplier (Consultant or Service Provider)" means any supplier who is on a list of registered suppliers of the Procuring Entity or a Central Purchase Organisation;

45. "Reverse auction" (or the term ‘Electronic reverse auction’ in certain contexts) means an online real-time purchasing technique utilised by the Procuring Entity to select the successful bid, which involves presentation by bidders of successively more favourable bids during a scheduled period of time and automatic evaluation of bids;

46. “Scheduled Bank” means a bank as defined in section 2(e) of the Reserve Bank of India Act, 1934 and listed in schedule 2 thereof;

47. "Service" is 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’;

48. “Special Conditions of Contract” (SCC) means Special Conditions that override the General Conditions if and to the extent of the conflict between the two;

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

50. ‘Tender Document’ means the document (including all its sections, appendices, forms, formats, etc. and various terms prevalent for such documents) published by the Procuring Entity to invite bids in a Tender Process. The Tender Document and Tender Process may be generically called “Tender" or "Tender Enquiry", which would be evident from context without ambiguity;

51. “Tender Process” is the entire process from the publishing of the Tender Document to the resultant award of the contract;

52. ‘Total Cost of Owning’ - TCO (Life Cycle Costing - LCC, Whole of Life Costing - WOL) encompasses all costs associated with acquiring (including the price paid to the supplier), operating, maintaining, and disposing of a product or service. Essentially, the three terms refer to the cost incurred on a product during its lifetime. However, LCC has evolved beyond that to consider the cost of the impact of the product on the environment and, therefore, is mostly used as a tool in Sustainable Public Procurement. WOL is used mostly in capital-intensive assets, infrastructure projects, and long-term investments, and TCO is used mostly in procurement of Goods;

53. "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; (Rule 130 of GFR 2017)

Chapter 1: Introduction to Procurement of Consultancy Services

1.1 Procurement Rules and Regulations; and this Manual

1. Various Ministries, Departments, attached and subordinate offices, local urban bodies, public sector enterprises, and other Government (including autonomous) bodies (hereinafter referred to as 'Procuring Entities') spend a sizeable amount of their budget on the Procurement of goods, works and services to discharge the duties and responsibilities assigned to them.

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

3. 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 consultants/ service providers, there is a hierarchy of statutory provisions, rules, financial, vigilance, security, safety, counter- trade and other regulations; orders and guidelines of the Government about public procurement (hereinafter referred as 'Procurement Guidelines', please see Annexure 1 of Manual for Procurement of Goods, 2024 (hereinafter referred as 'Procurement Guidelines').

4. At the apex of the Statutory framework governing public procurement is Article 299 of the Constitution of India, which stipulates that contracts legally binding on the Government must be executed in writing by officers specifically authorized to do so. The Constitution also enshrines Fundamental Rights (In particular Articles 14 – Right to Equality before Law and 19 (1) (g) – Right to practice any profession, or to carry on any occupation, trade, or business) which have implications for Public Procurement. Further, the Indian Contract Act, 1872 and the Sale of Goods Act, 1930 are major legislations governing contracts of sale/ purchase of goods in general. There are other mercantile laws (Arbitration and Conciliation Act, 1996; Competition Act, 2002; Information Technology Act, 2000, Indian Stamp Act, 1899, etc . as amended from time to time), which may be attracted in Public Procurement Transactions.

5. In Central Government, 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 to 9); Delegation of Financial Powers Rules (DFPR), 2024; Government orders regarding purchase preference/ restrictions like Public Procurement (Preference to Make in India), Order 2017, facilities to Micro and Small Enterprises and Startups, Restrictions on Entities from a Class of Countries (Rule 144 (xi), GFR 2017) etc.

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

1.2 Clarification, Amendments and Revision of this Manual

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

1.3 Applicability of this Manual

1. This manual is applicable to procurement of "Consultancy Services" as defined in the 'Procurement Glossary section'. For any circumstances not covered in this manual for procurement of consulting services, the Procuring Entity may refer to the Manual for Procurement of Goods, 2024. For the sake of brevity, this Manual refer to some of the sections of the Goods Manual without reproducing them.

2. **Procuring Entities:** This Manual shall apply to all Procuring Entities covered by Rule 1 of GFR, i.e., all Central Government Ministries/Departments, attached and subordinate bodies. These provisions shall also apply, as per the same rule, to autonomous bodies except to the extent that the bye-laws of an autonomous body provide separate procurement guidelines[7] that the Government has approved.

3. **Statutory Bodies and CPSEs:** These guidelines shall also be applicable to bodies substantially owned or controlled by or receiving substantial financial assistance from the Central Government (inter-alia, Central Public Sector Enterprises (CPSEs or undertakings, including their subsidiary companies/ Ventures); Public Sector Banks (PSBs); Public Sector Insurance Companies (PSICs); Public Sector Financial Institutions (FIs); Constitutional or Statutory Bodies, Public Academic Institutions (National/ Central institutes), and Commissions that have been created under the Constitution of India or specific legislations), except to the extent deviations[7] that have been approved by their competent authority (e.g., Board of Directors)

4. **Indian Missions and CPSE Units Abroad:** While the applicability of the Manual in the case of Indian Missions abroad and CPSE Units abroad shall be as per sub-para 2) and 3) above, respectively – the following is clarified:

a) **Adopting Financial Limits/ Thresholds in Local Currency:** For procurements done and for use outside India, in the host country's local currency, Indian Missions and CPSE units abroad may adopt General Financial Rules (GFR) financial limits/ thresholds of procurements (as mentioned in this Manual at various instances, e.g., selection of mode of Procurement etc.) by using latest INR-PPP conversion rates for the local currency as published by the IMF (International Monetary Fund). For convenience, such converted limits/ thresholds may be reviewed annually. Even if the Procurement is to be done in a currency other than the local currency, the applicable financial limits/ thresholds of procurements shall be in terms of the INR-PPP conversion rate for the local currency only. If the IMF does not publish the PPP conversion rate for local currency, then the conversion may be done to the currency most relevant to that mission/ unit in consultation with the Financial Advisor.

The following illustration may be used as guidance:

[7] Such approved guidelines must retain fundamental provisions relating to the Constitution and Government instructions relating to Preferential Procurement Policies, GTE and Land Border restriction, General Instructions on Procurement and Project Management (NO.F.1/1/2021-PPD dtd 20.10.2021)

Financial limits in GFR are to be calculated for the Indian Mission in Bangladesh, where the relevant local currency is Bangladesh Taka (BT). Let the PPP conversion rate (as per international dollar) published by the IMF for INR and BT in a particular year be as follows:

Rs. 22.947 = 1 USD = 31.98 BT

The PPP-based conversion rate for BT/ INR may be calculated as 31.98/ 22.947 = 1.394. Thus, a threshold of INR. 25,00,000 (say the threshold for OTE) would be then 34,85,000 BT.

b) **Exemptions**: For exemptions from restrictions relating to Global Tenders, bidders from Land-border countries, and eProcurement for bona-fide procurements and use outside India by Indian Missions and CPSE Units abroad, please refer to paragraphs 4.3.2-4-g, 1.11.4-3-f(ii), and 4.17.1-4, respectively, in the Manual for Procurement of Goods, 2024.

5. **Portals:** GeM portal, CPPP (Central Public Procurement Portal), and various such platforms of different Organisations carry out a substantial proportion of Public Procurement. Hence, the procedures for such platforms should generally conform to these 'Procurement Guidelines.'

6. **Outsourced Procurement:** These procurement guidelines shall continue to apply if these procuring entities outsource the procurement process, bundle the procurement process with other contractual arrangements, or utilise the services of a procurement support agency or procurement agents to carry out the Procurement on their behalf.

7. **Customisation:** This Manual is to be taken as generic guidelines, which are necessarily broad in nature. Subject to the observance of these generic guidelines, Procuring Entities are advised to customise these manuals, with the approval of competent authority and financial concurrence, to suit their local/specialised needs by issuing their own detailed Manuals (including customised formats); Model Tender Documents; Schedule of Procurement Powers and Checklists to serve as practical instructions for their officers and to ensure completeness of examination of cases. For procuring organisations that have their own detailed manuals or procedure orders, the initiation, authorisation, Procurement, and execution of contracts undertaken by them shall be regulated by detailed rules and orders contained in their respective regulations and by other special orders applicable to them.

8. **Exemptions**: These procurement guidelines would not apply to procurements by procuring entities mentioned above for their own use from their subsidiary companies, including Joint Ventures, where they have a controlling share. Moreover, by a general or special notification, the Government may permit certain 'Procuring Entities' mentioned in the sub-para above, considering unique conditions under which they operate, for all or certain categories of procurement, to adopt detailed approved guidelines for procurement, which may deviate in some respects but conform with all other essential aspects of these 'Procurement Guidelines.'

9. **Procurements financed by Loans/ Grants extended by International Funding Agencies**:

a) For projects funded by the World Bank, Asian Development Bank, and other International Funding Agencies (IFA), the Articles of Agreement, with the approval of the Ministry of Finance, stipulate either the Indian (or State) Government's own procurement procedures or IFA's specific procurement procedures to be followed by the borrowers.

b) These guidelines would not be applicable to projects funded by the World Bank using the Investment Project Financing (IPF) instrument and similar instruments of other International Funding Agencies (IFA), as stipulated under Articles of Agreement, as mentioned under sub-para-a) above. IFA's specific procurement procedures shall be applicable as permitted under Rules 264 of GFR 2017.
c) However, for the projects financed using instruments such as Program-for-Results (PforR) of the World Bank, and Results-based lending (RBL) of the Asian Development Bank, and similar instruments of other International Funding Agencies, the application of these guidelines as expressly agreed in the legal agreements shall be followed.

1.4 Categorisation of procurements

1. Categorisation of Procurements helps in preparing guidelines for Procurements and Model Tender Documents, which cater to peculiar contractual conditions of the categories of procurements. Following are the categories of procurements (please refer to the definition in procurement Glossary):

a) Goods.
b) Services
    i) Consultancy Services and
    ii) Non-consultancy services (NC services)
c) Works

2. **Distinctive Features**: Normally such categorisation is clear as per their definition and procurement should be done accordingly, following the relevant guidelines and Model Tender Documents. The boundaries between such categorisation may not be clear cut and may overlap. It may neither be possible nor necessary to precisely distinguish between the categories in overlapping areas. Though simplistic, main distinguishing factors between these are:

a) While both Goods and Works lead to tangible outputs (with some exceptions like IPR materials), yet the main Difference between Goods and Works is that manufacture of goods is done in supplier's own premises (other than installation/ commissioning), while 'Works' is done on the premises of the procuring entity (other than pre-fabricated components). Works may include incidental 'Goods' and vice-a-versa.
b) Main Difference Between 'Goods' and 'Works' on one hand and 'Services' on the other is intangibility of outputs of Services.
c) Main difference between Consultancy and Non-consultancy services is the level of intellectual inputs – predominant in Consultancy and not central to Non-consultancy. Another difference is that Non-consultancy services are repetitive, routine, with measurable and standardised outputs, while Consultancy services are one-off and non-routine with outputs that are neither exactly measurable nor standardised.

3. **In case of Doubt**: Procurement in cases of doubts about categorisation may be done as follows:

a) In case of blurred border-lines and grey areas, a simpler procedure of procurement should be followed. In case of doubt between:
    i) Goods and works/ NC services/ consultancy, it should be processed as procurement of goods.

ii) Works and NC service/ consultancy, it should be processed as procurement of works.
iii) Non-consultancy and Consultancy services, it should be processed as procurement of non-consultancy services.

b) 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.

c) [8]Composite Contracts: Composite contracts may involve mixed elements of Goods, Works, and Services. For example, in the Procurement of large machinery, some works and services like Installation, Commissioning, Training, Annual Maintenance Contract (AMC) or a Comprehensive Maintenance Contract (CMC), and so on may be incidental to the supply of goods. The relationship of primacy between the goods element and the works/ services element may be examined, irrespective of the relative values. A possible alternative approach could be to have separate but linked contracts for such elements of Goods, Works, and Services, but implementation may become challenging. If the primary objective is the Procurement of goods with services/ works being incidental to it, it may be processed as procurement of Goods. However, if the primary objective is Procurement of Works/ services with Procurement of goods being incidental, then it should generally be processed as Procurement of works/ services (as the case may be), irrespective of the relative values.
   i) Procurement of "*new product*" viz. Mechanical, Electrical or ICT assets etc of the nature of Machinery and Plant with incidental works/ services like fabrication, installation, erection, commissioning, AMC/CMC should be handled as procurement of goods, except for procurement of IT Projects as specified above.
   ii) AMC/ CMC of existing Mechanical, Electrical or ICT assets of the nature of Machinery and Plant should be treated as procurement of Non-Consultancy Services.

   Notes:
      1) If the NC services primarily 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.
      2) Procurement of new mechanical and electrical works (not in the nature of Machinery and Plant) involving fabrication, installation, erection of a mechanical or electrical nature should be treated as procurement of Works, if elements of procurement of Goods is incidental.

[8] PPD's OM No. F6/2/2023-PPD dated 13.01.2023

3) Repair, renovation, maintenance, overhauling, decoration, AMC/ CMC, or similar work for *existing Mechanical, Electrical or ICT assets* NOT *of the nature of Machinery and Plant* etc should normally be handled as procurement of services.

d) 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 is the primary objective (irrespective of relative value of these component), 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 primary objective of the assignment. Therefore, the entire task needs to be dealt with as selection of a consultant.

1.5 Authorities Competent to incur Expenditure on a Procurement

1. The first step in procurement to procure goods, services or works involves a formal decision to procure something along with the exact or approximate expenditure to be incurred. A Competent authority which is competent to incur expenditure may accord administrative sanction/ approval to incur expenditure on a specific procurement in accordance with the Delegation of Financial Rules (DFPR – extracted in Annexure 1) by following the 'Procurement Guidelines' described in this Manual (*Rule 145 of GFR 2017*). Each 'Procuring Entity' may issue a Schedule of Procurement Powers (SoPP) adding further details to the broad delegations in the DFPR, based on the assessment of risks involved in different decisions/ approvals at various stages of Procurement Cycle. A suggested structure of such SoPP is enclosed as Annexure 2.

2. Being a decision with a financial bearing and hence invariably requires consultation of the Financial Adviser (unless validly re-delegated within permissible limits or otherwise permitted by DoE through specific orders). The extent of involvement of the Financial Adviser and the Integrated Finance (IFD) in in subsequent stages of procurement matters may be based on one of the following procedures (Para 19, Charter for FA, 2023):

a) **Normal Procedure**: Under this procedure, the concurrence of the Financial Adviser/ IFD shall be required on all procurement matters, except for matters where re-delegation has been done within the limits permissible under the rules/ general orders/ general instructions of DoE. Unless a special procedure is approved by the Secretary of the Department with concurrence of DoE, this procedure shall be followed.

b) **Special Procedure**: The Secretary of the Department may, with the prior concurrence of Secretary Expenditure, decide on a different level of involvement of the Financial Adviser /IFD specific to the Department. The procedure will lay out the types/ classes of cases where the Financial Adviser/ Integrated Finance Division's (IFD) consultation would be required which may be in terms of threshold financial limits, stages in procurement or types of procurement and contracts viz. consultancy, goods and works contracts etc. or any permutation thereof.

3. In all procedures, payments under approved contracts shall not require IFD consultation except in cases where the payments are in relaxation/variation to approved contract conditions.

1.6 Basic Aims of Procurement – Five R's of Procurement

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

1. Right quality;
2. Right quantity;
3. Right price;
4. Right time and place; and
5. Right source.

(For more details on basic aims of procurement, please refer to Chapter 1 and 'Appendix 1: Advanced Concepts of Value for Money' of the Manual for Procurement of Goods, 2024).

1.7 Refined Concepts of Cost and Value – Value for Money

The concept of price or cost has been further refined into Total Cost Of Ownership (TCO), Life Cycle Cost (LCC) or Whole-of-Life (WOL) to consider not only the initial acquisition cost but also the cost of operation, maintenance, and disposal during the lifetime of the external resource procured. Similarly, the concept of quality is linked to the need and is refined into the concept of utility/ value. These two, taken together, are used to develop the concept of Value for Money (VfM, also called Best Value for Money in certain contexts). VfM means the effective, efficient, and economical use of resources, which may involve the evaluation of relevant costs and benefits, along with an assessment of risks, non-price attributes (e.g., in goods and/or services that contain recyclable content, are recyclable, minimise waste and greenhouse gas emissions, conserve energy and water and minimise habitat destruction and environmental degradation, are non-toxic etc.) and/or life cycle costs, as appropriate. Price alone may not necessarily represent VfM. *In public Procurement, VfM is achieved by attracting the widest competition by way of optimal description of need; development of value-engineered specifications/ Terms of Reference (ToR); appropriate packaging/ slicing of requirement; selection of an appropriate mode of Procurement and tendering system.* These advanced concepts are explained in *Chapter 1 and '*Appendix 1: Advanced Concepts of Value for Money' *of the Manual for Procurement of Goods, 2024*.

1.8 Fundamental Principles of Public Procurement

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

1. Transparency principle;
2. Professionalism principle;
3. Broader obligations principle;
4. Extrinsic legal principle; and

5. Public accountability principle.

(For more details on fundamental principles of public procurement, please refer to Chapter 1 and 'Appendix 1: Advanced Concepts of Value for Money' of the Manual for Procurement of Goods, 2024).

1.9 Public Procurement Infrastructure at the Centre

Public Procurement is a complex function, and the infrastructure needed to execute it is equally complex. In India, the following administrative, oversight, and Digital infrastructure exist for Public Procurement.

a) Procurement Policy Division
b) Central Public Procurement Portal
c) Government e-Marketplace (GeM)
d) Comptroller and Auditor General (CAG) of India
e) Lokpal/ Lokayukta – Anti-corruption Ombudsman
f) Central Vigilance Commission (CVC)
g) Central Bureau of Investigation (CBI)

(For details about these, please refer to Chapter 1 of the Manual for Procurement of Goods, 2024.)

1.10 Preferential 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. (General and Financial Rules, 2017, Rule 153 (iii)).

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

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

(Rule 153 (ii) of GFR 2017)

1. **The Policy**: From time to time, the Government of India (Procuring Entity) lays down procurement policies to help inclusive national economic growth by providing long-term support to micro and small enterprises and disadvantaged sections of society and to address environmental concerns. The Procurement Policy for Micro and Small Enterprises, 2012 [amended 2018 and 2021] has been notified by the Government in exercise of the powers conferred in Section 11 of the Micro, Small and Medium Enterprises Development (MSMED) Act, 2006. Details of the policy along with the amendments issued in 2018[9] and 2021[10] are available on the MSME website[11].

2. **Eligibility:**

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

[9]http://www.dcmsme.gov.in/Gazette%20Notification.pdf
[10]http://www.dcmsme.gov.in/PPP-MSEs%20Order,2012%20Amendment,2022.pdf
[11] http://dcmsme.gov.in/pppm.htm.aspx

b) This Policy provides preferential procurement of goods produced and services rendered by MSEs. Traders/ distributors/ sole agents/ Works Contract are excluded from the purview of the policy.

i) [12]In case of an upward change in terms of investment in plant and machinery or equipment or turnover or both, and consequent re-classification, an enterprise shall continue to avail of all nontax benefits of the category (micro, small, or medium) it was in before the re-classification, for a period of three years from the date of such upward change. Non-tax benefits include benefits of various schemes of the Government, including Public Procurement Policy, Delayed Payments, etc.

ii) MSEs would be treated as owned by SC/ ST or Women entrepreneurs:

1). In the case of proprietary MSE, proprietor(s) are SC /ST or Woman;

2). In the case of partnership MSE, the SC/ ST or Women partners hold at least 51% (fifty-one per cent) shares in the unit;

3). In the case of Private Limited Companies, SC/ ST or Women promoters hold at least 51% (fifty-one per cent) share.

3. **Applicability and Exemptions**:

a) The policy is applicable to Central Government Ministries/ Departments/ Public Sector Undertakings

b) The policy is not applicable to State Government Ministries/ Departments/ State PSEs, but they have similar policies applicable in their state.

c) **Exemptions:** Given their unique nature, defence armament imports shall not be included in computing the 25 (twenty-five) per cent goal for the Ministry of Defence. In addition, defence equipment like weapon systems, missiles, etc., shall remain out of the purview of such a reservation policy. Monitoring of goals set under the policy will be done, as far as they relate to the Defence sector, by the Ministry of Defence itself in accordance with suitable procedures to be established by them.

4. **Facilities for MSE**:

a) **Reduced Transaction Costs**: To reduce transaction cost of doing business, MSEs will be facilitated by providing them tender documents free of cost, exempting MSEs from payment of earnest money deposit, adopting e-procurement to bring transparency in tender process. However, exemption from paying Performance Bank Guarantee/ Security Deposit is not covered under the policy.

b) **Relaxation in Prior Turnover and Experience:** The Procuring Entity may relax the condition of prior turnover and prior experience for start-up enterprises recognised by the Department for Industry & Internal Trade (DPIIT), subject to meeting quality & technical specifications. Startups may be MSEs or otherwise. Such relaxation can be provided in the case of procurement of works as well. It is further clarified that such relaxation is not optional but normally has to be ensured, except in case of procurement of items related to public safety, health, critical security operations and equipment, etc.) where adequate justification exists for the Procuring Entity not to relax such criteria[13]. The decision of the Procuring Entity in this regard shall be final. Please

[12] Notified by MSME Ministry vide S.O. 4926(E) dt 18/10/2022

[13] Notified vide OM No.F.20/2/2014-PPD(Pt.) issued by Department of Expenditure dated 29.09.2016.

also refer to para 1.10.4-2-b), 5.2.2-6-b) and 7.3.3-6) (table). (Rule 173 (i) of GFR 2017).

c) **Timely Payments**: Chapter V of the MSMED Act, 2006 also has provision for ensuring timely payments to the MSE suppliers. The period agreed upon for payment must not exceed forty-five days from the deemed acceptance of the materials supplied by the MSEs; in case of any discrepancies in the supplies, then the Procuring Entity shall raise objection to the MSE supplier within 15 days from date of receipt of materials, if such objection is not raised, then it will be taken as deemed acceptance. For delays in payment the buyer shall be liable to pay compound interest to the supplier on the delayed amount at three times of the bank rate notified by the Reserve Bank. For arbitration and conciliation regarding recovery of such payments and interests, Micro and Small Enterprises Facilitation Council has been setup in states.

5. **Purchase Preference**

a) Under the amended Public Procurement Policy for MSEs, Order 2012, the Central Government Ministries/ Departments/ Public Sector Undertakings shall procure a minimum of 25 per cent of their annual value of goods or services from MSEs. (In accordance with General Financial Rules, 2017, Rule 153-(ii)).

i) The annual goal of procurement from MSEs also includes subcontracts to Micro and Small Enterprises by large enterprises and consortia of Micro and Small Enterprises formed by the National Small Industries Corporation. If a subcontract is given to MSEs, it will be considered as procurement from MSEs.

ii) The annual target of 25% procurement from MSEs is only a minimum. The MSE purchase preference is mandatory for all procurements (except for exemptions as per sub-para 3-c above), even after this target is achieved. For example, it is not permissible for organisations to earmark only some goods/ services to be procured exclusively from MSEs to achieve the annual target and not apply MSE procurement preferences to the rest of the goods/services.

b) In tender, if the L1 price is from someone other than an MSE, participating Micro and Small Enterprises (MSE) quoting prices within a price band of L1+15 (fifteen) per cent shall be allowed to supply up to 25 (twenty-five) per cent of the total tendered value by bringing down their price to L1 price. If there is more than one eligible MSE within such price band who agree to match the L1 price, the 25 (twenty-five) per cent quantity is to be distributed proportionately to them

Note: If the procuring entity negotiates with the non-MSE L1 bidder, the price band (L1+15%) should be calculated based on the original L1 price, not the lower negotiated price, and such eligible MSE bidders shall be called to match the new negotiated L1 price as per procedure mentioned above for placement of 25% quantity.

i) In case the 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 the total tendered value to MSE, considering the spirit of the Policy for enhancing Government procurement from MSEs.

ii) Out of the target of 25% of annual procurement from MSEs (Not in the specific tender), the 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 the event

of failure of such MSEs to participate in the tender process or meet tender requirements and L1 price, the 4% sub-target for procurement earmarked for MSEs owned by SC/ST entrepreneurs and 3% earmarked to women entrepreneurs will also be met from other MSEs.

6. **Developing MSE Vendors**: The Central Ministries or Departments or Public Sector Undertakings shall take necessary steps to develop appropriate vendors by organising Vendor Development Programmes (VDP) or Buyer-Seller Meets focused on developing Micro and Small Enterprises (MSEs) for procurement through GeM Portal. To enhance the participation of MSEs owned by SCs /STs/ Women in Government procurement, Central Government Ministries/ Departments/ CPSEs should conduct Special Vendor Development Programmes/ Buyer-Seller Meets for SC/STs and Women MSEs.

7. **Policy Implementation**:

a) 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 (twenty-five) percent target on a case-to-case basis and monitor achievements under the Policy.

b) To monitor the progress of procurement by Central Government Ministries/ Departments and CPSEs from MSEs, Ministry of MSME has launched the MSME 'Sambandh'[14] Portal on 8th December 2017 for uploading procurement details by all CPSEs on a monthly and an annual basis which is regularly monitored by the Ministry.

c) 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.

d) Clarifications: Office of Development Commissioner (Micro, Small & Medium Enterprises) issued FAQs[15] on Public Procurement Policy for MSE Order, 2012, placed at Annexure-19.

1.10.2 Procurement Preference to Make in India

(Rule 153 (iii) of GFR, 2017)

1. **Purpose:** To encourage 'Make in India' and promote manufacturing and production of goods and services in India with a view to enhancing income and employment, Department for Promotion of Industry, and Internal Trade (DPIIT), Ministry of Commerce and Industry, Government of India, issued Public Procurement (Preference to Make in India), Order 2017[16]. The order is issued pursuant to Rule 153 (iii) of GFR, 2017. The Order is applicable on the procurement of Goods, Works, and Services.

2. **Definitions:** For the purpose of this Order: -

a) *'L1'* means the lowest tender or lowest bid, or the lowest quotation received in a tender, bidding process or other procurement solicitation as adjudged in the evaluation process as per the tender or other procurement solicitation.

[14] https://sambandh.msme.gov.in/PPP_Index.aspx. Any payment grievances filed by the MSEs against Procuring Entity may be monitored and progress updated therein. Total value of month end payments due to the MSEs may updated.

[15] Issued Vide OM F.No 1(3)/2018-MA, Part III dated 25.03.2022.

[16] Latest revision to the Order notified vide OM No. P-45021/2/2017-PP (BE-II) issued by DPIIT, dated 16.09.2020

b) *'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.

Explanatory notes for calculation of local content given above

i) Imported items sourced locally from resellers/ distributors shall be excluded from calculation of local content.

ii) The license fees/ royalties paid/ technical charges paid out of India shall be excluded from local content calculation

iii) Procurement/ Supply of repackaged/ refurbished/ rebranded imported products as understood commonly shall be treated as reselling of imported products and shall be excluded from calculation of local content. The definition of repackaged/ refurbished/ rebranded imported products is as follows:

1)'Refurbishing' means repair or reconditioning of an imported product does not amount to manufacture because no new goods come into existence.

2)'Repackaging' means repacking of imported goods from bulk pack to smaller packs would not ordinarily amount to manufacture of a new item.

3)'Rebranding' means relabelling or renaming or change in symbol or logo/ makes or corporate image of a company/ organization/ firm for an imported product would amount to rebranding.

iv) To ensure that imported items sourced locally from resellers/ distributors are excluded from calculation of local content, procuring entities to obtain from bidders, the cost of such locally-sourced imported items (inclusive of taxes) along with break-up on license/ royalties paid/ technical expertise cost etc. sourced from outside India/ for items sold by bidder as reseller, OEM certificate for country of origin to be submitted.

v) For contracts involving supply of multiple items, weighted average of all items to be taken while calculating the local content

c) *'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.

d) *'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.

e) *'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.

f) *'Margin of purchase preference'* means the maximum extent to which the price quoted by a "Class-I local supplier" may be above the L1 for the purpose of purchase preference. It has been fixed as 20 (twenty) percent.

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

h) *'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.

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

2A. Special treatment for items covered under PLI Scheme: The manufacturers manufacturing an item under PLI scheme shall be treated as deemed Class II local supplier for that item unless they have minimum local content equal to or higher than that notified for Class-I local supplier for that item, provided the manufacturer has received incentive from the concerned PLI Ministry for the item. The above shall be applicable for the specific time period only, as notified by concerned PLI Ministry.

3. **Eligibility** of 'Class-I local supplier'/ 'Class-II local supplier'/ 'Non-local suppliers' for different types of procurement

e) In procurement of all goods, services or works in respect of which the Nodal Ministry/ Department has communicated that there is sufficient local capacity and local competition, only 'Class-I local supplier', shall be eligible to bid irrespective of purchase value.

f) Only 'Class-I local supplier' and 'Class-II local supplier', shall be eligible to bid in procurements undertaken by procuring entities, except when Global tender enquiry has been issued. In global tender enquiries, 'Non-local suppliers' shall also be eligible to bid along with 'Class-I local suppliers' and 'Class-II local suppliers'. In procurement of all goods, services or works, not covered by sub-para 3-a) above, and with estimated value of purchases less than Rs. 200 Crore, in accordance with Rule 161(iv)-(b) of GFR, 2017, Global tender enquiry shall not be issued except with the approval of competent authority as designated by Department of Expenditure.

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

3A. Mandatory sourcing of items, with sufficient local capacity and competition, from Class-I local suppliers in SI/ EPC/ Turnkey Contracts/ Service Tenders

a) The items, notified as having sufficient local capacity and competition, shall mandatory be sourced from Class-I local suppliers in SI/ EPC/ Turnkey Contracts/ Services tenders. This provision will be applicable only for those items which have been notified by the Nodal Ministry as Class-I i.e., having sufficient local capacity and competition, with specific HSN codes.

b) Notwithstanding above, if in any project, it is considered that it is not practically feasible to source such items from Class I local suppliers, it may take relaxation from such stipulation with the approval of Secretary of the administrative Ministry/ Department concerned or with the approval of the Competent Authority specified by the Administrative Ministry/ Department, on case-specific basis.

4. **Purchase Preference:**

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

b) In the procurements of goods or works, which are covered by para 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:

Note:

1. If the procuring entity negotiates with the L1 bidder, who is not a Class-I Local Supplier, the margin of purchase preference (L1+20%) should be calculated based on the original L1 price, not the lower negotiated price, and such eligible Class-I Local Suppliers shall be called to match the new negotiated L1 price as per procedure mentioned above for placement of 50% quantity.

2. Since as per sub-para c) below, MII order is applicable 'where the bid is evaluated on price alone' – MII purchase preference would not be applicable where evaluation is based inter-alia on non-price criteria, e.g., QCBS or FBS in Services and Works.

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 (fifty) percent of the order quantity shall be awarded to L1. Thereafter, the lowest bidder among the 'Class-I local supplier' will be invited to match the L1 price for the remaining 50 (fifty) percent quantity subject to the Class-I local supplier's quoted price falling within the margin of purchase preference, and contract for that quantity shall be awarded to such 'Class-I local supplier' subject to matching the L1 price. In case such lowest eligible 'Class-I local supplier' fails to match the L1 price or accepts less than the offered quantity, the next higher 'Class-I local supplier' within the margin of purchase preference shall be invited to match the L1 price for remaining quantity and so on, and contract shall be awarded accordingly. In case some quantity is still left uncovered on Class-I local suppliers, then such balance quantity may also be ordered on the L1 bidder.

c) In the procurements of goods or works, which are covered by para 3-b) above and which are not divisible in nature, and in the 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 L1. If L1 is a 'Class-I local supplier', the contract will be awarded to L1.

ii) If L1 is not a 'Class-I local supplier', the lowest bidder among the 'Class-I local suppliers' will be invited to match the L1 price subject to the Class-I local supplier's quoted price falling within the margin of purchase preference(L1+20%), and the contract shall be awarded to such 'Class-I local supplier' subject to matching the L1 price.

iii) In case the 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 (L1+20%) shall be invited to match the L1 price and so on, and the contract shall be awarded accordingly. In case none of the 'Class-I local suppliers' within the margin of purchase preference matches the L1 price, the contract may be awarded to the L1 bidder.

d) "Class-II local supplier" will not get a preference for any procurement undertaken by procuring entities.

4A Applicability in tenders where the contract is to be awarded to multiple bidders: In tenders where the 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 tender process along with 'Class I Local suppliers' as per provisions of the Order.

c) If 'Class I Local suppliers' qualify for the award of contract for at least 50 (fifty) per cent of the tendered quantity in any tender, the contract may be awarded to all the qualified bidders as per award criteria stipulated in the tender documents. However, in case 'Class I Local suppliers' do not qualify for the award of contract for at least 50 (fifty) per cent of the tendered quantity, purchase preference should be given to the 'Class I local supplier' over 'Class II local suppliers'/ 'Non-local suppliers' provided that their quoted rate falls within 20 (twenty) per cent margin of purchase preference of the highest quoted bidder considered for award of contract so as to ensure that the 'Class I Local suppliers' taken in totality are considered for award of contract for at least 50 (fifty) per cent of the tendered quantity.

d) The margin of purchase preference shall be 20%. Only those 'Class-I local suppliers' would be eligible for purchase preference whose quoted rates fall within the 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. First, purchase preference must be given to the lowest quoting eligible 'Class-I local 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 the next higher eligible 'Class-I local supplier,' and so on. In case the quantity thus allocated to eligible 'Class-I local suppliers' is short of 50% of the tendered quantity, then this shortfall quantity may be distributed among all other qualified bidders as per award criteria stipulated in the tender documents.

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

5. **Exemption of small purchases:** Notwithstanding anything contained in paragraph 1 above, procurements where the estimated value to be procured is less than Rs. 5 lakhs shall be exempt from the Order. However, it shall be ensured by procuring entities that procurement is not split for the purpose of avoiding the provisions of this Order.

5A Exemption in the sourcing of spares and consumables of closed systems: Procurement of spare parts, consumables for closed systems and Maintenance/ Service contracts with Original Equipment Manufacturer/ Original Equipment Supplier/ Original Part Manufacturer shall be exempted from this Order.

6. **Minimum local content**: The 'local content' requirement to categorise a supplier as a 'Class-I local supplier' is a minimum of 50 (fifty) per cent. For 'Class-II local suppliers,' the 'local content' requirement is a minimum of 20 (twenty) per cent. Nodal Ministry/ Department may prescribe only a higher percentage of the minimum local content requirement to

categorise a supplier as a 'Class-I local supplier'/ 'Class-II local supplier.' For the items for which the Nodal Ministry/ Department has not prescribed higher minimum local content notification under the Order, it shall be 50 (fifty) per cent and 20 (twenty) per cent for 'Class-I local supplier'/ 'Class-II local supplier' respectively. It may be noted that local content is not related to the nationality of the firm – a foreign-owned firm may also become a Class-I or Class-II local supplier by adding local value addition.

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 that 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) The bidder shall give self-certification for local content in the quoted item (goods/ works/ services) at the time of tendering. However, at the time of execution of the project, for all contracts above INR 10 Crore, the contractor/ supplier shall be required to give local content certification duly certified by cost/ chartered accountant in practice. For cases where it is not possible to provide certification by Cost/ Chartered Accountant at the time of execution of project, the supplier shall be permitted to provide the certificate for local content from Cost/ Chartered Accountant after completion of the contract, within the limit acceptable to the procuring entity. In case the contractor/ supplier does not meet the stipulated local content requirement and the category of the supplier changes from Class-I to Class-II/ Non-local or from Class-II to Non-local, a penalty upto 10% of the contract value may be imposed. However, contract once awarded shall not be terminated on this account.

d) 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.

e) 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.

f) Nodal Ministries and procuring entities may prescribe fees for such complaints.

g) 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.

h) A supplier who has been debarred by any procuring entity for violation of the Order shall not be eligible for preference under the Order for procurement by any other procuring entity for the duration of the debarment. The debarment for such other procuring entities shall take effect prospectively from the date on which it comes to the notice of other procurement entities in the manner prescribed above.

i) The Department of Expenditure shall issue suitable instructions (please refer to para 3.8 of this manual) for the effective and smooth operation of this process, so that:

   i) The fact and duration of debarment for violation of the Order by any procuring entity are promptly brought to the notice of the Member-Convenor of the Standing Committee and the Department of Expenditure through the concerned Ministry /Department or in some other manner;

   ii) on a periodical basis such cases are consolidated and a centralized list or decentralised list of such suppliers with the period of debarment is maintained and displayed on the website(s);

   iii) in respect of procuring entities other than the one that has carried out the debarment, the debarment takes effect prospectively from the date of uploading on the website(s) in 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 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.

   ii) Entities of countries that 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 (b) above shall be part of all tenders invited by the Central Government procuring entities stated in (1) above. All purchases on GeM shall also necessarily have the above provisions for items identified by the 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 a 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 the 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 PS Es/PS Us, 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.

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 the procurement of all goods, services or works in respect of which there is a 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**:

a) 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,
   i) reduce the minimum local content below the prescribed level; or
   ii) reduce the margin of purchase preference below 20 (twenty) percent; or
   iii) exempt any particular item or supplying entities from the operation of this Order or any part of the Order.

b) The Administrative Department, while seeking exemption under this para, shall certify that such an item(s) has not been notified by Nodal Ministry/ Department concerned under sub-para 3A-a) above.

c) 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) A standing committee is hereby constituted with the following membership
   i) Secretary, Department for Promotion of Industry, and Internal Trade-Chairman
   ii) Secretary, Commerce-Member
   iii) Secretary, Ministry of Electronics, and Information Technology-Member
   iv) Joint Secretary (Public Procurement), Department of Expenditure-Member
   v) Joint Secretary (DPIIT)-Member-Convenor

b) 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 the 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, cartelisation or increase in public expenditure and suggest remedial measures.

f) may examine cases covered by paragraph (xiii) 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 indigenisation.

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

20. Please refer to the FAQs related to the PPP-MII order issued by DPIIT, placed in Annexure 26.

1.10.3 Restrictions/ Prior Registration on Entities from a Class of Countries (Rule 144 (xi), GFR 2017)

1. **Requirement of registration:** Rule 144 of GFR, 2017, has been amended to include a new sub-para (xi) as follows:

> *"Notwithstanding anything contained in these Rules, Department of Expenditure may, by order in writing, impose restrictions, including prior registration and/ or screening, on procurement from bidders from, or bidders having commercial arrangements with an entity 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."*

2. Detailed provisions in this regard have been notified by the Department of Expenditure's OM No. F.7/10/2021-PPD (1) dated 23.02.2023(Public Procurement Order No. 4 – hereinafter referred to in this section as the 'Order'), are as follows.

a) Any bidder from a country which shares a land border with India will be eligible to bid in any procurement, whether of goods, services (including consultancy services and non-consultancy services) or works (including turnkey projects) only if the bidder is registered with the Competent Authority. The information on Competent Authority is given in sub-para 10 below.

b) Any bidder (including an Indian bidder) who has a Specified Transfer of Technology (ToT) arrangement with an entity from a country which shares a land border with India will be eligible to bid in any procurement, whether of goods, services (including consultancy services and non-consultancy services) or works (including turnkey projects) only if the bidder is registered with the Competent Authority, specified in para 10 below.

c) The requirement of registration for cases covered by sub-para a) above has been applicable since 23.07.2020. The requirement of registration for bidders covered by sub-para b) above will be applicable for all procurements where tenders are issued/ published after 01.04.2023.

d) In tenders issued after 23.07.2020 or 01.04.2023, as the case may be, the provisions of requirement of registration of bidders and of other relevant provisions of this Order shall be incorporated in the tender conditions.

3. **Applicability**

a) Apart from Ministries/Departments, attached and subordinate bodies, notwithstanding anything contained in Rule 1 of the GFR 2017, the Order shall also be applicable to:

i) all Autonomous Bodies;
ii) all public sector banks and public sector financial institutions;
iii) all Central Public Sector Enterprises;
iv) all procurement in Public Private Partnership projects receiving financial support from the Government or public sector enterprises/ undertakings; and
v) all Union Territories, National Capital Territory of Delhi, and all agencies/ undertakings thereof.

b) **The Order will not be applicable to**:

i) 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.
ii) procurement made by Indian missions and by offices of government agencies/ undertakings located outside India.
iii) bidders (or entities) from those countries (even if sharing a land border with India) to which the Government of India has extended lines of credit or in which the Government of India is engaged in development projects. Updated lists of countries to which lines of credit have been extended or in which development projects are undertaken are given on the website of the Ministry of External Affairs[17].
iv) procurement of spare parts and other essential service support like Annual Maintenance Contract (AMC)/ Comprehensive Maintenance Contract (CMC), including consumables for closed systems, from Original Equipment Manufacturers (OEMs) or their authorized agents.

4. **Definitions**

a) “Bidder" for the purpose of the Order (including the term ‘bidder’, ‘consultant’ ‘vendor’ or ‘service provider’ in certain contexts) means any person or firm or company, including any member of a consortium or joint venture (that is an association of several persons, or firms or companies), every artificial juridical person not falling in any of the descriptions of bidders stated hereinbefore, including any agency, branch or office controlled by such person, participating in a procurement process.
b) “Tender” for the purpose of the Order will include other forms of procurement, except where the context requires otherwise.
c) “Transfer of Technology” means dissemination and transfer of all forms of commercially usable knowledge such as transfer of know-how, skills, technical expertise, designs, processes and procedures, trade secrets, which enables the acquirer of such technology to perform activities using the transferred technology independently. (Matters of interpretation of this term shall be referred to the Registration Committee constituted by the Department for Promotion of Industry and Internal Trade, and the interpretation of the Committee shall be final.)

[17]https://mea.gov.in/Lines-of-Credit-for-Development-Projects.htm

d) "Specified Transfer of Technology" means a transfer of technology in the sectors and/ or technologies, specified in sub-para 5 below, occurring on or after 23.07.2020.

e) "Bidder (or entity) from a country which shares a land border with India" for the purpose of the Order means:

i) An entity incorporated, established, or registered in such a country; or
ii) A subsidiary of an entity incorporated, established, or registered in such a country; or
iii) An entity substantially controlled through entities incorporated, established, or registered in such a country; or
iv) An entity whose beneficial owner is situated in such a country; or
v) An Indian (or other) agent of such an entity; or
vi) A natural person who is a citizen of such a country; or
vii) A consortium or joint venture where any member of the consortium or joint venture falls under any of the above

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

Note

1. *A person who procures and supplies finished goods from an entity from a country which shares a land border with India will, regardless of the nature of his legal or commercial relationship with the producer of the goods, be deemed to be an Agent for the purpose of this Order.*

2. However, a bidder who only procures raw material, components etc. from an entity from a country which shares a land border with India and then manufactures or converts them into other goods will not be treated as an Agent.

g) **Beneficial owner** for the purposes of point e(iv) 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: -

1) "Controlling ownership interest" means ownership of, or entitlement to, more than twenty-five per cent of shares or capital or profits of the company;
2) "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 sub-para g(i) or g(ii) or g(iii) above, the beneficial owner is the relevant natural person who holds the position of senior managing official;

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.

vi) For determining nationality while assessing the beneficial ownership of the bidder, the nationality as mentioned in the Passport of the beneficiary owner should be considered. In case of the possibility of dual citizenship, nationality on all the passports should be considered, through a suitable declaration. If, nationality in any of the passports of the person, whose beneficial ownership is being assessed, is recorded to be from a country sharing land border with India, the provisions contained under this Order shall apply. Hong Kong and Macau are to be considered as part of China for the purpose of this Order.

5. **Sensitive Sectors/ Technologies** (relevant only for the provisions on ToT arrangements; please refer to sub-para 2-b) above):

a) Certain sectors and technologies have been identified as sensitive from the national security point of view. The sectors listed in Schedule I to the Order are considered Category-I sensitive sectors. The sectors listed in Schedule II to the Order are considered Category-II sensitive sectors. The technologies listed in Schedule III are considered sensitive technologies.

List of Category-I Sensitive sectors (Schedule-I)

S. No	Sectors
1	Atomic Energy
2	Broadcasting/ Print and Digital Media
3	Defence
4	Space
5	Telecommunications

List of Category-II Sensitive sectors (Schedule-II)

S. No	Sectors
1	Power and Energy (including exploration/ generation/ transmission/ distribution/ pipeline)
2	Banking and Finance including Insurance
3	Civil Aviation
4	Construction of ports and dams & river valley projects
5	Electronics and Microelectronics
6	Meteorology and Ocean Observation
7	Mining and extraction (including deep sea projects)

S. No	Sectors
8	Railways
9	Pharmaceuticals & Medical Devices
10	Agriculture
11	Health
12	Urban Transportation

List of Sensitive Technologies (Schedule-III)

S. No	Sectors
1	Additive Manufacturing (e.g., 3D Printing)
2	Any equipment having electronic programmable components or autonomous systems (e.g., SCADA systems)
3	Any technology used for uploading and streaming of data including broadcasting, satellite communication etc.
4	Chemical Technologies
5	Biotechnologies including Genetic Engineering and Biological Technologies
6	Information and Communication Technologies
7	Software

b) For Category-I sensitive sectors, bidders with ToT arrangement in any technology with an entity from a country which shares a land border with India shall require registration.

c) For Category-II sensitive sectors, bidders with ToT arrangement in the sensitive technologies listed in Schedule III, with an entity from a country which shares a land border with India shall require registration.

d) In Category-II sensitive sectors, the Secretary (or an officer not below the rank of Joint Secretary to Government of India, so authorized by the Secretary) of the Ministry/ Department of the Government of India is empowered, after due consideration, to waive the requirement of registration for a particular item/ application or a class of items/ applications from the requirement of registration, even if included in Schedule III. The Ministry/ Department concerned shall intimate the Department for Promotion of Industry and Internal Trade (DPIIT) and National Security Council Secretariat (NSCS) of their decision to waive the requirement of registration. Ministries/ Departments of the Government of India are not required to consult the DPIIT/ NSCS before deciding and are only required to intimate the decision to DPIIT/ NSCS. If any point is raised by DPIIT/ NSCS, it should be considered in future procurements; ongoing procurement for which the waiver was granted need not be interrupted or altered.

e) Based on security considerations, a Ministry/ Department in a Category II sensitive sector or other Ministries/ Departments may recommend to DPIIT inclusion of any other technology in the list of sensitive technologies, either generally or for their Ministry/ Department.

6. **Sub-contracting in works contracts:** In works contracts, including turnkey contracts, contractors shall not be allowed to sub-contract works to any contractor from a country which shares a land border with India unless such contractor is registered with the Competent Authority. The definition of "contractor from a country which shares a land border with India" shall be as in sub-para 4-e) above. This shall not apply to sub-contracts already awarded on or before the date of the Order (i.e., 23rd July 2020).

[Note: Procurement of raw material, components, etc. does not constitute sub-contracting]

7. **Model Clauses/ Certificate regarding compliance:** A certificate shall be taken from bidders that the extant guidelines for participation in the tenders (which should include conditions for implementation of this Order) have been complied with. if such certificate given by a bidder whose bid accepted is found to be false, this would be a ground for debarment and further legal action in accordance with law. Model Clauses and Model Certificates which may be inserted in tenders / obtained from Bidders are given at Annexure 17. 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.

8. **Validity of registration:** In respect of tenders, registration should be valid at the time of submission of bids and at the time of acceptance of bids. In respect of supply otherwise than by tender, registration should be valid at the time of placement of order. If the bidder was validly registered at the time of acceptance / placement of order, registration shall not be a relevant consideration during contract execution.

9. **Government e-Marketplace:** GeM shall remove non-compliant entities from GeM unless/ until they are registered in accordance with this Order.

10. **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) [18] [Notified vide OM No. F.6/18/2019-PPD issued by Department of Expenditure dated 23.07.2020]

Note:

(i) In respect of application of the Order to procurement by/ under State Governments, all functions assigned to DPIIT shall be carried out by the State Government concerned through a specific department or authority designated by it. The composition of the Registration Committee shall be as decided by the State Government. However, the requirement of political and security clearance as per para 10 (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.

[18] (i) In respect of application of the Order to procurement by/ under State Governments, all functions assigned to DPIIT shall be carried out by the State Government concerned through a specific department or authority designated by it. The composition of the Registration Committee shall be as decided by the State Government. However, the requirement of political and security clearance as per para 10 (d) above 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.

and shall not be valid for procurement in other states or by the Government of India and their agencies/ public enterprises etc.

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 Chairperson;
   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 Chairperson of the Committee.
   iv) With effect from 01.04.2023, an officer (ordinarily not below the rank of Joint Secretary) representing the National Security Council Secretariat.

c) DPIIT has laid down the method of application, format etc. for such bidders as covered by the Order.

d) On receipt of an application seeking registration from a bidder covered by sub-para 2-a) and 2-b) above, the Competent Authority shall first seek political and security clearances from the Ministry of External Affairs and Ministry of Home Affairs, as per guidelines issued from time to time. registration shall not be given unless political and security clearance have both been received.

e) The Ministry of External Affairs and Ministry of Home Affairs may issue guidelines for internal use regarding the procedure for scrutiny of such application 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 granted by the Competent Authority of the Government of India shall be valid not only for procurement by the Central Government and its bodies specified in sub-para 3 above, but also for procurement by State Governments and their agencies/ public enterprises etc. No fresh registration at the State level shall be required.

h) The Competent Authority is empowered to cancel the registration already granted if it determines that there is sufficient cause. Such cancellation by itself, however, will not affect the execution of contracts already awarded. Pending cancellation, it may also suspend the registration of a bidder, and the bidder shall not be eligible to bid in any further tenders during the period of suspension.

i) For national security reasons, the Competent Authority shall not be required to give reasons for rejection/cancellation of registration of a bidder.

11. **Clarifications regarding the applicability of the restrictions under Rule 144 (xi) of the GFR.**

a) The proprietary purchases are not excluded from the provisions of the Rule 144 (xi) of GFR, 2017.

b) The rule is applicable on all the purchases irrespective of the order value.

c) The provisions of Rule 144 (xi) are not applicable in the case of selling of raw materials by a Government agency (like a CPSE/ Autonomous Bodies, etc.).

d) The provisions of Rule 144 (xi) are not applicable on the export to the countries sharing land border with India.

e) Sub-contracting is not permitted to any contractor from a country sharing land border with India, unless registered with the competent authority. However, it is to be noted that procurement of raw material, components, etc. does not constitute sub-contracting. In case, a bidder has proposed to supply finished goods, procured directly/ indirectly from the vendors from the countries which shares land border with India, such vendor will be required to be registered with the Competent Authority as per the provisions of Rule 144 (xi) of GFR, 2017.

f) There is no bar on the contractor from procuring raw material from a firm that has been acquired by another firm belonging to a country that shares a land border with India.

g) **Contract Manufacturing outside India:** If the bidder is getting the subject product manufactured outside India, this is treated as contract manufacturing, and beneficial ownership of the actual manufacturing entity must be verified. If the actual manufacturer meets the beneficial ownership criteria (para 4-g above) – then the bidder must submit DPIIT registration of such manufacturer to participate in the procurement.

h) **Hiring of Services:** Suppose, a Bidder (Indian/Foreign), who is not from a country sharing land border with India, offers services to a procuring entity by arranging equipment from another company then the following scenarios may appear:

SN	Scenario	Applicability of Rule 144 (xi)
a)	The equipment/ goods have been purchased or will be purchased from company (manufacturer) from country which shares a land border with India	The bidder has procured certain goods to offer the requisite services to a procuring entity. In such case, the bidder **does not fall** within the definition of the terms "bidder" as defined under sub-para 4-e) above. Hence, the provisions of the Rule 144 (xi) of GFR, 2017 do not apply to this case.
b)	By entering into a MOU/ lease agreement with the company (who owns the equipment/ goods) from country which shares a land border with India	Here, the bidding vendor proposes to hire the services from a company that belongs to a country sharing land border with India. This, prima facie, becomes the case of indirect supply of services by a company that owns the equipment/ goods by introducing an intermediary. The intermediary merely acts as an agent to the company providing services of the equipment. In such a case registration of company owning the equipment and indirectly supplying the services shall require to be registered with the competent authority, thereby requiring the need to fulfil the provisions of Rule 144 (xi).

SN	Scenario	Applicability of Rule 144 (xi)
c)	By entering into a MOU/ lease agreement with the company (say 'X' who is the present owner of the equipment) from country which does not share a land border with India. The equipment has been purchased from the manufacturer of the company (say 'Y') which is from country that shares a land border with India.	In this case, the actual supplier of services, prima facie, shall be 'X.' Status of 'X' in this case does not attract the provisions of Rule 144 (xi).

12. **Illustrative examples on the applicability of the Restrictions under Rule 144 (xi) of GFR 2017**

a) A vendor, say, 'Party A' from India, is procuring an item from their sister company, say, 'Party B,' which is registered in a country not sharing a land border with India. Both the parties, Party A and B, are owned by an entity that does not belong to a country sharing a land border with India. Party B has its production facility in a country sharing land border with India. The manufactured item will be procured by Party A from its sister concern, i.e., Party B from the above-mentioned production facility. The production unit is wholly owned by Party B. The Party A now claims that the provisions of Rule 144 (xi) of GFR 2017 do not apply on it because: both the Party A and B are not:

i) Both Party A and B are not an entity incorporated, established, or registered in such a country, since Party A is registered in India and Party B is registered in a country not sharing land border with India;
ii) Both Party A and B are 100% owned subsidiary of an entity, which is incorporated, registered, and established in a country not sharing land border with India;
iii) The beneficial owner of Party A and B is not situated in a country sharing land border with India since they are owned by an entity belonging to country not sharing land border with India;
iv) Both Party A and B are not an Indian (or other) agent of such an entity;
v) Both A and B are not a natural person who is a citizen of such a country;
vi) Both A and B are not a consortium or joint venture where any member of the consortium or joint venture falls under any of the above. Though, Party B has a wholly owned subsidiary in a country that shares a land border with India but is not a JV or consortium (a subsidiary does not qualify as a JV or consortium)
vii) In addition to the above, Party A claims that they are not procuring finished goods directly/ indirectly from the vendors from the countries sharing a land border with India as the item is being manufactured in their own production units.
viii) In light of the above facts and the claims put forth by Party A, it is important to clarify to the procurers that Party A acts as an agent for Party B, which manufactures goods in a country sharing a land border with India. Party B supplies goods manufactured at premises established in a country that shares a land border with India. In such a case, registration is required for Party B (and not necessarily for Party A, who is only an agent and not from a country sharing a land border with India).

b) **Taking an example of IT goods and services**:

i) if the contractor is only supplying the servers as it is from an OEM, that belongs to a country sharing land border with India, and there is no value addition done by the contractor, then the contractor acts as an agent for the OEM and registration of the OEM and the agent (contractor) both are required as per the provisions of Rule 144 (xi) of GFR 2017.

ii) In case the contractor supplies value added services on a hardware, the contractor outsources, in that case the registration of OEM is not required.

iii) Where there is deployment of IT services that includes both hardware and software customization, and the contractor has sourced hardware, which is made in the country sharing land border with India, the requirement of registration as per the provisions of Rule 144 (xi) are not applicable.

1.10.4 Support to Start-up Enterprises

1. **Definition of Start-up Enterprises**

a) As defined by DPIIT, an entity shall be considered as a 'Start-up':

i) Upto a period of ten years from the date of incorporation/ registration, if it is incorporated as a private limited company (as defined in the Companies Act, 2013) or registered as a partnership firm (registered under section 59 of the Partnership Act, 1932) or a limited liability partnership (under the Limited Liability Partnership Act, 2008) in India, and

ii) Turnover of the entity for any of the financial years since incorporation/ registration has not exceeded one hundred crore rupees, and

iii) The entity works towards innovation, development or improvement of products or processes or services or a scalable business model with a high potential for employment generation or wealth creation.

b) Provided that an entity formed by splitting up or reconstructing an existing business shall not be considered a 'Start-up'.

c) Provided further that in order to obtain benefits a Startup so identified under the above definition shall be required to be recognized as Startup by DPIIT.

2. **Support to Start-ups**

The Government of India has ordered the following support to Start-ups (as defined by the Department for Promotion of Industrial and Internal Trade - DPIIT).

a) **Exemption from submission of Bid Security**: Such Start-ups shall be exempted from payment of Earnest Money.

b) [19]**Relaxation in Prior Turnover and Experience**: The Procuring Entity reserves its right to relax the condition of prior turnover and prior experience for start-up enterprises recognized by the Department for Industry & Internal Trade (DPIIT), subject to meeting quality & technical specifications. Startups may be MSEs or otherwise. Such relaxation can be provided in the case of procurement of works as well. It is further clarified that such relaxation is not optional but normally has to be ensured, except in case of procurement of items related to public safety, health, critical security operations and equipment, etc) where adequate justification exists for the

[19] Such relaxation can be partial – e.g., 25% relaxation over specified turn-over and experience.

Procuring Entity not to relax such criteria[20]. The decision of the Procuring Entity in this regard shall be final. The benefits under Startup policy will be applicable only for the particular industry/ sector for which they are registered with DPIIT (necessary certificate to be obtained from the bidder in this regard). Please also refer to para 1.10.1-4-b), 5.2.2-6-b) and 7.3.3-6) – Table 2. (Rule 173 (i) of GFR 2017).

1.11 When is Procurement of Consultancy Services justified

Rule 178 & 180 of GFR 2017, permits Ministries/ Departments to hire external professionals, consultancy firms or consultants (referred to as consultant hereinafter) for a specific job, which is well defined in terms of content and time frame for its completion. Engagement of consultants may be resorted to in situations requiring high quality services for which the Procuring Entity does not have requisite expertise. Approval of the competent authority should be obtained before engaging consultant(s). We may justify need for Procurement of Consultancy Services on consideration of:-

a) The assignment should be well defined in terms of content and time frame for its completion
b) The inadequacy of Capability or Capacity of required expertise in-house;
d) The need to have qualified consultants for providing a specialized high-quality service;
e) Need for impartial advice from a consultant (acting independently from any affiliation) to avoid conflicts of interest;
f) The need in some cases for Transfer of Knowledge/ Training/ Capacity and capability building as a by-product of such engagement;
g) Need to acquire information about/ identifying and implementing new methods and systems**;**
h) Need for planning and implementing organizational change
i) 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;
    i) Staff/ Management/ Organization;
    ii) Technological and Material Resources;
    iii) Money, and
    iv) Time/ Speed of execution.

1.12 Principles for Public Procurement of Consultancy Services

1. Other principles of Public Procurement as mentioned in para 1.8 above are also equally applicable to Procurement of consultancy services. To ensure value for money during procurement of consultancy services, the following additional principles shall be considered:

a) Services to be procured should be justifiable in accordance with Para 1.11 above;
b) Terms of Reference (a document covering well-defined scope of work/ description of services and the time frame for which services are to be availed of) should be consistent with the overall objectives of Procuring Entity;
c) Equal opportunity to all qualified Consultants to compete should be ensured;

[20] Notified vide OM No.F.20/2/2014-PPD(Pt.) issued by Department of Expenditure dated 29.09.2016.

d) Engagements should be economical and efficient.
e) Transparency and integrity in the Consultancy process (that is, proposed, awarded, administered, and executed according to highest ethical standards) and;
f) Additionally, in procurement of consultancy services, consultants should be of high quality, in line with justification as per para 1.11 above.

(Rule 180 of GFR 2017)

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.

1.13 Legal Aspects Governing Public Procurement of Consultancy Services

A public procurement contract, besides being a commercial transaction, is also a legal transaction. There are a number of laws that may affect various commercial aspects of public procurement contracts. A public procurement professional is expected to be generally aware of the implications of following basic laws affecting procurement of works; however, he or she is not expected to be a legal expert. In different contexts of the scope of work, an additional set of laws may be relevant. (For salient features of laws applicable to public procurement, please refer to Appendix 2 provided in Manual for Procurement of Goods, Second Edition, 2024)

1.14 The Law of Agency – applicable to Procurement of Consultancy services

Legally speaking consultant would be an Agent of the Procuring Entity acting as a 'Principal' –, to carry out the service 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 and Agent relationship between Procuring Entity and the consultant. 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 consultant 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. Model tender Documents take care of this aspect.

1.15 Public Procurement Cycle in Procurement of Consultancy Services

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

1. **Need Assessment**:
   a) Preparation of Procurement Proposal (Concept Paper) and obtaining in principle approvals;

b) Preparation of the Terms of Reference (ToR), cost estimate and seeking administrative and budgetary approval;
c) Developing a Procurement Plan

2. **Shortlisting of Qualified Consultants – EOI process**

3. **RfP Invitation Process:** Preparing 'Request for Proposal (RfP) Document', publication, receipt and opening of bids;

4. **Bid Evaluation and Award of Contract:**
   a) Preliminary Examination and Evaluation of technical proposals: consideration of quality;
   b) Evaluation of financial proposals;
   c) Selection of winning proposal; Negotiations and award of the contract to the selected firm; and

5. **Contract Management**: Execution and Monitoring of Consultancy Assignments.

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

1.16 Nomenclature Conundrum

1. There is no standardised nomenclature in Public Procurement in India, and a mix of American, European, and British/ Indian nomenclature has become common. 'Tender' is taken to mean (i) 'Tender Document' or 'Tender Process' as well as (ii) the 'Bid' submitted by the 'bidders.' The Tender Document floated by Procuring Entity is also called a Bid (or Bidding) Document. Similarly, participants in a 'tender' are alternatively called bidders and tenderers. This duality is reflected in "Notice Inviting Tenders' and 'Instructions to Bidders' etc.
2. An attempt is made to standardise the term 'Tender' for 'Tender Document' (document prepared and published by the Procuring Entity, instead of bid/ bidding document) or 'Tender Process' and Bid for the 'bid' submitted by the 'bidders' and hence 'bidder' is used instead of tenderer. Similar attempts are made to standardise other nomenclature in this document without disturbing the nomenclature (e.g., Pre-qualification Bidding) embedded in the CPPP or GeM portals.

Chapter 2: Need assessment and Procurement Planning

2.1 Need Assessment

1. **Procurement Proposal:** A critical part of the procurement of Consultancy Services process is preparing an appropriately staffed and budgeted Procurement Proposal/ Concept Paper (which serve the function that an Indent serves in procurement of Goods). The authority in the user Department initiating the procurement proposal shall first determine the need (including anticipated quantum) for the subject matter of the procurement. Purpose/ Objective Statement of Services, Service Outcome Statement, and justification for the procurement of Consultancy Services are important parts of the procurement proposal.
2. **Terms of Reference** containing Scope of Work, Time-frame, Key Staff, Deliverables/ Milestones is of fundamental importance in ensuring value for money, transparency, competition, and level playing field in procurement of Consultancy Services. The user Department shall maintain all documents relating to the determination and technical/financial/budgetary approvals of the need for procurement.

2.2 Procurement Proposal (Concept Paper) for Consultancy services

2.2.1 Preparing Procurement Proposal/ Concept Paper

As a first step towards procurement of services, a formal written brief Proposal and Justification for the Services should be prepared *(Please see a suggested format in Annexure 3: Format of Procurement Proposal)*. It is akin to the Indent for Materials/ Material Requisition in case of Procurement of Goods. The User should prepare in simple and concise language the requirement, purpose/ objectives and the scope/ outcomes of the assignment and justify the procurement based on analysis of in-house available capacity/ capability. The eligibility and pre-qualification criteria to be met by the consultants should also be clearly identified at this stage. Justifications for procurement of Consultancy Services as given in para 1.11 may be kept in view. It is the basic document for initiating procurement of services. It is also the document from which the subsequent detailing of Terms of Reference (ToR) for consultancy services is drawn up. A procurement proposal should contain:

1. **Purpose/ Objective Statement of Services:** The user should prepare “Purpose/ Objective Statement of Services”. One of the important contents of this statement is description of service to describe the subject matter of procurement which would be used in all subsequent documents. Bringing out the background and context, this should justify how the proposed procurement of services would fit in with short-term and strategic goals of Procuring Entity. Making such a statement is important to put the need for services in clear perspective. It may seem elementary or academic but is a necessary and critical first step in properly designing a procurement proposal.

2. **Service Outcome Statement**: Once the "Purpose/ Objective of Services" has been clearly defined, the next step is to formulate a 'Service Outcome Statement'. This should list out qualitatively and quantitatively the outcomes expected from the Procurement of Services,

as well as the expected Time-frame and a rough estimate of cost of Procurement of services (including related costs to be incurred by the organization). At this stage, it is not necessary go into details of all the activities required to achieve the service outcomes, but it should list at least the broad activities, would help in putting a rough estimate to the cost of the assignment. A 'Service Outcome Statement' should provide a concrete basis for subsequently defining the type and amount of work that needs to be done by the Consultant and the time-frame within which the output needs to be received by the user. The estimated cost is needed to ascertain the level of approval necessary as per SoPP.

3. **Justification for the procurement of Services:** The Concept Paper/ Procurement proposal should analyse the capabilities/ capacities required to carry out the assignment. It should also analyse the available in-house capabilities/ capacities and compare these with the ones required for the assignment. Based on this assessment the Procurement should be justified in the light of para 1.11.

2.2.2 In-principle Approval for initiating procurement of Services

Based on the justification contained in the Procurement Proposal, in-principle administrative approval and budgetary sanction for initiating procurement of such services should be accorded by the Competent Authority (CA) as laid down in SoPP. Further stages may be proceeded with, only after such approvals. (Rule 180 of GFR 2017)

2.3 Preparation of Terms of Reference (ToR)

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. It explains 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. It 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. 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.

2. Hence 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:

a) Procuring Entity’s organisation background and Project background;
b) Purpose and Service Outcomes Statement of the assignment; (refer to chapter 1)
c) Detailed scope of work Statement including schedule for completing the assignment;
d) Expected requirement of key professionals and kind of expertise;
e) Capacity-building programme and transfer of knowledge, if any;
f) Deliverables - List of reports (or documents, data, maps, surveys, designs, drawings), schedule of deliveries, and period of performance;
g) Background material, Data, reports, records of previous surveys, and so on, available and to be provided to the consultant;
h) 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;
i) Institutional and organisational arrangement; and

j) Procedure for review of the work of consultant after award of contract

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

a) **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 envisage in the 'Brief proposal and Justification of the Services' (refer chapter 1). 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.

b) **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.

c) **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 Procuring Entity 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. For all major reports, an executive summary is recommended as a separate section. Depending on the assignment, the following reports are usually required;

   i) **Inception Report:** This report should be submitted about six weeks after the commencement date. Any major inconsistency in the ToR, staffing problems, or deficiency in Procuring Entity's assistance that have become apparent during this period should be included. The inception report is designed to give the Procuring Entity confidence that the assignment can be carried out as planned and as agreed upon in the contract and should bring to its attention major problems that might affect the direction and progress of the work.

   ii) **Progress Reports:** These reports keep the Procuring Entity 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, progress reports may be delivered monthly or bimonthly. For feasibility studies and design assignments, delivery of progress reports at two-month intervals is satisfactory. For technical assistance and implementation supervision, for instance, construction, progress reports are best submitted monthly. Progress reports may include a bar chart showing details of progress and any changes in the assignment schedule. Photographs with time-stamping are a quick and easy way of conveying the status of a project, and their use in progress reports should be encouraged. For technical assistance services, progress reports also serve as a means of setting out the work program for the following months. Each team member usually contributes to the preparation of the monthly report.

iii) **Interim Reports:** If the assignment is phased, interim reports are required to inform the Procuring Entity 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, the Procuring Entity should discuss the draft interim reports with consultants in the field. The Procuring Entity should not take more than 15 (fifteen) days to review and approve draft interim reports.

iv) **Final Report:** The final report is due at the completion of the assignment. The Procuring Entity 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 Procuring Entity, these should be noted in the report. The consultants should include in the report the reasons for not accepting such changes.

d) 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.

e) 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.

f) Procedure for review of the consultancy after award of contract: In consultancy services, the Contract Monitoring Committee (CMC), and procedure for review and approval of work of the consultant after the award of contract should also be declared and adhered to.

(Rule 185 of GFR 2017)

2.4 Estimating Costs, Setting the Budget, and Seeking Approval

1. Preparation of a well-thought-through cost estimate is essential if realistic budgetary resources are to be earmarked.

a) **Categories**: Costs shall be divided into two broad categories: (a) fee or remuneration (according to the type of contract used); and (b) reimbursable costs. Depending on the nature of the assignment, cost estimates may be prepared either in local currency or with a combination of local plus foreign currencies. Cost estimate should provide for forecast of inflation during the period of assignment.

g) **Estimated Resources**: The cost estimate shall be based on the Procuring Entity's assessment of the resources needed to carry out the assignment:
   i) Staff time
   ii) logistical support (City, National and International Travels/ Trips and durations), and
   iii) physical inputs (for example, vehicles, laboratory equipment)
   iv) Miscellaneous (Support services, contingencies, and Profit element, taxes, and duties)

h) **Rates**: Costs are normally estimated using unit rates (staff remuneration rates, reimbursable expenses) and quantities (exceptionally some items may be estimated on the lump-sum basis or percentage basis – Contingencies and support services). Rates of payment should be identified (including applicable taxes if any) in local and foreign currency for Staff Time, Logistics Costs and Costs of various physical inputs/ support services.

i) **Staff Costs**: The estimate of staff cost is based on an estimate of the personnel time (staff-months or staff-hours) required for carrying out the assignment taking into account the time required by each expert, his or her billing rate, and the related direct cost component. In general, staff remuneration rates include basic salary, social charges, overheads, fees or profit and allowances. It is useful to prepare a bar chart indicating the duration of each main activity (work schedule) and time to be spent by different members of the consultancy team (staffing schedule) distinguishing tasks to be carried out by foreign and local consultants. Due consideration should be given to the expected breakdown of a consultant’s time in the home office and client’s countries and away from home office allowance.

j) **Logistic Costs**: Number of trips required should be estimated as required to carry out various activities. Travel costs may be included for city travel, National and International travel and stay.

k) **Physical Inputs Costs**: Assessment of such costs would depend on the technical requirements of equipment.

l) **Miscellaneous costs**: Support services may be taken as a percentage of staff costs. Contingencies and Profit elements are usually taken as a percentage of the total cost of the Consultancy. To this would be added the taxes and duties likely to be incurred by the consultants.

2. Although assignments vary in size, length, and nature, it is possible to make a cost estimate by breaking down the assignment’s activities into the following cost categories:

a) Professional and support staff;
b) Travel, Hotel, and transport;
c) Mobilisation and demobilisation;
d) Office rent, Furniture/ Equipment, supplies, Utilities, IT equipment and communication;
e) Assignment related surveys, training programmes;
f) Translation, report printing;

g) Contingencies: miscellaneous, insurance, shipping; and
h) Indirect local taxes and duties in connection with carrying out the services.

3. 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.

2.5 Final Administrative and Budgetary Approvals

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

2. Procuring Entities may lay down a schedule of powers for administrative and budgetary approval of procurement proposals for services. Before granting such approvals, it should be certified that funds in the budget are available and liability for this procurement proposal is noted against the total available budget.

2.6 Need assessment, Formulation of Terms of Reference, and Procurement Planning - Risks and Mitigations

Risk	**Mitigation**
1. **Need is either artificially created or exaggerated**, with the intention to channel benefits to an individual or an organisation. For example, demand is created for a good that is not needed simply to benefit the company's owner.	**Keep records and involve stakeholders:** Records of decision making, and data used should be kept. Involve procurement and finance functions at this stage also. End user and stakeholder consultations should be part of the process.
2. **Delays in Assessment of Need and generation of Purchase Proposal for Procurement** may lead to shortcut procurement procedures that dilutes transparency and prevent achievement of value for money. It may also lead to delays in delivery of services.	Need assessment should be done sufficiently in advance of the time when services are required. In case or urgent requirements, the urgency certificate should be approved by authority empowered to grant administrative approval for the indent, recording justification – why the need could not be formulated earlier.

Risk	Mitigation
3. **The estimate of the costs may be inadequate.** This may lead to inadequate response from the bidders and may delay finalisation of procurement. It may also adversely affect the quality of supplies.	Estimates of procurement should be prepared with due diligence, keeping in view inflation, technology changes, profit margins etc.
4. **Need Description/ Specifications/ Activity Schedule** are disproportionate to the need identified or made to tilt in favour one or a group of vendor(s) or contractor(s) to artificially restrict competition.	**Use a formal market discovery tool:** Pre-bid conference and/ or well publicised EoI may be used for discovery of the market. Otherwise, encourage and invite comments on the technical and commercial conditions in the tender document or hold pre-bid conference.
5. **Asymmetric dissemination of vital need information**: Dialogue for determining solutions available in the market is held only with selected prospective bidders, giving them undue advantage in preparing for the bidding. Selected prospective bidders get access to inside information not disclosed or disclosed late to others.	

2.7 Developing a Procurement Plan

2.7.1 Planning the Procurement

1. The Consultancy Services may be part of a larger project/ works in which there be other components of work, Goods or Non-consultancy services. Once a project or a program is identified, the Procuring Entity needs to develop synchronised procurement plan for all the various components of the project/programme. This will also require planning of the sequence and contents of the different components including this Consultancy Service, adoption of the most appropriate method of selection and type of contract and ensuring that selection of consultant is initiated and completed to in timely manner to meet the overall requirements of project implementation. 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 considered so that the construction supervision consultant is mobilised before the award of the construction contract. Procurement planning is a crucial stage of decision-making in procurement planning for a better outcome and for VfM considerations.

2. **Packaging, Bundling and Slicing:** The procuring authority shall normally neither package nor divide its procurement or take any other action to limit competition among bidders or to avoid the necessity of obtaining the sanction of higher authority required with reference to the estimated value of the total demand. Provided that in the interest of efficiency, economy, timely completion or supply, wider competition, or access to MSEs, a procuring authority may, for reasons to be recorded in writing, divide its procurement into appropriate packages, or club requirements of other users for procurement. Packaging of the contract and procurement planning should be done keeping in view the availability and possibility of eliciting the interest

of the qualified firms; effective competition for the type and size of the contract; and access to MSEs. For example, for a particular contract, material to be procured may constitute more than 50 (fifty) per cent of the total cost of works or there are services which are a mix of consultancy services with substantial element of goods, such as procurement of an IT system. Such procurement could be done as a single composite contract comprising all components or divided into separate procurements for each category of procurement. In all such situations, the dominant aspect of the requirement and value for money aspects of a composite all-inclusive contract versus dividing the contract into respective categories should be carefully examined at the time of Need assessment/ Procurement Planning.

3. **Eligibility for Participation in Tender:** Determine and declare in documents, any limitation on participation of bidders as per the Government's procurement policy regarding preference to certain sections of industry, if any. The procuring entity shall not establish any requirement aimed at limiting participation of bidders in the procurement process that discriminates against or amongst bidders or against any category thereof except to lay down a reasonable and justifiable eligibility or pre-qualification criteria for the bidders;

4. **System of Tendering and Mode of procurement:**

   a) Selection of a system of tendering (single/two stage; single/two bids; suitability for e-procurement or reverse auction);
   b) Select the mode of procurement (open tenders, limited tenders, single tenders, and so on);

5. **Time Frame:** Decisions on the timeframe for completing various stages of procurement, which should be declared in the pre-qualification/bidder registration or tender documents. The procuring entity should endeavour to adhere to the time limit so decided and record reasons for any modification of such limits; (Rule 144(ix), GFR 2017)

6. **Annual Procurement plans:** GFR 2017 [Rule 144 (x)] mandates that All Ministries/Departments shall prepare Annual Procurement Plan within 30 (thirty) days of Budget approval, before the commencement of the year and the same should also be placed on their website. Integrated annual procurement plan should be prepared for goods, works and services for the ensuing financial year based on the latest cost estimates, and realistic time schedule for procurement activities and contract implementation and thus schedule and stagger the procurements over the year with a view to ensure an even load on the procuring entity and the market and to co-ordinate matching procurements of Goods, Works, and Services for a project. The procuring entity may publish information regarding the planned procurement activities for the forthcoming year or years on the central public procurement portal and website/ e-Procurement portal used by the procuring entity with a caveat that such publication shall not be construed as initiation of a procurement process and cast any obligation on the procuring entity to issue the tender document or confer any right on prospective bidders.

7. **Mitigating Cartel Formation**: Need Assessment and Procurement Planning is the main stage where this menace can be addressed effectively:

   a) Inadequate competition, due to an inadequate number of service providers in the list/ panel of registered service providers, may empower bidders to conspire against the Procuring Entity:
      i) New firms may be encouraged to register themselves for the subject services.
      ii) Various services and activities in the Services and Activities Schedule may be reviewed so that more consultants/ service providers become eligible. Insisting

on costly machinery to be used may reduce competition and encourage cartel formation.

b) Processes, e.g., pre-bid conferences (where a considerable number of competing bidders come together on a platform), may facilitate such cartel formation. This may be avoided as far as feasible or be held only virtually. However, a pre-bid conference may be advantageous in the case of turnkey contract (s) and sophisticated and costly equipment, large works, and complex service assignments, as detailed in para 5.5.3 below.

c) Tendering similar Services and Activity Schedule with similar conditions, year on year, provides a stable conspiring environment for the bidders to come to an agreement for quoting prices and quantities. Therefore, the following action can be considered to vary quantity and conditions to make it difficult for cartels:

   i) Change the mode of procurement - OTE instead of LTE, or GTE instead of OTE; or bypass the pre-qualification stage and vice versa.
   ii) Change the packaging/slicing by clubbing/ slicing services/ activities in a tender.
   iii) Change the pre-qualification criteria, especially in the case of slicing/ packaging, to broaden the target bidders.

Chapter 3: Participation of Bidders and Governance Issues

3.1 Eligibility Criteria for Participation in Tender Process

1. Normally participation in Tender Process should be open to all bidders. However, procuring entity should lay down 'Eligibility' criteria, based on requirement of the procurement and Government Policies. 'Eligibility' and 'Qualification' criteria (Experience; Performance and Financial Capabilities), are entirely different criteria and should not be mixed up. 'Eligibility' criteria regulate the participation of bidders in the Tender process, while 'Qualification' criteria are for evaluation of bidders for award of the contract. Bidder should meet the eligibility criteria as of the date of his bid submission (and should continue to meet these till the award of the contract) otherwise his bid would be rejected as non-responsive and would not be evaluated for award of contract. Bidder shall be required to declare fulfilment of Eligibility Criteria in his bid document. Some of the eligibility criteria is related to following issues (for details refer to relevant Model Tender Documents):

a) **Legal status of the bidder:** a natural person or a private entity or a public entity (State-owned enterprise or institution), a Joint Venture/ Consortium (an association of several persons, firms, or companies - hereinafter referred to as JV/C).
b) Requirement of various registrations/ licences from various statutory authorities, required for the subject matter of procurement: GSTIN, PAN, EPF, ESI, Labour, Private Security Agencies (PASARA), etc.
c) Submission of requisite Bid Security (or Bid Security Declaration, if allowed) or proof of exemption therefrom
d) free from Financial insolvency, Debarment or Convictions;
e) A consistent history of litigation or arbitration by the bidder may result in disqualification;
f) free from 'Conflict of Interest' with other bidders, which may affect fair competition.
g) Restriction on participation as per Government Policies:
    i) For Class-II Local Suppliers and Non-Local bidders as per the Make-in-India policy.
    ii) Any bidder from a country sharing a land border with India (but not in development partnership with India), or any bidder (including Indian) with a Specified Transfer of Technology (ToT) arrangement with such a country, shall be eligible subject to certain conditions.

3.2 Legal Status of Bidders

3.2.1 Individual Persons

1. **Individual consultants:** Individual consultants are recruited for similar activities as Consultancy 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 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 are classed as either international or national, depending on their level of expertise and their international experience and exposure.

2. **Retired Government Servants:** Rule 177 of GFR, 2017, says that the consulting services do not include direct engagement of retired Government servants. They should not be engaged as consultants against regular vacant posts under this rule. Such engagements should be handled as a personnel matter. As Consultants, retired Government servants can be hired/ engaged only for a specific task and for a specific duration. They should be assigned clear output related goals. For such engagements on a full-time basis (when they are not allowed to concurrently do any other assignment) on a monthly basis, their remuneration should be fixed as last pay drawn minus pension, as per extant DOPT guidelines. However, for part-time non-exclusive engagements, the Procuring Ministry/ department may fix remuneration on a per day/ month or lump-sum basis. Also refer to para 9.2-3)

3.2.2 Private and Public Entities:

1. **Consultancy Firms:** The main source of consultants is Consultancy firms of diverse specializations that provide consultancy. 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. **Non-governmental Organizations (NGO)**

There may be distinct advantage in use of Non-governmental organizations (NGOs) in Projects which emphasize experience in community participation and in-depth local knowledge – for example, Projects related to Corporate Social Responsibility (CSR) or Government Social Initiatives like ‘Swatch Bharat Abhiyan’ etc.

3. **Specialized Agencies and Institutions**

Specialized agencies or institutions (including Government/ Semi-Government agencies, universities, research, and professional institutions) may also from time to time be recruited to provide Consultancy 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 services. These may range from project preparation through project supervision and policy advice to project benefit monitoring and evaluation.

3.2.3 Association of several Bidders

1. **Sub-contracting:** A bidder who is capable of being selected for award of contract on his own credentials, may propose to sub-contract a part of the contract for specialised items of services, as a financial or technical strategy. The names and details of the sub-contracts are to be clearly stated in the bid submitted by Bidder, provided further that such sub-contractor should not circumvent the eligibility criteria. Qualifications of these sub-contractors shall not be considered in evaluation of qualification criteria for the bid. Despite any approval granted by the Procuring Entity for such arrangements, the Bidder/ Contractor shall be solely and directly responsible for executing sub-contracted portions of the contract. The total value of the sub-contracting portion of services must not exceed the per cent of the contract price

as specified in the Tender Document/ Contract (if not so specified 25 (twenty-five) percent). Sub-contracting by the contractor without the approval of the Procuring Entity shall be a breach of contract.

2. **Consortium of Consultants:**

a) In large and complex assignments consultants 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.

b) Such associations are called Consortium or Joint Ventures (JVs) for the purpose of this Manual. In case of consortium or JVs, all members shall sign the contract and shall be jointly and severally liable for the entire assignment. However, the Procuring Entity only deals with the lead member of consortiums/ JVs for all the purposes. After the short list is finalised, and the Request for Proposal (RfP) is issued, any association in the form of a consortium/ JV or sub consultancy among the short-listed firms shall be permissible in accordance with provisions stated in the RfP. Under such circumstance, one of the shortlisted consultants must become the lead member of the consortium/ JV.

c) Bid documents should clearly specify whether consortiums/ JVs are allowed to bid (in case of complex and large assignments, say above certain values (say - Rs. 5 (Rupees five) crore). Maximum number of partners in consortium/ JV shall be limited (say – three). In case consortiums/ JVs are permitted to bid, it should be clarified what qualifications are to be collectively (clubbed together) met by the consortium/ JV partners (say experience of similar consultancy etc) and what each partner has to meet individually and separately (say financial capacity). In case of each member meeting credentials individually, it should also be specified that each partner should meet at least 25% (and the lead partner at least 50%) out of the qualifying limit (say financial capacity/ turnover).

d) If consortiums/ JVs are allowed, measures should be taken to ensure that all the consortium/ JV partners are present and deliver services all through the contract period. An Implementation Board with participation of all consortium/ JV partners may be provided for wherein the Project Manager from the procuring entity shall also be allowed audience when required. Meeting of consortium/ 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.

3.3 Governance Issues in Procurement of Services

3.3.1 Standards (Canons) of Financial Propriety

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

> ***Rule 21. Standards of financial propriety:*** *Every officer incurring or authorizing expenditure from public moneys should be guided by high standards of financial propriety. Every officer should also enforce financial order and strict economy and see that all relevant financial rules and regulations are observed, by his own office and by*

subordinate disbursing officers. Among the principles on which emphasis is generally laid are the following: -

i) Every officer is expected to exercise the same vigilance in respect of expenditure incurred from public moneys as a person of ordinary prudence would exercise in respect of expenditure of his own money.

ii) The expenditure should not be prima facie more than the occasion demands.

iii) No authority should exercise its powers of sanctioning expenditure to pass an order which will be directly or indirectly to its own advantage.

iv) Expenditure from public moneys should not be incurred for the benefit of a particular person or a section of the people, unless —

a) a claim for the amount could be enforced in a Court of Law, or
b) the expenditure is in pursuance of a recognized policy or custom.

3.3.2 Right to Information and Proactive Information Disclosures

Section 4(1) (b) of the RTI Act lays down the information to be disclosed by public authorities on a suo-motu or proactive basis and Section 4(2) and Section 4(3) prescribe the method of its dissemination to enhance transparency and also to reduce the need for filing individual RTI applications. The Department of Personnel & Training, Ministry of Personnel, Public Grievances & Pensions, Government of India, has issued "Guidelines on suo motu disclosure under Section 4 of the RTI Act" vide their OM No.1/6/2011-IR dated April 15, 2013.[21]. The relevant guidelines relating to information disclosure relating to procurement are reproduced below:

> *"Information relating to procurement made by public authorities including publication of notice/tender enquiries, corrigenda thereon, and details of bid awards detailing the name of the Vendor/ Contractor of goods/services being procured or the works contracts entered or any such combination of these and the rate and total amount at which such procurement or works contract is to be done should be disclosed. All information disclosable as per Ministry of Finance, Department of Expenditure's O.M. No 10/1/2011-PPC dated 30th November, 2011[22] (and 05th March 2012[23]) on Mandatory Publication of Tender Enquiries on the Central Public Procurement Portal and O.M. No. 10/3/2012- PPC dated 09th January 2014 on implementation of comprehensive end-to-end e-procurement should be disclosed under Section 4 of the Right to Information Act.*

3.3.3 Code of Integrity for Public Procurement (CIPP)

1. Public procurement is perceived to be prone to corruption and ethical risks. To mitigate this, the officials of Procuring Entities and the bidders/ suppliers/ contractors/ consultants/ service providers involved in procurement process must abide by the following Code of Integrity for Public Procurement (CIPP). All Procuring officials may be asked to sign declarations to this effect periodically and in various Procurement decisions (including Need Assessment). The bidders/ suppliers/ contractors/ consultants/ service providers should be asked to sign a declaration for abiding by a Code of Integrity for Public Procurement in registration applications and in bid documents, with a warning that, in case of any

[21] http://cic.gov.in/GuidelinesOnProActive.pdf

[22] http://finmin.nic.in/the_ministry/dept_expenditure/gfrs/pub_tender_enq_cppportal.pdf

[23] http://eprocure.gov.in/cppp/sites/default/files/instruction_contents/INST_DOC_NO_7/OM_DoE_5thMarch2012.pdf

transgression of this code, its name is not only liable to be removed from the list of registered suppliers/ contractors/ consultants/ service providers, but it would be liable for other punitive actions such as cancellation of contracts, banning and blacklisting or action in Competition Commission of India, and so on. (Rule 175 (2) of GFR 2017).

2. **Code of Integrity for Public Procurement**: Procuring authorities as well as bidders, suppliers, contractors, consultants, and service providers should observe the highest standard of ethics and should:
   a) **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 Procuring Entity, 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"**: any personal, financial, or business relationship between the bidder and any personnel of the procuring entity who are directly or indirectly related to the procurement or execution process of the contract, which can affect the decision of the procuring entity directly or indirectly;
      vi) **"Undue Advantage"**: improper use of information obtained by the bidder from the procuring entity with an intent to gain an unfair advantage in the procurement process or for personal gain. This also includes if the bidder (or his allied firm[24]) provided services for the need assessment/ procurement planning[25] of the tender process in which he is participating;
      vii) **"Obstructive practice":** materially impede the Procuring Entity'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

[24] Please see definition in 'Procurement Glossary" section

[25] inter-alia need assessment, preparation of - feasibility/ cost estimates/ Detailed Project Report (DPR), design/ technical specifications, terms of reference (ToR)/ Activity Schedule/ schedule of requirements or the Tender Document etc.

the investigation; or by impeding the Procuring Entity's rights of audit or access to information;

b) **proactively disclose**[26]**,** whether asked or not, in a tender document:

i) Procuring authorities [27] as well as bidders, suppliers, contractors, and consultants/ service providers, 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 this code of integrity; and

ii) All bidder must declare 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 Procuring Entity. Failure to do so would amount to violation of this code of integrity;

iii) The Contractor/Consultant must disclose any commissions or fees that may have been paid or are to be paid to agents, representatives, or commission agents concerning the selection process or execution and performance of the Contract. The information disclosed must include the name and address of the agent, representative, or commission agent, the amount and currency, and the purpose of the commission or fee in a format given in the Tender Document.

3. **Professionalism and Unfair Competitive Advantage:**

a) **Professionalism:** The consultant is required to provide professional, objective, and impartial advice, at all times holding the Procuring Entity's interest paramount above his/ its own corporate interests and above any consideration for future work, strictly avoiding any conflicts of interest.

b) **Unfair Competitive Advantage:** 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 request for proposals and all information should be made available to all short-listed consultants simultaneously.

c) Therefore, without limitation on the generality of the foregoing, and unless stated otherwise in the RfP document, Consultants (including its experts and sub—consultants) or its allied firm[28] shall not be eligible for any assignment that,

i) by its nature, may be in conflict with another assignment of the consultant or its allied firm for the same or for another Procuring Entity.

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[26] 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 procuring entity. Similarly, voluntary reporting of previous transgressions of the Code of Integrity elsewhere may be evaluated, and barring cases of debarment, an alert watch may be kept on the bidder's actions in the tender and subsequent contract.

[27] Please refer to example in para 3.10-5 for clarification of CoI relating to personnel of procuring Entity.

[28] For definition of allied firm please refer to 'Procurement Glossary' section.

ii) A Consultant or any of its affiliates/ allied firms that has been engaged by the client to provide goods, works, or non-consultancy services for a project, shall be disqualified from providing Consultancy service resulting from or directly related to those goods, works, or non-Consultancy services.

iii) Conversely, a Consultant or any of its affiliates/ allied firms hired to provide consultancy services for the preparation or implementation of a project, shall be disqualified from subsequently providing goods or works or non-consultancy services resulting from or directly related to the consultancy services for such preparation or implementation;

4. **Punitive Provisions:**

Without prejudice to and in addition to the rights of the Procuring Entity to other penal provisions as per the bid documents or contract, if the Procuring Entity concludes that a (prospective) bidder/contractor/ Supplier/ consultant/ service provider, directly or through an agent, has violated this code of integrity in competing for the contract or in executing a contract, the Procuring Entity may take appropriate measures including one or more of the following:

a) if his bids are under consideration in any procurement
   i) Forfeiture or encashment of bid security;
   ii) calling off of any pre-contract negotiations, and;
   iii) rejection and exclusion of the bidder from the procurement process
b) if a contract has already been awarded
   i) Cancellation of the relevant contract and recovery of compensation for loss incurred by the Procuring Entity;
   ii) Forfeiture or encashment of any other security or bond relating to the procurement;
   iii) Recovery of payments made by the Procuring Entity along with interest thereon at the prevailing rate
c) Provisions in addition to above:
   i) Removal from the list of registered consultants and debarment of the bidder from participation in future procurements of the Procuring Entity for a period for a period not exceeding two years;
   ii) In case of anti-competitive practices, information for further processing may be filed by the Competent Authority, with the Competition Commission of India;
   iii) Initiation of suitable disciplinary or criminal proceedings against any individual or staff found responsible.

3.4 Integrity Pact (IP)

1. 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.

2. Ministries/ Departments and their attached/ subordinate offices (including autonomous bodies) should incorporate Integrity Pact[29] in the procurements/ contracts of the nature and of a threshold value, decided by the Ministries/ Departments with the approval of the Minister in charge. As guidance, the threshold should cover bulk (80-90% - eighty to ninety percent by value) of its annual procurement expenditure. The format of the Integrity Pact is included in Annexure 18. Ministries/ Departments including their attached/ sub-ordinate offices and CPSEs may use this format of Integrity Pact, with the suitable changes specific to the situations in which pact is to be used.

3. CVC issued a revised Standard Operating procedure[30] and has further stated[31] that in view of the increasing procurement activities of Public Sector Banks (PSBs), Public Sector Insurance Companies (PSICs) and Public Sector Financial Institutions (FIs) shall also adopt and implement the suggested format of Integrity Pact. In the case of sub-contractors, the IP shall be a tri-partite arrangement to be signed by the organization, the contractor, and the sub-contractor. Please refer to Annex-2 of Annexure 18 for details.

3.5 Grievances and its Redressal:

1. Procuring Entities shall provide a suitable clause in their Tender Documents for the redressal of grievances of bidders. The following is a suggested mechanism of redressal:

2. Any supplier, contractor, or consultant that claims to have suffered or is likely to suffer loss or injury as a result of a decision/ action/ omission of the Procurement Entity may make an application for its review within a period of Five (5) days from its date, or any other time period, as may be specified in the tender documents, to the designated officer named in the tender documents in this regard (or the Head of the Procuring Entity, if not so specified), specifying the ground(s) and the relevant clauses of the tender documents. Unsuccessful Bidders may seek de-briefing regarding the rejection of their bid, in writing or electronically, within Five (5) days, or any other time period, as may be specified in the tender documents, of the declaration of techno-commercial or financial evaluation results.

3. Only a directly affected bidder can represent in this regard:

a) Only a bidder who has participated in the concerned procurement process, i.e., pre-qualification, bidder registration or bidding, as the case may be, can make such representation.
b) In case the pre-qualification bid has been evaluated before the bidding of Technical/ financial bids, an application for review in relation to the technical/ financial bid may be filed only by a bidder who has qualified in the pre-qualification bid;
c) In case the technical bid has been evaluated before the opening of the financial bid, an application for review in relation to the financial bid may be filed only by a bidder whose technical bid is found to be acceptable.
d) The following decisions of the procuring entity in accordance with the provision of internal guidelines shall not be subject to review:
    i) Determination of the need for procurement;
    ii) Selection of the mode of procurement or tendering system;
    iii) Choice of selection procedure;

[29] OM No.14(12)/ 2008- E-II(A) dated 19th July 2011

[30] vide CVC Circular No.04/06/23 (015/VGL/091 dtd 14/06/2023)

[31] vide CVC Circular No.06/05/21 (015/VGL/091 dtd 03/06/2021)

iv) Complaints against specifications except under the premise that they are either vague or too specific to limit competition may be permissible.
v) Provisions limiting the participation of bidders in the procurement process in terms of government policies.
vi) Provisions regarding purchase preferences to specific categories of bidders in terms of policies of the Government
vii) The decision to enter into negotiations with the L1 bidder;
viii) Cancellation of the procurement process except where it is intended to subsequently re-tender the same requirements;
ix) Issues related to ambiguity in contract terms shall not be taken up after a contract has been signed; all such issues should be highlighted before the vendor/contractor consummates the contract.

4. This grievance redressal is beside the avenue of complaints to the vigilance department of the procuring organisation or judicial remedies.

5. If received during the processing of the tender, the officer receiving the application shall forward it to the TC/Convener of TC for its examination on merits and action as considered necessary. An interim reply may be sent that the application will be kept in view in the tender evaluation, and a final response shall be given only after the declaration of the award of the contract. The Tender Committee shall place the application on record, including its analysis and action taken thereon, in the TC minutes/ report to the Competent Authority. After the award, the competent authority shall respond to the aggrieved party as per sub-para 6) below.

6. If such grievance is received after the declaration of the award of the contract, the officer receiving the application shall forward the application to the Competent Authority of the tender for his examination on merits and action as considered necessary. Such post award grievance must be redressed and closed within 30 days of receipt of the grievance. If the Competent Authority finds the complaint to have substance, appropriate and feasible remedial measures should be initiated as per sub-para 7) or 8) below.

7. If the grievance is resolved or if the grievance is found to be unwarranted, the aggrieved party shall be informed by the officer receiving the application of the final decision without disclosing confidential details.

8. Based on such representation, if the Competent Authority is satisfied that there has been a contravention of procurement guidelines in this case, he may initiate such action as, in his opinion, is necessary to rectify the contravention, including:

a) If the grievance is due to inadequacy of procurement guidelines or a lack of understanding of the staff, remedial action to address such lacunae may be initiated without repercussions to the concerned staff.
b) Annulment or reconsideration of the procurement proceedings;
c) cancellation of the resultant procurement contract, if legally feasible;
d) In case any individual staff is found responsible, suitable disciplinary proceedings should be initiated against such staff under the conduct rules.
e) In case the complicity of any bidder is proved,
    i) removal of the concerned firm from the list of registered firms
    ii) debarment of the bidders, if warranted
    iii) reporting the matter to the Competition Commission of India (CCI) in case of anti-competitive actions by the bidder.
f) Handing over the case to CVO if there are aspects that require investigations.

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

Risk	Mitigation
1. **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 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.
2. **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 reported and deposited in Toshakhana/ Treasury.
3. **Private Purchases from Official Suppliers**/ contractors/ consultants/ service providers: Procuring 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).	Public purchasers 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.
4. **Sponsorship of Events:** Procuring Officials may mistakenly consider it innocuous to seek financial favours (donations, advertisements for	Public purchasers must never get involved in any non-official pecuniary transaction with the contractors, suppliers/ contractors/ consultants/ service providers including

Risk	Mitigation
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.	soliciting of sponsorship for unofficial and private cultural, social, sporting, religious, charitable, or similar organisations or events from.
5. **Conflict of Interest (COI):** Para 3.3.3-2-a-v) above, Code of Integrity for Public Procurement has a provision on Conflict of Interest – which inter-alia states:" *"… if the bidding firm or their personnel have relationships or financial or business transactions with any official of procuring entity who are directly or indirectly related to tender or execution process of contract;…"* There may be dilemma regarding the officers related to the tender or execution process and if even minor routine transactions.	Interpretation of Conflict of Interest would depend on the organisational structure and its unique circumstances and cannot be laid down universally. However, some illustrative examples are given below to provide context. a) Officers that can be considered to be related to the tender or execution process would depend on the organisational structure and sensitivity of their role in procurement. It may cover key officials (and any external consultants/ advisors) involved in making a recommendation, various approvals, or making a major decision at any stage in procurement – i.e., during need determination/ indenting, Tender Document preparation/ preparation of comparative tabulation; Technical and Financial evaluation of Bids; negotiation/ signing of Contract; execution of the contract; payments to the contractor. b) As an illustration – COI (actual, potential, or perceived) can arise if such officers (or his close family[32]) have: i. Substantial business interests in the firm[33] (e.g., shares more than 0.1% of market cap), taken a loan or other financial obligation (say discounts) from the firm or its personnel[33]), etc. ii. Business relationships with the firm – say previously worked for the firm or availed hospitality/ gifts beyond the limits laid down in the Code of Conduct of the organisation, etc.

[32] Close family for this purpose shall be officer's spouse, parents, children, and their families. As far as extended family - Siblings/ Uncles/ Aunts/ Cousins and their families are concerned, the situation would depend on closeness of relationships and whether the officer would in normal course be aware of their activities.

[33] For purpose of COI, Firm includes its allied firms also. Firm's personnel for this purpose, shall mean – senior executives (or team handling the bidding) at the bidding firm.

Risk	Mitigation
	iii. Familial relationship[32]**Error! Bookmark not defined.** with the personnel of the firm. iv. close personal friendships or regular (say, more than once in a quarter) social interactions (e.g., clubs, games, social associations) with the Firm's personnel, etc. c) **Resolution of COI**: It shall be the responsibility of such officials to declare COI (to the extent he is aware of, in normal course) with reference to a procurement process to the Competent Authority/ next higher officer. The competent officer may evaluate the level of COI, and the sensitivity of the function assigned to the official. He may either determine i. COI is insignificant enough to influence the type of function performed by the official and ask the officer to continue his function. ii. If COI or the type of function is significant, nominate any alternative officer to perform the function (partly or fully) of this official in that procurement process.

3.7 Development of New Sources and Registration/ Empanelment/ Pre-qualification of Firms

1. Normally, in open tendering, there should be no restriction of prior registration. Entities may provide for registration after selection in unrestricted open tendering. Difference may be noted between registration, empanelment (maintaining a classified list of firms based on their experience usually required in case of limited tenders), and prequalification.

a) **Registration** is to establish genuine identification of the firm (e.g., for e-procurement portals, preferential procurement, and so on).
b) **Empanelment** is to establish prima-facie capability for restricted tendering (not open tendering, e.g., limited tendering panels, also useful in special limited tenders).
c) **Pre-qualification and Multi-use Lists**:
    i) **Pre-qualification**: Wherever the nature of the requirement dictates competition only among prequalified bidders (without vitiation of prices offered by unqualified bidders), prequalification may be done with open tendering in the prequalification bidding stage.
    ii) **Approved List/ Multi-use List**: If there are frequent requirements of such nature, prequalification may be done through an open process with an extended

validity of the Shortlist of Qualified Bidders (called List of approved Sources, in some organisations, e.g., Ministry of Railways), for example, one year or longer. The use of a List of Qualified Bidders is also known as a Multi-use list in many countries, as distinct from empanelment (e.g., Limited Tender Panel - which does not undergo a formal open tender pre-qualification/ EoI process). In such long-term Multi-use lists or Approved Lists, if any competent bidder applies for inclusion at any time, it should be examined as per the criteria of the original multi-use list.

2. However, since in common parlance, registration is a word interchangeably for the above three concepts, used by most of departments, this usage is being retained, though the distinction would be clear from the context of usage.
3. *For goods and services not available on GeM*, and for Works, the Head of Ministry/ Department may periodically register suppliers of goods and services that Department or Office specifically requires. Ensuring an up-to-date and current list of registered, capable, and competent suppliers/ consultants/ service providers facilitates efficiency, economy, and promotion of competition in public procurement, especially while floating a limited tender/ local purchase/ direct contracting. For such tenders, it may be possible to skip bidder qualification to avoid unnecessary repetition/ duplication of efforts, thereby saving time, especially in the case of emergency procurement. Registration of the supplier/ consultant/ service provider should be done following a fair, transparent, and reasonable procedure and after giving due publicity. Such registered suppliers should be on-boarded on GeM as and when the item or service gets listed on GeM.[34] The list of registered Firms for the subject matter of procurement should be exhibited on websites of the Procuring Entity/ their eProcurement portals.
4. All Ministries/ Department may use such lists prepared by other Ministries / Departments as and when necessary. Registered Firms are ordinarily exempted from furnishing earnest money deposit/ bid security with their tenders for items, and Monetary Limits for which they are registered.

5. In cases where the firm is not considered capable and registration cannot be granted, the authority concerned shall communicate the deficiencies and shortcomings direct to the firms under intimation to the appellate authority. Where a request for re- verification and review is made by the firm (such a request can be made only after six months), along with any fee as prescribed by the Department, review shall be undertaken. Requests for re-verification after expiry of the said period would be treated as a fresh application and processing fee, if any prescribed, charged accordingly.

6. Procuring Entity shall retain its option to reassess firms already registered, at any later date, to satisfy itself about the current financial soundness/ credit worthiness, facilities available, and so on. Thereafter, Procuring Entity may decide to retain them as registered suppliers for the requirements and monetary limit earlier considered or with necessary changes as deemed fit. In case of adverse reports from the team of Procuring Entity's officers who reassess the firm, Procuring Entity shall delete/ downgrade such firm from the registered suppliers list

7. Further details about procedure for registration is given in para 3.6 of the Manual for Procurement of Goods, 2024.

[34] Amended vide DoE OM No. F.1/26/2018-PPD dated 02.04.2019.

(Rule 150 of GFR 2017)

3.8 Debarment of Suppliers

3.8.1 GFR Provisions

1. Registration of suppliers/ consultants/ service providers and their eligibility to participate in Procurement Entity's procurements is subject to compliance with Code of Integrity for Public Procurement and satisfactory performance in contracts. Rule 151 of General Financial Rules (GFR), 2017 states the following regarding the 'Debarment from Bidding': -

a) A bidder shall be debarred if he has been convicted of an offence-
   i) under the Prevention of Corruption Act, 1988; or
   ii) the Bhartiya Nyaya Sanhita (BNS), 2023 or any other law for the time being in force, for causing any loss of life or property or causing a threat to public health as part of execution of a public procurement contract.

b) A bidder debarred under sub-section (a), or any successor of the bidder shall not be eligible to participate in a procurement process of any procuring entity for a period not exceeding three years[35] commencing from the date of debarment. The

c) A procuring entity may debar a bidder or any of its successors, from participating in any procurement process undertaken by it, for a period not exceeding two years, if it determines that the bidder has breached the code of integrity.

d) The bidder shall not be debarred unless such bidder has been given a reasonable opportunity to represent against such debarment.

3.8.2 Current Guidelines on Debarment:

1. PPD, DoE did consultations on the issue of Debarment with major procuring Ministries/ Departments and issued the following 'Debarment Guidelines' in suppression to all earlier instructions on this subject[36]. Public Procurement organisations who have existing guidelines for Debarment (by any name) should revise their guideline in conformity with these guidelines issued by PPD, DoE.

2. **Guidelines on Debarment of Firms from Bidding**:

a) The guidelines are classified under the following two types: -
   i) In cases where debarment is proposed to be limited to a single Ministry, the Ministry itself can issue the appropriate Orders, thereby banning all its business dealing with the debarred firm.
   ii) Where it is proposed to extend the debarment beyond the jurisdiction of the Ministry, i.e., covering all central Ministries/ Departments, the requisite Orders shall be issued by the Department of Expenditure (DoE), Ministry of Finance (MoF).

b) Definitions:
   i) Firm: The term 'firm' or 'bidder" has the same meaning for the purpose of these Guidelines, which includes an individual or person, a company, a cooperative society, a Hindu undivided family and an association or body of persons, whether incorporated or not, engaged in trade or business.

[35] Now two years is applicable as mentioned below in para 8.7.2-3-a) below.

[36]Notified vide OM No. F.1/20/2018-PPD issued by Department of Expenditure dated 02.11.2021.

ii) Allied firm: All concerns which come within the sphere of effective influence of the debarred firms shall be treated as allied firms. In determining this, the factors listed in its definition in the 'Procurement Glossary' section may be kept in view.

iii) The terms "banning of a firm," 'suspension,' 'Black-Listing' etc. convey the same meaning as "Debarment".

c) All ministries/departments must align their existing debarment guidelines with these guidelines. Further, tender documents must also be suitably amended if required.

3. **Debarment by a Single Ministry/ Department**: Orders for Debarment of a firm(s) shall be passed by a Ministry/ Department, keeping in view the following:

a) A bidder (including its successors/ allied firms) may be debarred from participating in any procurement process for a period not exceeding two years (along with such other actions as may be permissible under law) for the following reasons:

i) If it is determined that the bidder has breached the code of integrity as per Rule 175 (2) of GFR 2017. (Refer to para 3.3.3 of this Manual for Code of Integrity).

ii) False declaration of local content by Class I/ Class II local suppliers under Public Procurement (Preference to Make in India, Order 2017, Dtd 16/09/2020 or later, i.e., the Make in India Order) shall also be treated as a breach of the code of integrity. A supplier who has been debarred by any procuring entity as per this sub-para:

1) The fact and duration of debarment for this reason by any procuring entity must be promptly brought to the notice of the Member-Convenor of the Standing Committee (Joint Secretary DPIIT, under the Make in India order) and the Department of Expenditure through the concerned Ministry /Department or in some other manner.

2) The Standing Committee shall consolidate such cases, and a centralized list or decentralized list of such suppliers with the period of debarment must be maintained on a periodical basis and displayed on the website(s).

3) Such suppliers, though debarred by a single Ministry/ Department, shall not be eligible for preference under the Make in India Order for procurement by any other procuring entity for the duration of the debarment. This shall be effective from the date of uploading such debarment to the website(s).

iii) For any other actions or omissions[37] by the firm that, in the opinion of the Ministry/ Department, warrants debarment.

b) The debarment order shall not be circulated to other Ministries/ Departments. It will only be applicable to all the attached/ subordinate offices, Autonomous bodies, Central Public Sector Undertakings (CPSEs), etc. of the Ministry/ Department issuing the debarment Order. Please refer to Annexure 28 for a format for debarment order.

c) The concerned Ministry/ Department, before issuing the debarment order against a firm, must ensure that reasonable opportunity has been given to the concerned firm to represent against such debarment (including a personal hearing if requested by

37 [Supply of substandard material; non-supply of material; abandonment of works; substandard quality of works; failure to abide by "Bid Securing Declaration"; conviction under the Prevention of Corruption Act, 1988; conviction under any law for causing any loss of life or property or causing a threat to public health as part of executing a public procurement contract; employs a government servant who has been dismissed or removed on account of corruption; employs a non-official convicted for an offence involving corruption or abetment of such an offence in a position where he could corrupt government servants, or employs a government officer within one year of his retirement who has had business dealings with him in an official capacity before retirement.]

the firm). Please refer to Annexure 27 for the format of the Show-cause notice for debarment.

d) The Secretary of Ministry/Department may nominate an officer at the rank of Joint Secretary/Additional Secretary as competent authority (CA) to debar the firms.

e) The Ministry/Department will maintain a list of such debarred firms, which will also be displayed on its website. Such a list on the website shall be automatically binding on the departments, subordinate and attached offices, autonomous bodies, and CPSEs under the Ministry, but in case of doubt, it can be confirmed by the issuing authority.

f) More than one Ministry/ Department may concurrently debar the same firm.

g) Debarment is an executive function and should not be allocated to the Vigilance Department.

h) The period of debarment starts from the date of issue of the debarment order; therefore, the process of debarment should be conducted expeditiously. Considering the quasi-judicial nature of such proceedings and the need to afford a fair hearing to the firm, the following timeline is suggested, which may be suitably modified considering the specifics of an organisation:

   i) Noticing of delinquency of the firm by the Procuring Entity – zero-day
   ii) Evaluation of evidence and proposal to CA for debarment of the firm - 2 Weeks
   iii) Issue of Show Cause Notice to the firm calling for written and oral submission. – 1 week.
   iv) Time for submission, including reminders, etc – 3 weeks.
   v) Evaluation of firm's submission and giving oral hearing to the firm – 3 weeks
   vi) Final Order, indicating an opportunity to the firm, 2 weeks to appeal to the Secretary of Ministry/ Department as an appellate authority – 2 weeks.
   vii) Total 12 weeks from zero-day, after which the debarment period starts.
   viii) Receipt of Appeal and disposal of the same by the appellate authority – 4 weeks.

4. **Debarment by CPSEs, Attached Offices/ Autonomous Bodies, GeM**: Ministries/ Departments, at their option, may also delegate powers to debar bidders to their CPSEs, Attached Offices/ Autonomous Bodies, etc. In such cases, broad principles for debarment in sub-paras 3-a) to h) above are to be kept in mind. Debarments by such bodies shall be applicable only to the procurements made by such bodies. Similarly, the Government e-Marketplace (GeM) can also debar bidders for up to two years on its portal.

5. **Debarment across All Ministries/ Departments**: In the following situations, the Ministry/ Department may consider debarring the firm from taking part in any tendering procedure floated by all the Central Government Ministries/ Departments:

   a) If the bidder has been convicted of an offence (Rule 151 (i) of GFR, 2017), for debarment upto three years:
      i) under the Prevention of Corruption Act, 1988, or
      ii) the Bhartiya Nyaya Sanhita (BNS), 2023 or any other law for the time being in force, for causing any loss of life or property or causing a threat to public health as part of the execution of a public procurement contract.

   b) The Ministry/ Department concerned should, after obtaining the approval of the Secretary concerned, forward to DoE a self-contained note setting out all the facts of the case and the justification for the proposed debarment, along with all the relevant papers and documents.

   c) Ministry/ Department, before forwarding the proposal to DoE, must ensure that reasonable opportunity has been given to the concerned firm to represent against

such debarment (including a personal hearing if requested by the firm). If DoE realizes that sufficient opportunity has not been given to the firm to represent against the debarment, such debarment requests received from Ministries/ Departments shall be rejected.

d) The firm shall remain debarred during the interim period till the final decision is taken by DoE, only in the Ministry/ Department forwarding such proposal. For this purpose, the proposing Ministry shall issue an interim order debarring the firm from taking part in tendering procedures floated by their Ministry/ Department following the procedure laid down in sub-para 3) above. Such order inter-alia must mention that the Government reserves its right to further debar the firm from taking part in any tendering procedure floated across all the Central Government Ministries/ Departments, following due procedure.

e) DoE can also give additional opportunity, at their option, to the firm to represent against proposed debarment. DoE can also take suo-moto action to debar the firms in certain circumstances. DoE shall complete the process of Debarment within 12 weeks after receiving the proposal from the concerned Ministry/ Department.

f) DoE will issue the necessary orders for debarment for a period not exceeding three years for offences mentioned in Rule 151 (i) of GFR, 2017, after satisfying itself that the proposed debarment across all the Ministries/ Departments is in accordance with the said rule. This scrutiny is intended to ensure uniformity of treatment in all cases.

g) DoE will maintain a list of such debarred firms, which will be displayed on the Central Public Procurement Portal (CPPP). This list on CPPP shall be applicable to all Ministries/ Departments, Attached and Subordinate Offices, CPSEs, and Autonomous bodies, but in case of doubt, they may confirm it from issuing authority.

h) No contract of any kind whatsoever shall be placed on the firm debarred by DoE, including its allied firms, during the period of debarment by any Ministry/ Department/ Attached/Subordinate offices of the Government of India, including autonomous bodies, CPSEs, etc., after the issue of a debarment order.

6. **Review and Revocation of Orders**:

a) An order for debarment passed shall be deemed to have been automatically revoked on the expiry of the period of debarment specified therein, and it will not be necessary to issue a specific formal order of revocation.

b) The authorised entity (DoE, Ministry/ Department or CPSEs, Attached Offices/ Autonomous Bodies, GeM, etc.) that issued the order of debarment can review or revoke the debarment order before the period of debarment is over, suo-moto (based on new facts that come to light) or on an appeal by the debarred bidder. After a review, an Order for modification of the period of debarment or revocation of debarment, if there is adequate justification for the same, can be issued. Ordinarily, such modification/ revocation of the Order should be done with the approval of the Secretary concerned of DoE or the Ministry/Department that issued such orders. In case of debarments done by CPSEs, such modification/ revocation of the debarment orders should be done ordinarily with the approval of competent authority not below a board-level officer.

7. Other Provisions (common to both types of debarments):

a) The debarment order shall mention the reason(s) in brief that led to the debarment of the firm and the jurisdictional extent to which the order shall be applicable, besides the validity period of debarment.

b) No contract of any kind whatsoever shall be placed with a debarred firm, including its allied firms, after the issue of a debarment order by the entities in the jurisdiction mentioned in the order. Bids from only such firms shall be considered for placement of contract, which are neither debarred on the date of opening of tender (opening of first bid, normally called as technical bid, in case of two packet/two stage tendering) nor debarred on the date of contract (i.e., date of issue of Letter of Acceptance). Even in the cases of risk purchase, no contract should be placed on such debarred firms.
c) If any debarred firm submits the bid, it will be ignored. In case such firm is lowest (L-1), the next lowest firm shall be considered as L-1. Bid security submitted by such debarred firms shall be returned to them.
d) Contracts concluded before the issue of the debarment order shall not be affected by the debarment Orders.
e) The Debarment shall be automatically extended to all its allied firms. In case a joint venture/ consortium is debarred, all partners will also stand debarred for the period specified in the Debarment Order. The names of partners should be clearly specified in the "Debarment Order."
f) Debarment in any manner does not impact any other contractual or other legal rights of the procuring entities.
g) The period of debarment shall start from the date of issue of the debarment order for the issuing entity. In respect of procuring entities other than the one that has carried out the debarment, the debarment takes effect prospectively from the date of uploading on the website(s) in such a manner that ongoing procurements are not disrupted.
h) Ordinarily, the period of debarment should not be less than six months.
i) GeM portal also has a provision for Suspension (debarring vendors/ service providers participation in procurements of all the buyers) under its Incidence Management Policy[38]. The reasons and period for suspension are different than in the provisions mentioned above. However, if a procuring entity feels that the period of suspension by GeM is not adequate, it may also debar the firm as per procedure mentioned in this section for a more appropriate period, but such debarment shall be applicable ONLY to procurements by that procuring entity.
j) All Ministries/ Departments must align their existing Debarment Guidelines in conformity with these Guidelines. Further, bidding documents must also be suitably amended, if required.

8. **Safeguarding Procuring Entity's Interests during Debarment of Suppliers/ Consultants/ Service Providers:** Suppliers/ Consultants/ Service Providers are important assets for the procuring entities, and punishing delinquent suppliers/ consultants/ service providers should be the last resort. It takes a lot of time and effort to develop, register and mature a new supplier/ consultant/ service provider. In case of a shortage of suppliers/ consultants/ service providers in a particular group of materials/ equipment/ services, such punishment may also hurt the interest of the Procuring Entity. Therefore, the Procuring Entity may always seek the views of the concerned department regarding the repercussions of such punitive action on the continuity of procurements. Procuring Entity may give due weightage to the past performance of the supplier/ consultant/ service provider. In case of a shortage of suppliers/ consultants/ service providers and in cases of less serious misdemeanour, the

[38] https://assets-bg.gem.gov.in/resources/pdf/incident_management_policy_v12.1.pdf

Procuring Entity may pragmatically analyse the circumstances, reform the supplier/ consultant/ service provider, and get a written commitment from the supplier/ consultant/ service provider that his performance will improve. If this fails, efforts should be made to see if a shorter period of debarment can serve the purpose. (*Rule 151 of GFR 2017*)

3.9 Enlistment of Indian Agents

Ministries/ Departments if they so require, may enlist Indian agents, who desire to quote directly on behalf of their foreign principals[39]. *(Rule 152 of GFR 2017)*

[39]Rule 52 of GFR, 2017 amended vide OM No. F.26/2/2016-PPD issued by Department of Expenditure dated 25.07.2017.

Chapter 4: Bidding Design for Consultancy Services

4.1 Types of Contracts

1. There are various alternative basis for linking payments to the performance of a quantum of services (called types of contracts) – each having different risks and mitigation measures. Bids are called and financial evaluation is 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 requirement. BOQ of the financial bid is designed specifically for each type of contract. 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.

2. 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:

a) Lump sum (Firm Fixed Price) contract;
b) Time based (Retainer-ship) contracts;
c) Percentage (Success Fee) contract;
d) Retainer-ship cum Success fee-based contract;
e) Indefinite delivery contract.

4.1.1 Lump Sum (Firm Fixed Price) Contract:

1. The lump sum (firm fixed price) contract is the simplest form of contract and wherever feasible; the Procuring Entity shall use this form of contract. In this type of contract consultants are required to quote a lump sum fixed price figure for completing the Consultancy services in accordance with the given terms of reference. Consultant's proposal is deemed to include all prices - no arithmetical correction or price adjustments are allowed during evaluation. This Terms of Reference shall indicate the scope and quantum of Services required.

2. 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. Bidders quote lump sum price for the required quantum of services. They may also be asked to quote unit rate for the consultancy output, to be used in case of variation etc.

3. Schedule of Requirement shall indicate the quantum of the Consultancy outputs, its performance standards, and the timeline/ milestones of its delivery. Contract may specify parts of payments to be released at specified timelines/ milestones.

4. 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.

5. **Lump Sum Contracts - Risks and Mitigations**

Risk	Mitigation
1. **The quality and Scope of the Output/ deliverables** is not linked to the payment. There may be tendency for the consultant/ consultant to cut corners on quality and scope of the output/ deliverables by saving on resources	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 are clearly defined. The contract should include provision for evaluation of quality and scope of deliverables

Risk	Mitigation
employed. Disputes may arise due to different possible interpretations of quality and scope of assignment.	and certificate for its acceptability may be recorded. Payment should be made only against certificate of acceptance of deliverables.
2. **Time over-run**: As time is not linked to the payment. There may be tendency for the consultant 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.

4.1.2 Time-Based (Retainer-ship) Contract

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) and on reimbursable items using actual expenses and/or agreed unit prices. These are also called as retainer ship contracts since the consultant are retained for a pre-decided contract period. The rates for staff include salary, social costs, overhead, fee (or profit), and, where appropriate, special allowances.

2. Schedule of Requirement shall indicate the quantum of inputs required (Man-hours of different key and non-key personnel), qualifications of key-personnel, reimbursable items, and the timeline/ milestones of its deliverables. Contract may specify parts of payments to be released at specified timelines/ milestones.

3. Both time-based contracts and indefinite delivery contracts are used when Lump sum contract is not feasible due to difficulties in specifying the scope/ length of consultancy services or the quantum of individual activities either because the inputs required for attaining the objectives of the requirement is difficult to assess or because the services are tied up to contracts/ activities by others for which the completion period may vary. As differentiated from the Indefinite Delivery type of contracts (discussed below), Time-based contracts are suitable for consultancy services that are ***continuously needed,*** while Indefinite Delivery type of contracts is suitable for services which are ***infrequently needed*** but the consultant is needed to be always on beck and call.

4. 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.

5. **Time-Based Contracts - Risks and Mitigations**

Risk	Mitigation
1. **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 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.

Risk	Mitigation
2. **Performance in each time period** is not linked to the payment. There may be tendency for the consultant 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 to CA should be instituted to enable supervision.
3. **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 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.

4.1.3 Percentage (Success/ contingency Fee) Contract

1. Percentage (Success/ Contingency Fee) contracts directly relate the fees paid to the consultant to the estimated or actual project cost, or actual value of assets/ transactions to be handled – e.g., 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 payment is made based on the value of assets/ transactions handled during the period.

2. Schedule of Requirement shall indicate the estimated value of assets/ transactions to be handled as well as the contract Period (one year, unless otherwise stipulated) over which such volume shall be availed. However, there shall be no firm commitment to avail the entire value of transactions within the contract period. The final selection is made among the technically qualified consultants who have quoted the lowest percentage while the notional value of assets is fixed.

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

4. **Percentage Contracts - Risks and Mitigations**

Risk	Mitigation
4. **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 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.

Risk	Mitigation
5. **Time over-run**: As time is not linked to the payment. There may be tendency for the consultant 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.
6. **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.

4.1.4 Retainer and Success (Contingency) Fee Contract

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.

2. 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 organisational restructuring/ change.

3. **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.

4.1.5 Indefinite Delivery Contract (Price Agreement)

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. The Procuring Entity and the firm agree on the unit rates to be paid, and payments are made periodically on the basis of the time/ quantum of service actually used during the period.

2. Schedule of Requirement shall indicate only a tentative estimate of the volume of required service as well as the contract Period (one year, unless otherwise stipulated) over which such volume is likely to be availed. The Services shall be availed on-call as and when needed by the procuring entity without any commitment regarding the volume of services. The consultant shall be selected based on the total price (unit rate multiplied by indicative volume) of such Services/ Inputs (including service charges and taxes) over the period of contract.

3. Please read the para 4.1.2-3) for differences between Time-based and Indefinite Delivery contracts.

4. Due to risks and mitigations discussed below, Indefinite Delivery contracts 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.

5. **Indefinite Delivery Contracts - Risks and Mitigations**

Risk	**Mitigation**
1. **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 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.
2. **Performance in each time period** is not linked to the payment. There may be tendency for the consultant to use resources 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 to CA should be instituted to enable supervision.
3. **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 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.
4. **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 to CA should be instituted to enable supervision.

Risk	Mitigation
	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.

4.2 Systems of Selection of Consultants

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 normally done in a two-stage process. In the first stage, likely capable sources are shortlisted, on the basis of qualification and experience requirements for the given assignment for further consideration, if need be through an 'Expression of Interest' (EoI) through advertisement. The shortlist should include a sufficient number, not fewer than three (3) and not more than eight (8) eligible firms. In rare cases where less than three Consultants become eligible as per short-listing criteria, and the criteria cannot be relaxed, procurement may be continued with the approval of the Competent Authority. In the second stage, the shortlisted consultants are invited to submit their technical and financial (RfP) proposals generally in separate sealed envelopes. Evaluation of the technical proposal is carried out by evaluators without access to the financial part of the proposal. Financial proposals are opened after evaluation of quality.

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 systems of selection of consultants are designed to achieve appropriate relative importance (weightage) of Quality and Price aspects. Decision on system of selection is normally preceded by an assessment of the capacity of the user to engage and supervise the implementation of proposed assignment. The selection method chosen depends to some extent on this assessment. Selection of system of selection also should consider the likely field of Bidders.

3. The nomenclature of various selection methods below is in line with generally prevalent nomenclature:

a) Price based System - Least Cost Selection (LCS);
b) Quality and Cost Based Selection (QCBS);
c) Fixed Budget based Selection (FBS)
d) Direct Selection: Single Source Selection (SSS)

4.2.1 Price based System - Least Cost Selection (LCS)

1. In this method of selection, consultants 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 (normally 75 (seventy-five) out of maximum 100 (hundred)) and indicated in the RfP along with a scheme for allotting marks for various technical criteria/ attributes. Alternatively, since in LCS selection, technical offers *do not require be ranked (or to be added of weighted technical score to financial score – as in QCBS selection), it would suffice in appropriately simple cases (similar to EoI criteria, please refer to para 7.3.3-8), if the*

evaluation criteria is only a fail/ pass criteria prescribing only the minimum qualifying benchmark. Thus, in LCS, a simplified evaluation criteria may also be used where instead of a marking scheme a minimum fail/pass benchmark of technical evaluation may be prescribed (i.e., must have completed at least two similar assignments; must have a turnover of at least Rs 10 (Rupees Ten) Crore etc). Any bidder that passes these benchmarks is declared as technically qualified for opening of their financial bids. The technical proposals are opened first and evaluated and the offers who are qualifying as per these technical evaluation criteria will only be considered as technically responsive, and the rest would be considered technically nonresponsive and would be dropped from the list. Financial proposals are then opened for only eligible and responsive offers (Financial bids of other unresponsive bidders are returned unopened) and ranked. L-1 offer out of the responsive offers is selected on price criteria alone without giving any additional weightage to marks/ ranking of Technical proposal. *This system of selection is roughly the same as the price-based selection of L-1 offer (among the technically responsive offers) in procurement of Goods/ Works. (Rule 193 of GFR 2017, also see para 8.5.2)*

2. LCS is considered suitable for recruiting consultants from firms in most assignments that are of a standard or routine nature (such as engineering design of non-complex Consultancy/ services/ works) where well-established practices and standards exist.

3. 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 if a selection method other than LCS is to be used.

4. **Least Cost Selection - Risks and Mitigations**

Risk	**Mitigation**
1. **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 criterion and on the other hand no technically satisfactory offer should get ruled out by tight criteria.
2. **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.

4.2.2 Quality and Cost Based Selection (QCBS)

1. In QCBS system of selection, both the quality of the proposal and the cost of the services are considered as deciding factors. This approach is employed when the quality of deliverables is crucial, but the cost of service or work cannot be ignored.

2. Quality/ Technical scores are assigned to proposals based on specified quality criteria. Minimum qualifying marks (normally 70-80 (seventy – eighty) out of maximum 100 (hundred) marks) as benchmark for quality of the technical proposal is prescribed and proposals below this benchmark are not considered for Financial evaluation. The Financial Proposals are also given cost-score based on relative ranking of prices, with 100 (hundred) marks for the lowest and pro-rated lower marks for higher priced offers. The total score shall be obtained by weighting the quality and cost scores and adding them. For example, the weightage given to cost score may be 30% (thirty percent) and technical score may be given weightage of 70% (seventy percent but should never be more than 80%). The ratio of weightages for cost and Technical score could also be 40:60 (forty: sixty) or 50:50 (fifty: fifty) etc. However, the weight for the "cost" shall be chosen, considering the complexity of the assignment and the relative importance of quality. The proposed weightings for quality and cost shall be specified in the RfP. The firm obtaining the highest total score shall be selected. *It may be noted that theoretically QCBS system with weight of 100% (hundred percent) for the 'cost' approximates the price based LCS system.* 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. **Caution against consortium/ JV in QCBS Procurements:**

a) Since quality is given weightage in the evaluation itself, in QCBS procurement, therefore, Joint Ventures may be avoided, 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.

c) If consortiums/ JVs are allowed, measures should be taken to ensure that all the consortium/ JV partners are present and deliver services all through the contract period. An Implementation Board with the participation of all consortium/ JV partners may be provided for wherein the Project Manager from the procuring entity shall also be allowed an audience when required. Meeting of consortium/ JV partners with the project executing authority for quarterly progress review may be made as a criterion linked to the achievement of key dates or even payment.

4. Table 1 below provides a suggestive weighting for QCBS. (Rule 192 of GFR 2017, also see para 8.5.3)

Table 1. A suggestive weighting of scores for QCBS

Description	Remarks	Quality/Cost Score Weighting (%)
High complex/ downstream consequences/ specialised assignments	Use QCBS with higher technical weightage	80/20
Moderate complexity	Majority of cases will follow this range	75-65/ 25-35
Assignments of a standard or routine nature such as auditors/procurement agents handling the procurement	Use of LCS is appropriate	60-50/40-50

5. **QCBS - Risks and Mitigations**

Risk	Mitigation
1. **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.
2. **Weightage of Technical:** Cost may not be proportional to quality requirements	Weightage different from 70:30 (seventy: thirty) should be adequately examined and justified.
3. **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 criterion and on the other hand no technically satisfactory offer should get ruled out by tight criteria.
4. **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.

4.2.3 Fixed Budget based Selection (FBS) for consultancy services:

1. GFR 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 now also allowed[40] for selection of consultants.

2. In FBS, the selection process considers both the quality of proposals and the cost. FBS is a competitive method, encouraging consultants to provide high-quality services within the defined budget constraints.:

a) **Fixed Budget:** In the request for proposal (RFP) document, a specific fixed budget is specified. Consultants must adhere to this budget, and their proposed cost cannot exceed it.

[40] General Instructions on Procurement and Project Management - DoE's OM NO.F.1/1/2021-PPD dtd 29th October 2021

b) **Quality Assessment:** Consultants submit their proposals, and the evaluation considers the quality of these proposals. The proposal that scores the highest in quality (and is within the specified budget) is selected for award of contract. This assessment ensures that the selected consultant meets the project's requirements effectively, within the stipulated budget.

3. FBS may be used when:

a) the type of consulting services required is simple and/or repetitive and can be precisely defined; and
b) the budget can be reasonable estimated, and set based on credible cost estimates and/ or previous selections which have been successfully executed; and
c) the budget is sufficient for the consultant to perform the assignment.

4.2.4 Direct Selection: Single Source Selection (SSS)

1. 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 Procuring Entity. *(Rule 194 of GFR 2017, also see para 8.5.4).* Direct selection is also called the Nomination mode of procurement (Please refer to para 4.3-4-d) below). The selection by SSS/ nomination is permissible under exceptional circumstance such as:

a) tasks that represent a natural continuation of previous work carried out by the firm;
b) in case of an emergency situation, situations arising after natural disasters, situations where timely completion of the assignment is of utmost importance;
c) situations where execution of the assignment may involve use of proprietary techniques or only one consultant has requisite expertise;
d) 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;
e) 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.

2. Procuring Entity shall ensure fairness and equity, and shall have a procedure in place to 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. All works/purchase/ consultancy contracts awarded on nomination basis should be brought to the notice of following authorities for information-

a) The Secretary, in case of ministries/departments.
b) The Board of directors or equivalent managing body, in case of Public Sector Undertakings, Public Sector Banks, Insurance companies, etc;
c) The Chief Executive of the organisation where such a managing body is not in existence.
    i) The report relating to such awards on nomination basis shall be submitted to the Secretary/Board/Chief Executive /equivalent managing body, every quarter.
    ii) The audit committee or similar unit in the organisation may be required to check at least 10% of such cases.

4. **SSS - Risks and Mitigations**

Risk	Mitigation
1. 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 (schedule of Procurement Powers – SoPP should severely restrict powers for SSS selection) obtained before resorting to such single-source selection. In direct selection, the Procuring Entity should ensure fairness and equity, and the required consultancy/ Non-consultancy services are not split into smaller sized procurement to avoid competitive processes.
2. **Cost may be unreasonably High:** The single consultant is likely to charge unreasonably high price.	Procuring Entity 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 to examine reasonableness of quoted price.

4.3 Modes of Procurement

1. Offers from prospective bidders in public procurement must be invited according to a procedure that achieves a *balance between the need for the widest competition, on one hand, and complexity of the procedure, on the other hand*. Different modes of procurement and tendering systems are used to suit various procurement circumstances to achieve this balance. Various modes of procurement vary the extent of competition (width and specificity of catchment area of bidders) to suit different procurement situations. *Mode of Procurement addresses the 'Right Source' of the 5Rs*.

2. There are laid down procedures for delegation of powers of procurement to various competent authorities under different modes as shown in DFPR (Annexure 1). Each procuring entity may also publish its own Schedule of Procurement Powers (SoPP) delegating such powers within the entity. A suggested format for SoPP is given at Annexure 2.

3. The various modes of procurement that can be used in public procurement are (GFR 2017[41]):

a) **Advertised Modes**: The advertised modes of procurement are designed to foster a spirit of healthy competition. These modes, ensure the broadest possible competition by widely publicising procurement opportunities. (Rule 161 GFR 2017):

i) Open Tender Enquiry (OTE): Also known as National Competitive Bidding (NCB), this mode involves inviting bids through public advertisements to maximise participation, for procurement above Rs 50 Lakhs.

[41] Various thresholds for these Modes of procurements have been revised upwards vide PPD's OM No. F.1/3/2014-PPD dt. 10.07.2024

ii) Global Tender Enquiry (GTE): Also referred to as International Competitive Bidding (ICB), this mode invites bids from international vendors to ensure global competition. There is a restriction on use of this mode below Rs 200 crores.

b) **Pre-qualification Modes**: These modes of procurement are restricted to shortlisted pre-qualified bidders. The shortlisting is done transparently, based on qualification criteria to identify bidders who have the capability to perform the contract. Shortlisting itself is done through wide publicity akin to advertised tenders.
   i) Pre-Qualification Bidding Mode (PQB): In this mode, only those bidders who meet specific qualifications are invited to submit bids.
   ii) Approved Vendor Lists (AVL): Procurement is restricted to vendors who have been pre-approved and included on a long-term multi-use list based on their demonstrated ability to meet the required standards. (Please refer to Para 4.7 of the Manual for Procurement of Goods, Second Edition, 2024 for details on the AVL).

c) **Restricted Modes**: In restricted modes, the bidding is limited to known and selected bidders, without the public advertisements seen in advertised modes. Unlike the Pre-qualification mode, the shortlisting or registration of bidders is based on less rigorous checks of capability and past experience, without relying on wide publicity or stringent qualification criteria. (Rule 162, GFR 2017):
   i) Limited Tender Enquiry (LTE): This mode invites bids from a select group of suppliers and is used for procurements up to Rs. 50 lakhs. (Please refer to Annexure 15)
   ii) Special Limited Tender Enquiry (SLTE): LTE type of process applicable for procurements above Rs. Fifty lakhs in exceptional circumstances, where limited competition is justified.

d) **Nomination Modes**: These modes involve procurement from a single source, typically under special circumstances where competition is not feasible or necessary. (Rule 166 GFR 2017):
   i) Proprietary Article Certificate (PAC): This is used when procurement is required from a specific vendor due to the proprietary nature of the goods or services (say from OEMs).
   ii) Single Tender Enquiry (STE) without PAC: This allows procurement from a single source without a PAC under specific conditions. In case of Single Tender procurements:
      1). a report relating to such awards on nomination basis shall be submitted every quarter to:
         - The Secretary, in case of Ministries/Departments.
         - The Board of Directors or equivalent managing body, in case of Public Sector Undertakings, Public Sector Banks, Insurance companies, etc;
         - The Chief Executive of the organisation where such a managing body is not in existence.
      2). The audit committee or similar unit in the organisation may be required to check at least 10% of such cases.

e) **Shopping Modes**: These are used for small-value procurements where formal tendering is not practical. (Rule 154, 155 GFR 2017):

i) Direct Procurement without Quotation: Small purchases (upto Rs 50,000) made directly without soliciting formal bids. (Please refer to Annexure 13)
ii) Direct Procurement by Purchase Committee: A committee-based approach for direct purchases, typically used for low-value (upto Rs 5 Lakhs) items. (Please refer to Annexure 14)

f) **Rate Contracts**: Also known as Framework Agreements, are agreements with suppliers/ consultants/ service providers to provide goods or services at pre-agreed rates for a specified period.

4. Applicability, Terms and Conditions, Risks, and mitigations of these modes of procurements (including restrictions regarding GTE mode for procurements below Rs 200 Crore) are detailed in Chapter 4 of the Manual for Procurement of Goods, 2024 which may be referred. For sake of brevity, these are not repeated here.

4.4 Tendering Systems

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

a) **Single Stage Tendering System**:
   i) Single Stage Single Envelop System
   ii) Single Stage Two Envelops System (Two Bid System) (*Rule 163 of GFR 2017*)
   iii) Single Stage Two envelops System with pre-qualification.

b) **Two Stage Bidding** - Expression of Interest Tenders – Market Exploration/ Short-listing (*Rule 164 of GFR 2017*)

2. Details of these Bidding Systems are explained in Chapter 4 of the Manual for Procurement of Goods, 2024, which may be referred. For sake of brevity, these are not repeated here. For guidance on the preparation of Request for Expression of Interest (REoI) document for the procurement of consultancy services, please refer to para 5.2 below.

4.5 Channels of Procurement

Public Procurement can be channelled by way of Manual Bids, eProcurement Platforms, GeM Portal or through third-party agencies.

4.5.1 Electronic Procurement (eProcurement - *Rule 160 of GFR 2017*)

1. Electronic procurement (eProcurement) is the use of information and communication technology (specially the internet) by the buyer (through a third-party e-Procurement portal) in conducting procurement processes with the vendors/ contractors for the acquisition of goods (supplies), works and services aimed at open, non-discriminatory, and efficient procurement through transparent procedures. A generic description of how eProcurement is conducted is detailed in ‘Appendix 3: Electronic Procurement (eProcurement) and e-Auction’ of the Manual for Procurement of Goods, 2024.

2. It is mandatory for ministries/departments to receive all bids through e-procurement portals that are GCQE[42] compliant for all procurements. This condition will not be applicable for the procurement made without quotation (under Rule 154 of GFR, 2017) or through purchase committee (under Rule 155 of GFR, 2017).

3. Normally in eProcurement no manual Tender Documents are provided, nor any manual bids are accepted. It is not a good practice to call both electronic as well as manual bids in the same tender. Sub-paras 4 and 5) below allow exemptions in specific situations mentioned therein, from e-Procurement, in cases where it is not convenient or feasible.

4. In Global Tender Enquiry (by any mode – Open Tender, Limited Tender or Single Tender) e-procurement may not be mandatorily insisted upon, however e-Publishing would still be mandatory. (refer Para 5.4.1).

5. In individual cases where national security and strategic considerations demand confidentiality, Ministries/ Departments may exempt such cases from e-procurement after seeking the approval of the concerned Secretary and with the concurrence of Financial Advisers. In case of tenders floated by Indian Missions and CPSE units abroad, the Competent Authority for deciding the tender may exempt such cases from e-procurement.

6. National Informatics Centre (NIC) has an eProcurement portal called the Central Public Procurement Portal (CPPP). There are other service providers in Public Sector (e.g., MSTC) and Private sector which can be utilized for eProcurement. Details about the process of e-procurement are available from the service providers. *Appendix 3 of the '*Manual for Procurement of Goods, 2024,*' also gives such generic details of the eProcurement process.*

7. Ministries/ Departments which do not have a large volume of procurement or carry out procurements required only for day-to-day running of offices and have not initiated e-procurement through any other solution provided so far, may use e-procurement solution developed by NIC. Other Ministries/ Departments may either use e-procurement solution developed by NIC or engage any other service provider following due process.

8. These instructions will not apply to procurements made by Ministries/ Departments through Government e-Marketplace (GeM).

(Rule 160 of GFR 2017)

4.5.2 Mandatory Procurement of Goods and Services through Government e-Marketplace (GeM)

(Rule 149 of GFR 2017)

1. Government Electronic Marketplace is a type of e-commerce site where common use products or services are offered by several sellers, and all the buyers can select the product/ services offered by any one of the sellers based on his own criteria. In an online marketplace, Purchaser's transactions are processed by the marketplace operator, and then products/ services are delivered and fulfilled directly by the participating retailers. Other capabilities included are auctioning (forward or reverse), catalogues, ordering, posting requirements by purchasers, payment gateways, etc. The procurement process on GeM is end to end, from the placement of supply orders to payment to suppliers. This is to ensure better transparency and higher efficiency.

[42] Guidelines for Compliance to Quality Requirements of eProcurement (GCQE), July 2021 issued by Systems Standardisation Testing and Quality Certification (STQC) Directorate (an attached office of the Ministry of Electronics and Information Technology (MeitY), Government of India).

2. The Procurement of Goods and Services by Ministries or Departments is mandatory for Goods or Services available on GeM as per Rule 149 of GFR, 2017. The GeM portal shall be utilized by the Government buyers for direct online purchases (of Goods and Services) as follows:-

a) Up to Rs.50,000/- through any of the available suppliers on the GeM, meeting the requisite quality, specification, and delivery period.

Note 1: In the case of automobiles, direct procurement under this sub-para is permitted without any ceiling limit.

Note 2: In case the item is available on GeM, it is not permitted to purchase the same under Rule 154 of the GFR, 2017 (Purchase without quotation).

b) Above Rs.50,000/- and up to Rs.10,00,000/- through the GeM Seller having the lowest price amongst the available sellers, of at least three different manufacturers of goods or service providers (in case of services), on GeM, meeting the requisite quality, specification, and delivery period. The tools for online bidding and online reverse auction available on GeM can be used by the Buyer even for procurements less than Rs. 10,00,000/-.

Note 1: In case the item/ service is available on GeM, it is not permitted to purchase the same under Rule 155 of the GFR, 2017 (Purchase by Purchase Committee).

c) Above Rs. 10,00,000/- through the supplier having the lowest price meeting the requisite quality, specification, and delivery period after mandatorily obtaining bids, using online bidding or reverse auction tool provided on GeM.

d) The invitation for the online e-bidding/reverse auction will be available to all the existing Sellers or other Sellers registered on the portal and who have offered their goods/services under the particular product/service category, as per the terms and conditions of GeM.

e) The above-mentioned monetary ceiling is applicable only for purchases made through GeM. For purchases, if any, outside GeM, relevant GFR Rules shall apply.

f) The Ministries/Departments shall work out their procurement requirements of Goods and Services on either “OPEX” model or “CAPEX” model as per their requirement/suitability at the time of preparation of Budget Estimates (BE) and shall project their Annual Procurement Plan of goods and services on GeM portal within 30 (thirty) days of Budget approval.

g) It may be noted that it is the responsibility of the Procuring Entity to do due diligence to ensure the reasonableness of rates. The government buyers may ascertain the reasonableness of prices before placing an order using the Business Analytics (BA) tools available on GeM, including the last purchase price on GeM, the department’s own last purchase price, etc.

h) Demand shall not be divided into small quantities to make piecemeal purchases to avoid procurement through L-1 Buying / bidding / reverse auction on GeM or the necessity of obtaining the sanction of higher authorities required with reference to the estimated value of the total demand.”

3. Further details for procurement on GeM are detailed in Chapter 4 of the Manual for Procurement of Goods, 2024, which may be referred to. For the sake of brevity, these are not repeated here.

4.5.3 Procurement through Centralized Agencies or other Organizations

Departments/ Organisations, who have not built-up their own infrastructure for purchase, may engage procurement agents (for individual procurement or as outsourcing of service) with the approval of its Secretary. Many canalized agencies authorised by the Government and some CPSEs [43] do provide such end-to-end procurement services, i.e., framing procurement documents, bidding process, evaluation, and contract management. *Procurements by such agencies would have to conform to these Procurement Guidelines.* In such cases a Contract can be placed on them for procurement services, at mutually agreed terms. Guidelines for procurement through such agencies are detailed in Chapter 4 of the Manual for procurement of Goods, 2024, which may be referred. For sake of brevity, these are not repeated here.

[43] Examples (not an exhaustive or recommendatory list) of such agencies are – Rail India Technical and Economic Services (RITES), Delhi Metro Rail Corporation (DMRC), Engineers India Limited (EIL), Indian Railway Institute of Logistics and Materials management (IRILMM), Institute of Public Auditors of India (IPAI) etc.

Chapter 5: Bid Invitation Process

5.1 Preparation and Uploading/ Floating of Tender Documents

5.1.1 Model Tender Documents

Department of Expenditure (DoE), Ministry of Finance, Government of India has issued Model Tender Documents for Procurement of Goods [44] (October 2021), Procurement of Non-Consultancy Services[45] (October 2021) and Procurement of Consultancy Services[46] (April 2023). Procuring Entities are urged to customise relevant MTD for preparing tender documents for their procurements. Guidance notes annexed to the MTDs, detail the process of customisation of MTD for an Organisation and for each procurement.

5.1.2 Tender Documents[47]

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. A carefully prepared tender document avoids delays and complaints. This will also attract more bidders to formulate and submit their competitive bids with confidence. Hence, it is worth spending time and effort on this even in cases of urgency.
2. Provisions/ clauses in the tender document should be clear, self-contained, and comprehensive, without any ambiguity. to avoid differences in interpretation and possible disputes, time overrun, cost overrun and quality compromises. While tender document should be complete in themselves and may be slightly different for various categories of procurements, these must necessarily address the essential aspects mentioned below (Rule 186 of GFR 2017). Model Tender Documents, issued by the DoE, which comply with all these requirements, may be used, with due customisation, as per the guidance notes annexed to the MTDs:
    a) A letter of Invitation
    b) Information to Consultants regarding the procedure for submission of proposal.
    c) Terms of Reference (TOR).
    d) Eligibility and pre-qualification criteria in case the same has not been ascertained through Enquiry for Expression of Interest.
    e) List of key position whose CV and experience would be evaluated.
    f) Bid evaluation criteria and selection procedure.
    g) Standard formats for technical and financial proposal.
    h) Proposed contract terms.
    i) Procedure proposed to be followed for midterm review of the progress of the work and review of the final draft report

[44] Accessible from https://doe.gov.in/sites/default/files/Model%20Tender%20Document%20for%20Procurement%20of%20Goods%20%28pdf%29.pdf

[45] Accessible from https://eprocure.gov.in/cppp/sites/default/files/standard_biddingdocs/Procurement_Consultancy_Services.pdf

[46] Accessible from https://www.doe.gov.in/sites/default/files/Model-Tender-Document-for-Procurement-of-Non-Consultancy-Services.pdf

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

3. Procuring entities may issue instructions regarding appropriate delegation of authority for approval of the Tender Documents before these are floated/ uploaded.
4. **Eligibility criteria** specify the very basic criteria that a bidder should meet to be considered a responsive bid to be evaluated further beyond the preliminary evaluation/ screening of bids.
5. **Qualification Criteria:** Technical and Financial qualification 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 qualification criteria for bidders, to enable selection of the right type of bidders in public interest, balancing considerations of quality, time, and cost.
6. **Evaluation Criteria:** Procuring Entity may include in the evaluation criteria in the Tender Document based on one or more of quality, price, technical merit, aesthetic and functional characteristics, environmental characteristics, running costs, cost- effectiveness, after-sales service and technical assistance, delivery date and delivery period or period of completion etc. No criteria shall be used for evaluation of tenders that cannot be verified or has not been specified in the Tender Document.
7. 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 services/ goods can participate.
8. The Procuring Entity should allow enough time to the bidders to prepare their proposals. The time allowed shall depend on the assignment, but normally shall not be less than three weeks. In cases where participation of international consultants is contemplated, a period of not less than four weeks should normally be allowed.
9. Tender documents should invariably reserve Procuring Entity's right without assigning any reason to:
    a) reject any or all of the Bids, or
    b) cancel the tender process; or
    c) abandon the procurement of the Services; or
    d) issue another tender for identical or similar Services.

5.2 Preparation of the Request for Expression of Interest (REoI) Document

5.2.1 Basic Considerations

1. Department of Expenditure (DoE), Ministry of Finance, Government of India has inter-alia issued Model Tender Documents for Procurement of Consultancy Services[48], which includes a Model REoI, which may please be referred.

2. As mentioned in para 1.11 above it is important to hire consultants who have a reputation for relevant quality and competence, hence Procurement of Consultancy, is done in a two-stage process. The first stage (Expression of Interest stage) to shortlist such qualified consultants in a transparent and open manner. In next stage (RfP stage) there is competition

[48] Accessible from https://eprocure.gov.in/cppp/sites/default/files/standard_biddingdocs/Procurement_Consultancy_Services.pdf

only 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.

3. Therefore, 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.

5.2.2 Contents of REoI

The EoI document shall contain following sections:

1. **Part I: REOI process**
   a) Section I: Request for Expression of Interest (REOI)
   b) Section II: Appendix
   c) Section III: Qualification Criteria
2. **Part II: Schedule of Requirements**
   a) Section IV: Terms of Reference
3. **Part III: EOI Submission Formats**
   a) Form 1: EOI Form (Covering Letter)
      i) Form 1.1: Consultant Information
      ii) Form 1.2: Eligibility Declarations
   b) Form 2: Qualification Criteria – Compliance
      i) Form 2.1: Performance Capability Statement
      ii) Form 2.2: Financial Capability Statements
      iii) Form 2.2.1: Financial Statement
      iv) Form 2.2.2: Average Annual Turnover
   c) Form 3: Checklist for Consultants
   d) Other Annexures:
      i) Annexure 1: Authorisation to Attend Pre-EOI Conference
      ii) Annexure 2: Code of Integrity

4. **Section I: Request for Expression for Interest (REoI):** Is a formal invitation for Expression of Bidders from interested bidders.

5. **Section II - Appendix to the REoI**, is where variable parameters and information related to this specific REoI process are summarised.

6. **Section III: Qualification Criteria:**
   a) This section lays down the qualification criteria which shall be applied by the Procuring Entity for short listing the consultants. The REoI should ask for sufficient information so that the Procuring Entity may evaluate the consultant's capabilities and eligibility to undertake the assignment. The Consultants must be asked
      i) requisite experience during specified period (say 5 years) with volume of assignments similar in nature in general and specific sectors relevant to the subject assignment;
      ii) Financial capability: Turnover (Overall and from Consultancy Services)
   b) **Relaxation for Start-ups:** The condition of prior turnover and prior experience may be relaxed[49] for startups (only to startups recognised by the Department of Industry & Internal Trade (DPIIT)) subject to meeting quality & technical specifications and

[49] OM No.F.20/2/2014-PPD (Pt.) dated 20.09.2016.

making suitable provisions in the tender document (Rule 173 (i) of GFR 2017). Startups may be MSEs or otherwise. It is further clarified that such relaxation is not optional but has to be ensured, except in case of procurement of items related to public safety, health, critical security operations and equipment, etc) where adequate justification exists for the Procuring Entity to not relax such criteria. Please also refer to para 1.10.1-4-b), 1.10.4-2-b) and 7.3.3-6 Table).

c) Qualification Criteria shall be based entirely upon the capability and resources required to perform the particular contract satisfactorily, considering bidders' experience and past performance, capabilities with respect to personnel, equipment and manufacturing facilities, financial standing and relevant compliance with environmental protection regulations/ Environment Management System. There should be no qualification criteria that would be advantageous to foreign consultants at the cost of domestically delivered services.

d) **Qualification of demerged entities[50] (by virtue of a corporate restructuring exercise etc.)**: EoI document must clearly mention if (and under what conditions) the demerged entity will be permitted to use credentials of original/parent entity (for initial five years from the incorporation of the demerged entities) to satisfy the qualification criteria or not.

e) 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 RfP. No legal documents such as certificates of incorporation of the firm, powers of attorney, financial statements, or translations of standard brochures should be requested. Given the often-large number of submissions, the advertisement should stress the importance of brevity of the information to be sent. It may indicate the extent of dispensation, if any, allowed for startups. Unless otherwise stated in Section II: Appendix, Consultants may associate with other firms to enhance their qualifications but should indicate clearly whether the association is in the form of a joint venture/consortium (JV/C) and/or a sub-consultancy.

7. **Section IV: Terms of Reference (TOR):** This section describes the background, purpose/ objectives, description/ scope of work, deliverables/ outcomes, inputs to be provided by the Procuring Entity; and timelines of Consultancy Services (hereinafter called the 'Service') required. The 'Service' may include incidental Goods, Works, and other Services if so indicated therein. Any generic reference the 'Service' shall be deemed to include such incidental Goods, Works, and other Services. This may also include the place of execution of the assignment.

5.2.3 Important Provisions of REoI

1. REoI contains all relevant information as well as guidance to the prospective bidders regarding - obtaining tender documents, preparing, and submitting a responsive bid, process of establishing the eligibility/ qualification credentials of the bidders as well as evaluation and comparison of tenders, Code of Integrity in Public Procurement (CIPP), process of grievance

[50] As per DoE's OM No. No. F .8/78/2023-PPD dated 12.10.2023, in suitable cases procuring entity may consider the credentials based on the merit and circumstances of the cases like type of procurement, nature of demerger, number of eligible bidders available etc.

redressal, and declaration of results. It also contains introduction/ overview of its contents. Other important provisions in a REoI are:

2. **Eligibility Criteria:** Provisions relating to Eligibility Criteria, Conflict of Interest and applicable preferential policies regulate the participation of bidders of various categories and their agents. It also contains introduction/ overview of its contents. It mentions the type of entities which may participate, specifically if JV/C are permitted to participate. It shall also mention that the consulting company should be registered under applicable act with registered offices in India. It also excludes insolvent, bankrupt, debarred, convicted, firms with conflict of interest from participation. Restriction of participation of bidders from certain countries having land borders with India are also applicable. In case JV/Cs are permitted, it should be made clear if the experience of the bidders as a member of JV/C would be considered or not. If yes, then the manner of aggregating qualifications of members of JV/C (say, only prorata experience proportionate to his percentage share declared in JV/C MoU) may be mentioned.

3. **Preferential Procurement Policies:** Preferential Procurement policies applicable to the EoI are mentioned (MSEs, Start-ups, Make in India etc.)

4. **EoI Validity:** EOIs shall remain valid for a period not less than 60 (sixty) days from the deadline for the EOI submission.

5. **Qualification Criteria**: As mentioned earlier qualification criteria for shortlisting the bidders and its scoring/ marking scheme is detailed. It also specifies, if JV/C are permitted, how credentials of members of JV/C would be considered in evaluation.

6. **Terms of Reference (ToR):** As mentioned earlier ToR describes the background, purpose/ objectives, description/ scope of work, deliverables/ outcomes, inputs to be provided by the Procuring Entity; and timelines of the required 'Service'. At EoI stage ToR is relevant for bidders to decide, whether they are interested in bidding for this assignment. It is also relevant to decide specific sector of experience required in the qualification criteria. Normally ToR should be ready before REoI is floated, however, if detailed ToR is not ready, at least description/ scope of work, deliverables/ outcomes, inputs to be provided by the Procuring Entity; and timelines of the required 'Service' should be included in REoI. REoI should contain a clause retaining right to make minor adjustments to ToR at the RfP stage.

5.3 Preparation of the Request for Proposals (RfP) Document

5.3.1 Basic Considerations

1. Department of Expenditure (DoE), Ministry of Finance, Government of India has issued Model Tender Documents for Procurement of Consultancy Services and Procurement of Consultancy Services[51], which may please be referred.

5.3.2 The Request for Proposal (RFP) (*Rule 186 of GFR 2017*)

1. The Request for Proposals (RfP) is the bidding document in which the technical and financial proposals from the consultants are obtained. For procurement of Consultancy Services, the RfP is sent only to the short-listed consultants. It contains the following sections:

a) Section I: Request for Proposal Letter (RFPL) and its Appendix: Tender Information Summary (TIS)
b) Section II: Instructions to Consultants (ITC)

[51] Accessible from https://eprocure.gov.in/cppp/sites/default/files/standard_biddingdocs/Procurement_Consultancy_Services.pdf

c) Section III: Appendix to Instructions to Consultants (AITC)
d) Section IV: General Conditions of Contract (GCC)
e) Section V: Special Conditions of Contract (SCC)
f) Section VI: Terms of Reference (TOR)
    i) Section VI-A: List of Key Experts and Required Qualifications
g) Section VII: Evaluation/ Scoring Criteria

2. **Section I: Request for Proposal Letter (RFPL) and its Appendix: Tender Information Summary (TIS)**

Section I – Request for Proposal Letter (RFPL and its Appendix – Tender Information Summary - TIS) provides a synopsis of information relevant for a Consultant to decide on participating in the RFP. RFPL states the intention of the Procuring Entity to enter into a contract for the provision of consultancy services, details of the Procuring Entity, and date, time, and address for submission of proposals. It plays the role played by NIT in procurement of Goods and Services.

3. **Section II: Instructions to Consultants (ITC) and Section III: Appendix to Instructions to Consultants (AITC)**

Section II: “Instructions to Consultants” (ITC), along with Section III: “Appendix to Instructions to Consultants (AITC)”, contains all necessary information that would help the consultants prepare responsive proposals. It shall bring in as much transparency as possible to the selection procedure by providing information on the evaluation process and by indicating the evaluation criteria and factors and their respective weights and minimum passing quality score. Standard information includes clauses relating to the procedure of bid submission, pre-bid meeting, for seeking clarifications, and so on, but should not contain information on processes after the announcement of the award which should be covered in GCC, for example, the arbitration clause, resolution of disputes, and so on. The assignment/ job specific information in AITC include the date and time of bid submission, contact address, qualification criteria, method of selection, evaluation process, factors of evaluation and their respective weights, and so on. The ITC shall specify the proposal validity period [normally 90 (ninety) days].

4. **Section IV: General Conditions of Contract (GCC) and Section V: Special Conditions of Contract (SCC)**

Section IV – General Conditions of Contract (GCC) and Section V – Special Conditions of Contract (SCC) describe the conditions governing the resulting contract. GCC covers all information on aspects after the announcement of the tender award till the closure of the contract and dispute resolution. It should not cover any aspect up to the announcement of the award. Instead of modifying the GCC every time, any changes warranted by exceptional circumstances may be indicated in a separate section - Special Conditions of Contract (SCC)- with the prior approval of the CA and GCC and may be included unchanged in every tender document. It is also to be indicated therein that the provisions in the SCC will supersede the corresponding provisions in the GCC.

5. **Section VI: Terms of Reference (TOR) and Section VI-A: List of Key Experts and Required Qualifications**

a) Section VI: Terms of Reference (TOR) describes the background, purpose/ objectives, description/ scope, deliverables/ outcomes, timelines, Procuring Entity’s inputs and counterpart personnel, statutory requirements of Services required etc.

b) Since cost is part of the selection criterion the ITC shall not indicate the budget (except in case of Fixed Budget System of selection) but shall indicate the expected input of key professionals (staff time). Section VI-A: 'List of Key Experts and Required Qualifications' describes the team composition, expertise, experience, and professional qualifications required for each Key Experts. Consultants, however, shall be free to prepare their own estimates of staff time necessary to carry out the assignment.

c) Consultants may be encouraged to provide comments and suggestions on Terms of Reference, Counterpart Staff, Key Experts and Facilities to be provided by the Procuring Entity' regarding these Sections.

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

e) STP reduces the time and cost required to prepare the proposal and could be evaluated faster by the Evaluation Committee. For example, following parameters can be used:
   i) Minimum experience including number of assignments handled by the firm similar to the area of assignment;
   ii) Turnover and other financial parameters of the firm, if required;
   iii) Minimum educational qualifications of each of the key professionals;
   iv) Minimum requirement of experience of the key professionals in an area similar to the proposed assignment.
   v) All the firms which meet the minimum qualifying standards/ criteria so prescribed will stand technically qualified for consideration of their financial bids.

6. **Quality Considerations - Section VII: Evaluation/ Scoring Criteria**

Section VII – Evaluation/ Scoring Criteria stipulates the scoring scheme for evaluating various Technical criteria. These may cover scoring of criteria relating to the Consultant's experience, Technical Approach and Methodology, understanding of requirements, qualification, and experience of Key Experts (Key experts need not be a permanent employee of the consultant), transfer of knowledge etc. It may also lay down a minimum technical score to qualify for the next stage of Financial Evaluation. In a specific evaluation scheme, instead of a scheme of scoring, a scheme may be laid down to evaluate criteria on a pass/ fail basis.

5.3.3 Standard Formats for Technical and Financial Proposals

1. **Technical Proposal**
   a) Form T-1: Proposal Form – (To serve as a covering letter to both the Techno-commercial and Financial Proposals)
      i) Form T-1A: Consultant's Commercial Information
   b) Form T-2: Consultant's Organisation and Experience
   c) Form T-3: Comments and Suggestions on Terms of Reference, Counterpart Staff, and Inputs to be Provided by the Procuring Entity
   d) Form T-4: Description of Approach, Methodology and Work Plan in Responding to the Terms of Reference
   e) Form T-5: Work Schedule and Planning for Deliverables
   f) Form T-6: Team Composition, Assignment, and Key Experts' Inputs
      i) Annex to Form T-6: Key Experts' Curriculum Vitae (CV)
   g) Form T-7: Terms and Conditions - Compliance
   h) Form T-8: Checklist for Consultants.
   i) Form T-9: Bank Guarantee Format for Earnest Money Deposit
   j) Form T-10: Integrity Pact
2. **Financial Proposal (BOQ Excel Sheet):**
   a) Procuring Entity should select an appropriate format of BOQ from the eProcurement Portal and upload it after filling up the entries for the complete schedule of requirements and various price components to enable the system to automatically calculate all-inclusive price of a bid to generate a comparative tabulation of all bids. Any procurement portal that does not have a facility for Financial bid to be uploaded in Excel format (providing detailed break-up in line with type of contract and system of selection) should endeavour to build such functionality, which are crucial for Non-consultancy and Consultancy Services.
   b) The Bidder should fill in rates and prices for all items of the Consultancy described in the in the Excel Sheet. Items for which no rate or price is entered by the Consultant will not be paid for by the Procuring Entity when executed and shall be deemed covered by the other rates and prices in the Financial Proposal. The price Schedule contains sections on Remuneration for Staff deployed, Reimbursable Expenses and Miscellaneous Expenses. All duties, taxes, and other levies payable by the Consultant under the Contract, or for any other cause, as in the month prior to the month of the deadline for submission of bids, should be included in the total Bid price submitted by the Bidder. Even in tenders for Lump-sum contracts, for the purpose of determining the remuneration due for additional elements of work, the Bidder shall provide a breakdown of the lump-sum price. Bidding Documents should include a clause that "if a firm quotes NIL service charges/ consideration, the bid shall be treated as unresponsive and will not be considered".
   c) Bidders are to upload only the downloaded BOQ (in excel format) after entering the relevant fields without any alteration/ deletion/ modification of other portions of the excel sheet. The quoted price shall be considered to include all relevant financial implications, including inter-alia the scope of the services to be performed, location of the bidder, location of the consignee(s), terms of delivery, extant rules and regulations relating to taxes, duties, customs, transportation, environment, labour of the bidder's country and in India.

3. **Other Formats**

a) Contract Form and its Appendices
   i) Appendix A: Terms of Reference
   ii) Appendix B: Key Experts
   iii) Appendix C: Remuneration Cost Estimates
   iv) Annex to Appendix C: Breakdown of Agreed Fixed Rates in Consultant's Contract
   v) Appendix D: Reimbursable Expenses Cost Estimates
   vi) Appendix E-1: Bank Guarantee Format for Performance Security
   vii) Appendix E-2: Bank Guarantee Format for Advance Payment

b) Authorisation to Attend Pre-Proposal Conference. (To be filled up, if required, by Consultant)

5.3.4 Important Provisions of ITC

1. ITC contains all relevant information as well as guidance to the prospective bidders regarding - obtaining tender documents, preparing, and submitting a responsive bid, process of establishing the eligibility/ qualification credentials of the bidders as well as evaluation and comparison of tenders, Code of Integrity in Public Procurement (CIPP), process of grievance redressal, and declaration of results. It also contains introduction/ overview of its contents. Other important provisions in an ITC are:

2. **Eligibility to Participate:** As the RFP following the earlier EOI shortlisting process, this invitation is open only to consultants who have been shortlisted therein or are specifically invited to participate. It is not permissible for the shortlisted consultants to transfer this RFP to any other firm without the permission of the Procuring Entity. Proposals from consultants who have not been shortlisted shall not be entertained. The shortlisted Consultant must continue to meet the eligibility criteria prescribed in the EOI document (based inter-alia on which they were shortlisted), including restrictions on Consultants from specified countries as of the date of his Proposal submission and should continue to meet these till the award of the contract. Consultants must provide evidence of their continued eligibility to the Procuring Entity if requested.

3. **Association among Shortlisted Consultants**: Unless otherwise stipulated in TIS/ AITC, if a shortlisted Consultant considers that it may enhance its expertise for the assignment by associating with other consultants in the form of a Joint Venture or as Sub-consultants, it may do so with either (a) non-shortlisted Consultant(s) or (b) shortlisted Consultants, without vitiating the shortlisting criteria of the REOI. The shortlisted Consultant shall be a lead member when associating with non-shortlisted firms as a joint venture. If shortlisted Consultants associate with each other, any of them can be a lead member. A shortlisted Consultant must obtain the Procuring Entity's written approval not later than 14 days before the RfP submission deadline, in all such cases. Such approval shall be denied if (i) a shortlisted Consultant proposes to associate with an ineligible Consultant or, in case of an ineligible joint venture, any of its members (ii) because of the change, the consultant no longer substantially meets the qualification criteria outlined in REOI document, or (iii) if, in the opinion of the Procuring Entity, a substantial reduction in competition may result.

4. **Preferential Procurement Policies:** Preferential Procurement policies applicable to the RfP are mentioned (MSEs, Start-ups, Make in India etc.)

5. **RfP Validity:** RfP shall remain valid for a period not less than 90 (ninety) days from the deadline for the RfP submission.

6. **Evaluation/ Scoring Criteria**: Evaluation shall, inter-alia, consider the Consultant's (i) "Specific experience of the Consultant (as a firm) relevant to the Assignment"; ii) "Adequacy and quality of the proposed methodology, and work plan"; iii) "Key Experts' qualifications and competence for the Assignment". It also specifies, if JV/C are permitted, how credentials of members of JV/C would be considered in evaluation. Procuring Entity may, ask all shortlisted Consultants to deliver presentation on their technical proposals. This presentation shall only cover contents of the technical proposals submitted by the Consultant. Unless otherwise provided, no marks shall be assigned to the presentation. Opportunities for such presentations shall be provided in a manner to provide a level playing field to all shortlisted consultants, including time limits for such presentations.

7. **Terms of Reference (ToR):** As mentioned earlier ToR describes the background, purpose/ objectives, description/ scope of work, inputs of Key Experts, deliverables/ outcomes, inputs to be provided by the Procuring Entity; and timelines of the required 'Service'.

5.3.5 Proposed form of contract

1. The contract includes accepted ToR methodology, general and specific conditions of contract, etc. wherever possible, the Procuring Entity shall use the Standard Form of Contract. The general conditions of contract shall include all such conditions which are common in nature and not project specific. Such conditions include clauses pertaining to sub-contracting, methods of payment, termination and extension of contracts, arbitration, variation in quantities, indemnity and insurance, force majeure, conflict of interest, compliance to local laws and taxes and duties etc. The project specific conditions include clauses relating to the assignment in hand. These clauses should be carefully developed to protect the interest of the Procuring Entity.

2. **Description of Services:** Including a well-defined Description of Services ensures both parties have a clear understanding of the expectations, deliverables, and quality standards. It also provides a framework for monitoring performance and handing any potential issues that may arise during the consultancy contract's execution. It should include the ToR and the consultant's proposal as finalised during the negotiations. It should include the following:

a) Description of the specific tasks, activities, or deliverables that the consultant will provide. This should include all the major components of the consultancy work.
b) Phases of Work: If the consultancy service involves multiple phases (e.g., inception, implementation, evaluation), these should be defined, with milestones where applicable.
c) Outputs/Deliverables: Specify the tangible or intangible outputs the consultant is expected to deliver, such as reports, designs, strategies, etc.
d) Objectives and Goals as mentioned in the ToR
e) Methodology as proposed by the consulted and as modified during negotiation
f) Timelines and Deadlines, as agreed.
g) Roles and Responsibilities, as per ToR and Proposal of the consultant.
h) Quality Standards and Acceptance Criteria as per RfP.
i) Resources and Support as per the RfP.

3. **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 privatisation of public assets shall neither purchase nor advise

purchasers of such assets. Similarly, consultants hired to prepare ToR for an assignment shall not be hired for the assignment in question and shall not be in a conflict-of-interest situation as described in the RfP/contract.

4. **Professional Liability:** The consultant is expected to carry out its/his assignment with due diligence and in accordance with the prevailing standards of the profession. As the consultant's liability to the Procuring Entity will be governed by the applicable law, the contract need not deal with this matter unless the parties wish to limit this liability. If they do so, they should ensure that: (a) there must be no such limitation in case of the consultant's gross negligence or wilful misconduct; (b) the consultant's liability to the Procuring Entity may, in no case, be more than a multiplier (say 3 times) of the total value of the contract to be indicated in the RfP and special conditions of contract (the multiplier will depend on each specific case); and (c) any such limitation may deal only with the consultant's liability toward the Procuring Entity and not with the consultant's liability toward third parties.

5. **Staff Substitution of Key Professional:** During an assignment where key professionals are named in the contract, if substitution is necessary (for example, because of ill health or because a staff member proves to be unsuitable, or the member is no longer working with the consultant), the consultant shall propose other staff of at equivalent or higher credentials for approval by the Procuring Entity. The RfP/contract must specifically make provision for terms and conditions under which the staff can be replaced, about the remuneration to be paid, and so on. Please refer to para 10.2.5-2 below, to understand the system of remuneration deduction for substitutions.

6. **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.

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

5.4 Uploading of Tender Documents: Mandatory e-Publishing (*Rule 159 of GFR 2017*)

5.4.1 ePublishing of Tender Documents

1. It is mandatory for all Ministries/Departments of the Central Government, their attached and subordinate offices, and autonomous/ statutory bodies to publish their tender enquiries, corrigenda thereof and details of bid awards online on the Central Public Procurement Portal (CPPP) and also on their website. These instructions apply to all Tender Enquiries, Requests for Proposals, Requests for Expressions of Interest, Notice for pre-Qualification/ Registration or any other notice inviting bids or proposals in any form whether they are advertised, issued to limited number of parties or to a single party. These instructions would not apply to Purchase of goods/ services without quotations or Purchase of goods/ services by purchase committee.
2. Individual cases where confidentiality is required, for reasons of national security, would be exempted from the mandatory e-publishing requirement. The decisions to exempt any

case on the said grounds should be approved by the Secretary of the Ministry/ Department with the concurrence of the concerned Financial Advisor. In the case of autonomous bodies and Statutory bodies' approval of the head of the body with the concurrence of the head of the finance should be obtained in each such case. Statistical information on the number of cases in which exemption was granted and the value of the concerned contract should be intimated on a Quarterly basis to the Ministry of Finance, Department of Expenditure.

5.4.2 Amendment of Tender Documents (Rule 173 (iii) of GFR 2017)

At any time prior to the date of submission of bids, the procuring entity may, Suo-moto or in response to a clarification sought by a prospective bidder (directly or in pre-bid conference), amend tender documents by issuing a corrigendum. Copies of such amendment / modification should be uploaded on the ePublishing portal and Procuring Entity's own website. In case of off-line tenders, the copies of such amendment/ modification are to be simultaneously despatched, free of cost, by registered/speed post/courier/e-mail, to all the parties who have already purchased the tender documents and copies of such amendments are also to be prominently attached in the unsold sets of the tender documents (which are available for sale). 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 suitably extended (not less than 3 days) as per para 5.4.3 below.

5.4.3 Extension of Deadline of Bid Submission

1. To give sufficient time to bidders to prepare and submit their bids, the Procuring entity may suo-moto or based on justifiable request of bidder(s) or due to significant modification of tender documents (as per para 5.4.2 above) extend the time and date of submission of tenders suitably (not less than three (3) days), along with suitable changes in the corresponding time-frames for receipt of tender, bid validity period etc and validity period of the corresponding EMD/bid security. Depending on the situation, such an amendment may also need fresh publication adopting the same procedure as for publication of the original tender enquiry.

2. **Auto-Extension of Bids – in case of lack of Response**: The eProcurement portal/ GeM should not provide anybody, including the Procuring Entity, with the bid count before the tender opening time, even at their request. The eProcurement portal/ GeM may permit Procuring Entity to input minimum number of bids considered sufficient and pre-specified number of days for automatic extension of bid opening (ordinarily not less than 7 days) at the time of tender upload. The system shall declare in the tender details that in case of low competition (without specifying the number), the tender closing time shall be automatically extended by specified number of days. If bids received till the bid opening time are less than the specified minimum bids, the system should automatically extend the tender opening by specified number of days without seeking any input from or sharing any information with anyone, including the Procuring Entity. Purchaser and bidders shall only be informed that due to less competition, the tender closing time has been extended up to (date and time). However, this automatic extension of bid opening shall be done only once, not repeatedly. If a Procuring Entity wants to go ahead even with low competition (e.g., due to urgency), they may mention 'one' as minimum bid. So that if no bid is received, the tender is automatically extended, otherwise not. Procuring entity is free to cancel and retender the procurement after auto-extension. GeM and eProcurement portals shall update their systems accordingly.

5.5 Obtaining Tender Documents and Submitting Bids

5.5.1 Availability and Cost of Tender Documents (Rule 161 (v) of GFR 2017)

1. Tender documents should preferably be sold or available for download after the date and time of the start of availability till the deadline for availability as mentioned in tender document (say up to last date of bid submission) and this should be clearly indicated in the documents. The organisation should also post the complete tender document on the website and CPPP and permit prospective bidders to make use of the document downloaded from the website/ CPPP.

2. Normally no tenders document fee should be charged. In exceptional cases procuring entity may fix a bare minimum cost of tender documents to defray the expenses/ effort of preparing documents, drawings etc. The cost of the tender document is to be submitted to the authority nominated therein by the prospective bidder in the form of a demand draft /banker's cheque/ pay order/ online payment gateway. Firms that are eligible for exemption from the tender document cost such as MSEs, Procuring Entity's registered units (for relevant items and monetary limit) have to submit/ upload scanned copy of documents in support of this exemption.

5.5.2 Participation of Bidders

1. **Eligibility Criteria**

Tender document may lay down, eligibility criteria for participating in the tender process e.g., restrictions on participation by bidders relating to - type of commercial entity, insolvency, ineligibility/ debarment/ convictions/ conflict of interest, Class of bidders (as per Make in India Order), bidders from countries having land borders with India etc. Except for the eligibility criteria participation shall be open to all bidders in an Open/ Global Tender Enquiries. In the case of the Second Stage (of two Stage Bidding or PQB) or Limited Tenders, participation shall be open only to such bidders who have been previously shortlisted or specifically invited.

2. **Purchase Preference Policies**

The Procuring Entity shall stipulate in tender document the available preferences to eligible Bidders under various Government Policies/ directives (policies relating to Make in India; MSEs; Start-ups etc.).

3. **Conflict of Interest among Bidders/ Agents:** Bidders having a conflict of interest shall not be eligible to participate in the tender process unless the conflict stemming from such relationship has been resolved in a manner acceptable to the Procuring Entity throughout the Tender process and execution of the Contract. Please also refer to para 3.3.3 above. The bidder shall be considered to have a conflict of interest in this tender process and execution of the resultant contract in the following situations:

a) If its personnel have a close personal, financial, or business relationship[52] with any personnel of the procuring entity who are directly or indirectly related to the procurement or execution process of the contract, which can affect the decision of the procuring entity directly or indirectly;

[52] Please refer to para 3.5-5 for clarification

b) The bidder (or his allied firm[53]) provided services for the need assessment/ procurement planning[54] of the Tender process in which it is participating;

c) Participation in any capacity by a Bidder (including the participation of a Bidder as a partner/ JV/ consortium member or sub-contractor in another bid or vice-versa) in more than one bid shall result in the disqualification of bid in which he is a main/ principal/ lead bidder. However, this does not limit the participation of an entity as a sub-contractor in more than one bid if he is not bidding independently in his own name or as a member of a consortium/ JV;

5.5.3 Pre-proposal Meeting (Pre-bid Conference) and Pre-NIT Conference

(Rule 173 (x) of GFR 2017)

1. **Pre-Notice Inviting Tender (NIT) Conference:** In complex and innovative procurement cases or where the procuring entity may not have complete knowledge to formulate tender provisions (e.g., two-Stage Tendering (with EoI) - refer to para 4.4-1-b) above), a pre-NIT conference (Market Consultation) is a key step allowing procuring entities to refine specifications and terms by engaging with potential consultants and industry experts. Such conferences should be publicised so that different potential consultants can attend[55]. This process helps align tender requirements with current market capabilities and technological advancements. By gathering insights on feasibility and trends, the procuring entity can craft realistic specifications that encourage competitive and cutting-edge solutions. The findings from these consultations inform the final tender documents, ensuring a transparent and effective procurement process.

2. **Pre-proposal Meeting/ Pre-bid Conference:** In all cases of large value or complex assignments, one or more pre-proposal meetings/ Pre-bid conference may be prescribed in the EoI/ RfP. During this meeting, the technical/ commercial details, 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.

a) Participation is not mandatory. However, if a bidder chooses not to (or fails to) participate in the Pre-bid conference or does not submit a written query, it shall be assumed that they have no issues regarding the techno/ commercial conditions.

b) The date and time for such a meeting should normally be after 7 to 21 (seven to twenty-one) days of issue of the Tender Document and should be specified therein. The date and time by which the written queries for the Pre-bid must reach the authority and the last date for registration for participation in the Pre-bid conference are also mentioned in the tender Document (3 days before the date of the conference, if not specified). The pre-bid conference may also be held online at the discretion of the Procuring Entity.

c) Timelines for response to the pre-bid conference, e.g., Replies to Questions, issue of minutes of the pre-bid conference, Corrigenda, etc, should be mandatorily mentioned in the tender document and complied with.

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[53] Please see definition in 'Procurement Glossary" section

[54] inter-alia need assessment, preparation of - feasibility/ cost estimates/ Detailed Project Report (DPR), design/ technical specifications, terms of reference (ToR)/ Activity Schedule/ schedule of requirements or the Tender Document etc.

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

d) Delegates participating in the Pre-bid conference must provide a photo identity and an authorization letter as per the specified format from their Company/ principals; else, they shall not be allowed to participate.
e) After the Pre-bid conference, Minutes of the Pre-bid conference shall be published on the Procuring Entity's portal within seven days from the conference. Where some significant changes are made in the terms/scope of the EoI/ RfP as a result of the pre-bid meeting or otherwise considered necessary by the Procuring Entity, a formal corrigendum may be issued, to all bidders, which shall form part of the Tender Document. To give reasonable time to the prospective bidders to take such clarifications into account in preparing their bids, the Procuring Entity may suitably extend, as necessary, the deadline for the bid submission.

5.5.4 Site Visit

The Consultant, at its own cost, responsibility, and risk, may visit 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.

5.5.5 Clarification of Tender Documents

A prospective bidder requiring clarification on the tender documents may ask questions in writing/ electronically from Office/ Contact Person as mentioned in tender document, provided the questions are raised before the clarification end date mentioned therein (or if not mentioned, before 7 days of the deadline for the bid submission). This deadline shall not be extended in case of any intervening holidays. A response will be sent in writing to the clarifications sought prior to the date of opening of the tenders. Only material queries and their responses shall be uploaded on the website without revealing the identity of the bidder making the query. When the response to clarification changes the requirement significantly and /or when there is not much time left for the bidders to respond to such responses, the time and date of submission of tenders may also be suitably extended (not less than 3 days) as per para 5.4.3 above.

5.5.6 Withdraw/ Amendments / Modifications to Bids by Bidders

The bidder, after submitting its bid is permitted to substitute/ alter/modify it, superseding earlier bid, so long such revised bid is uploaded/ received duly sealed and marked like original bid, up to the bid submission deadline. Resubmission of a bid shall require uploading of all documents, including financial bid afresh. The system shall consider only the last bid submitted as the valid bid. The bidder may withdraw his bid before the bid submission deadline, and it shall be marked as withdrawn and shall not get opened during the Bid opening. Any such action after that deadline is not permitted. Withdrawal/ amendment/ modification/ alteration/ impairment/ derogation of a bid, in any respect, by its bidders between the deadline for submission of bids and expiration of the period of bid validity, his bid security/ EMD shall be forfeited besides imposition of any other punitive remedy available to the procuring entity. In such cases, tender evaluation shall be proceeded with in terms of para 8.2.6-3) below.

5.5.7 Sealing/ Marking of Bids in off-line Tenders

The tender document should indicate the manner of submission/ uploading of bids. In case of off-line tenders, total number of bid copies (for example, in duplicate or in triplicate, and so on) required to be submitted. The bidder is to seal the original and each copy of the bid in separate envelopes, duly marking the same as "original", "duplicate," and so on, and printing the address of the purchase office and the tender reference number on the envelopes. Further, the sentence "NOT TO BE OPENED" before (due date and time of tender opening) is also to

be printed on these envelopes. The inner envelopes are then to be put inside a bigger outer envelope, which will also be duly sealed marked, and so on, as above. If the outer envelope is not sealed and marked properly as above, the procuring entity does not assume any responsibility for its misplacement, premature opening, late opening, and so on.

5.5.8 Uploading/ Submission of Bids

1. **Uploading Bids in eProcurement:** Different eProcurement portals[56] may have different provisions, but the following is the generic description:

a) The Procuring Entity is neither a party nor a principal in the relationship between Bidder and the organisation hosting the e-procurement portal (hereinafter called the Portal). Bidders must acquaint and train themselves with the rules, regulations, procedures, and implied conditions/ agreements of the Portal. Bidders intending to participate in the bid, shall be required to register in the Portal.

b) Any query/ clarification/ complaint regarding downloading Tender Documents and uploading Bids on the e-Procurement portal may be addressed to the Help Desk of the portal.

c) In case of conflict between provisions of the Portal with the Tender Document, provisions of the Portal shall prevail. Bidders may study the resources provided by the Portal for Bidders.

d) Bids must be uploaded till the deadline for submission mentioned in the Tender Document. If the office happens to be closed on the deadline to submit the bids as specified above, this deadline shall not be extended. Bidder must comply with the conditions of the eProcurement portal, including registration, compatible Digital Signature Certificate (DSC) etc. In the case of downloaded documents, Bidder must not make any changes to the contents of the documents while uploading, except for filling in the required information.

e) Only one copy of the bid can be uploaded, and Bidder shall digitally sign all statements, documents, certificates uploaded by him, owning sole and complete responsibility for their correctness/ authenticity as per the provisions of the IT Act 2000 as amended from time to time.

f) Regarding the protected Price Schedule (excel format, Cover-2), Bidder shall write his name in the space provided in the specified location only. Bidder shall type rates in the figure only in the rate column of respective item(s) without any blank cell or Zero values in the rate column, without any alteration/ deletion/ modification of other portions of the excel sheet. If space is inadequate, Bidder may upload additional documents under "Additional Documents" in the "bid Cover Content."

g) The date and time of the e-Procurement server clock, which is also displayed on the dashboard of the bidders, shall be taken as the reference time for deciding the closing time of bid submission. Bidders are advised to ensure they submit their bid within the deadline and time of bid submission, taking the server clock as a reference, failing which the portal shall not accept the Bids. No request on the account that the server clock was not showing the correct time and that a particular bidder could not submit their bid because of this shall be entertained. Failure or defects on the internet or heavy traffic at the server shall not be accepted as a reason for a complaint. The

[56] These portals must be compliant with 'Guidelines for Compliance to Quality Requirements of eProcurement' (GCQE), July 2021 issued by Systems Standardisation Testing and Quality Certification (STQC) Directorate (an attached office of the Ministry of Electronics and Information Technology (MeitY), Government of India).

Procuring Entity shall not be responsible for any failure, malfunction or breakdown of the electronic system used during the e-procurement Process.

h) All Bids uploaded by Bidder to the portal shall get automatically encrypted. The encrypted bid can only be decrypted/ opened by the authorised persons on or after the due date and time. The bidder should ensure the correctness of the bid before uploading and take a printout of the system generated submission summary to confirm successful bid upload.

i) Bidder must upload scanned copies of originals (or self-attested copies of originals – as specified). Bidder should ensure the clarity/ legibility of the scanned documents uploaded by him. The Procuring Entity reserves its right to call for verification of originals of all such self-certified documents from the Bidders at any stage of evaluation, especially from the successful Bidder(s) before the issue of Letter of Award (LoA).

j) If so specified, originals (or self-attested copies of originals – e.g., exemption/ proof of EMD (in the form of Bank Guarantee, DD etc.) or, as specified therein) of specified scanned uploaded documents must be physically submitted sealed in double cover and acknowledgement be obtained before the bid submission deadline at mentioned venue. Failure to do so is likely to result in the bid being rejected. If the office is closed on the deadline for physical submission of originals, it shall stand extended to the next working day at the same time and venue.

k) No manual Bids shall be made available or accepted for submission in e-Procurement (except for originals of scanned copies as per sub-para above).

2. **Submission of Bids in offline Tender Process:** In offline tenders, receipt and custody of bids shall be done in a transparent manner to maintain the credibility of the process. The following guidelines should be adhered to for receipt and custody of bids:

a) The technical and financial proposals shall be submitted at the same time. To safeguard the integrity of the process, the technical and financial proposals shall be submitted in separate sealed envelopes, kept in an outer sealed envelope.

b) The procuring entity shall maintain tender boxes for receiving the bids at suitable locations which would facilitate security and easy access to bidders. If required, Tender boxes should be separate for each day of the week of tender opening and should be sealed by the Bid Opening Committee (BOC) of the day. The tender box shall have two locks. Key of one lock will be with the head of the office and the other key with the official nominated by him;

c) Bids received by courier shall be deposited in the tender box by the Dispatch Section till the date and time of bid opening. Bids sent by telex, cable or facsimile are to be ignored and rejected.; and

d) For bulky/oversized bids which cannot be dropped into tender boxes, the officials authorised to receive such bids shall maintain proper records and provide a signed receipt with date and time to the bearer of the bid. He will also sign on the cover, duly indicating the date and time of receipt of the tender(s). Names and designations of at least two such authorised officers should be mentioned in the tender documents.

3. **Bid security:** Bid Security or if permitted Bid Securing Declaration (BSD) must accompany the bid as per instructions in the Tender Document. A self-attested scan of the original Bid Security/ BSD should be uploaded along with bids. Bids not complying with these provisions shall be rejected. Please refer para 6.1.1 below.

5.5.9 Bid Validity

A bid shall remain valid for the period mentioned in the Tender Document (90 days if not so specified). A bid valid for a shorter period shall be rejected as nonresponsive. In case the day up to which the bids are to remain valid falls on or is subsequently declared a holiday/ closed day for the Procuring Entity, the bid validity shall automatically be deemed to be extended upto the next working day. The validity period should not be unreasonably long as keeping the tender unconditionally valid for acceptance for a longer period entails the risk of getting higher prices from the bidders. (Please see para 8.2.6 below for extension of Bid Validity Period)

5.6 Opening of Bids

1. Immediately after the deadline for bid submission, procuring entity shall proceed to the bid opening. If the specified date of Bid Opening falls on is subsequently declared a holiday or closed day for the Procuring Entity, the Bids shall be opened at the appointed time on the next working day. In offline tenders, the BOC shall comprise one officer each from the procuring entity and Associated/ integrated Finance.

2. In e-procurement, all tenders uploaded by bidders are received, safeguarded, and opened online on the portal as detailed in Appendix 3: Electronic Procurement (eProcurement) and e-Auction' of 'Manual for Procurement of Goods, 2024'.

3. In offline tenders, receipt and custody of bids shall be done in a transparent manner to maintain the credibility of the process. The following guidelines should be adhered to for receipt and custody of bids:

a) The authorised representatives of bidders, who intend to attend the tender opening in OTE/ GTE/ SLTE are to bring with them letters of authority from the corresponding bidder. The prescribed format for the letter of authority for attending the bid opening should be given in the tender document. All bid-opening activities should be carried out demonstrably before such a gathering. The prescribed format for the bid opening attendance sheet and report are given at Annexure 5;

b) At a prescheduled date and time, the BOC of the day should get the tender box opened, after ensuring and demonstrating that the seal on the box has not been tampered with. All bids should be collected from the tender box. Bids for tenders not opening on that day should be put back into the box and the box resealed. Sometimes, there would be tenders dropped wrongly into this tender box. Such wrongly dropped tenders with appropriate endorsement should be put into the appropriate box or sent to the Tender Committee (TC) concerned if the date of opening is over. The bids for different tenders opening on the day (including oversized bids, which were submitted to designated officers) should be sorted, and a count for each tender should be announced and recorded, particularly noting any modifying/altering/withdrawal of bids. BOC should ensure and demonstrate that bid envelopes are duly sealed and untampered. Late bids should be separately counted but kept aside and not opened. In the case of an advertised tender enquiry or limited tender enquiry, late bids (that is, bids received after the specified date and time for receipt of bids) should not be considered (Rule 188 of GFR 2017);

c) The technical bids will be opened on the pre-announced date and the financial proposals shall remain sealed and shall be opened publicly only for those firms that have qualified technically.

d) After opening, every tender shall be numbered serially (say 3/14 – if it is the third bid out of 14 total), initialled, and dated on the first page by the BOC. Each page of the price schedule or letter attached to it shall also be similarly initialled, particularly the prices, delivery period, and so on, which shall also be circled and initialled along with the date. Any other page containing significant information should also be dealt with similarly. Blank tenders, if any, should be marked accordingly by the BOC. The original (and duplicate, if any) copies in a tender set are to be marked accordingly by the BOC;

e) Erasure/cutting/overwriting/use of whitener/columns left unfilled in tenders, if any, shall be initialled along with date and time and numbered by the officials opening the tenders and total number of such noticed alterations (or the absence of any alteration) should be explicitly marked on the first page of the bid. Wherever quantity/amount is written only in figures, the BOC should write them in words. All rebates/discounts should be similarly circled, numbered, and signed. In the absence of any alteration/overwriting/whitener/ blanks, the remark “no corrections noted” should be written. Similarly, the absence of discounts should be marked with “no discounts noted;”

f) The BOC is to announce the salient features of the tenders such as description and specification, quoted price, terms of delivery, delivery period, discount, if any, whether EMD furnished or not, and any other distinctive feature of the tender for the information of the representatives attending the tender opening. No clarifications by bidders should be entertained or allowed to be recorded during the bid opening. BOC has no authority to reject any tender at the tender opening stage;

g) Financial instruments should be noted in the bid opening report/register and handed over to the Finance Section for safe custody and monitoring; and

h) A bid opening report containing the names of the bidders (serial number wise), salient features of the tenders, as read out during the public opening of tenders, will be prepared by the tender opening officers, and duly signed by them along with the date and time. The tenders that have been opened, list of the representatives attending the tender opening, and bid opening report are to be handed over to the nominated purchase officer and an acknowledgement obtained for him. The name of the bidder proposed prices shall be read aloud and recorded when the financial proposals are opened. No modification to financial proposals is permitted. The Procuring Entity shall prepare the minutes of the public opening. Format at Annexure 5 may be used for this purpose. When electronic submission of proposals is used, this information shall be posted online.

i) Similar procedure shall later be followed during Financial Bid Opening in case of multiple-envelop bidding.

5.7 Transparency and Protecting Third-Party Rights of Bidders

1. Objectives of transparency in eProcurement are amply served if all data relating to the Tender and Award of Contract are accessible to public.

2. As far as the bidders who have participated in a tender (participating bidders), for purpose of transparency, comparative summary of Technical (compliance details) and of Financials bids (including QCBS calculations, wherever applicable) should also be accessible to them, but not necessarily to public at large, unless sought and is permissible under the RTI act.

3. Bidders may have genuine concern about Techno-commercial and operational trade secrets, if their full technical and financial bids are accessible to their competitors or public at large. This concern may get aggravated in complicated EPC/ PPP/ Consultancy procurements. Technical/ financial bids should not be made accessible to public at large, and a call needs to be taken based on sensitivity of details in the bids to restrict access of even participating bidders to full technical/ financial bids of their competitors. Decision of procuring Entity to share or not share the full technical bids with other participating bidders, should be clearly brought out in the Tender Documents.

4. However, a clause may be added to the tender documents reserving right of the Procurement Entity and the eProcurement portal to provide access to bidders' technical/ financial bids to other participating bidders, in addition to comparative summary of Technical and financial bids of all participating bidders.

5.8 Bidding Invitation Process- Risks and Mitigations

Risk	**Mitigation**
1. **Exceptions to an open tender process** are abused, leading to single source processes.	**Rigorously follow the conditions** under which open tendering can be dispensed with**.**
2. **When short lists are used**, the process of preparation of short lists may be non-transparent and all eligible firms may not be included, and some ineligible firms may get included.	**Registration of bidders/contractors:** All major procuring Departments must keep a list of registered bidders for use in restricted tendering. Publicise even restricted bids on your website. Bidders for LTE/ SLTE may be transparently selected with the approval of CA.
3. **Pre-qualification criteria:** PQB has the potential of getting misused or being applied without considering the restrictive nature of competition. PQC should be relevant to the quality requirements, and neither be very stringent nor very lax to restrict/facilitate the entry of bidders. These criteria should be clear, unambiguous, exhaustive, and yet specific. Also, there should be fair competition.	**Lay down** criteria when two stage tendering is warranted. Also lay down model PQC criteria for diverse types of procurements.
4. **Invitation to tender** (an open bid) is not well publicised or gives insufficient time, thereby restricting the number of bidders that participate.	**Publicity and adequate time for bid submission** must be ensured. Require a higher-level approval for short bid submission period.
5. **Evaluation criteria** are not set from the beginning or are not objective or not clearly stated in the tender documents, thereby making them prone to being abused.	**Objective, relevant and clearly** stated evaluation criteria must be specified in the tender document.

Chapter 6: Forms of Securities, Prices, Payment Terms and Price Variations

6.1 Forms of Security

6.1.1 Bid Security (Rule 170 of GFR 2017)

1. To safeguard against a bidder withdrawing or altering its/ his bid during the bid validity period in the case of advertised (OTE and GTE tenders) or special limited tender enquiry Bid Security (also known as Earnest Money Deposit (EMD)) is to be obtained from the bidders along with their bids.

2. Normally in procurement of consultancy services, it is not a practice to ask for Bid Security. However, Procuring Entity has the option of requiring a bid security in time-critical procurements.

3. The bidders should be asked to furnish bid security along with their bids[57].Amount of bid security should ordinarily range between two (2) to five (5) per cent of the estimated value of the services to be procured. The amount of bid security, rounded off to the nearest thousands of Rupees, as determined by the Procuring Entity, is to be indicated in the tender documents. The procuring Entity may, if considered justified, stipulate an upper ceiling on the bid security amount, in larger tenders, so as not to restrict competition.

4. Form of Security: The bid security may be obtained in the form of Insurance Surety Bonds[58],account payee demand draft, or banker's cheque or Bank Guarantee (including e-Bank Guarantee)[59] issued/ confirmed[60] by any of the Scheduled Banks (as defined in section 2(e) of the RBI Act 1934) or payment online in an acceptable form, safeguarding the purchaser's interest in all respects. In case the bid security is more than a threshold (Rupees five lakh) and in case of foreign bidders in GTE tenders it may be in the form of a bank guarantee (in equivalent Foreign Exchange amount and must conform to the Uniform Rules for Demand Guarantees (URDG 758) – an international convention regulating international securities[61]) issued/ confirmed by any of the scheduled bank in India in an acceptable form. The bid security is normally to remain valid for a period of 45(forty-five) days beyond the final bid validity period.

5. In place of a Bid security, Procuring Entities after seeking approval of the competent authority may consider asking Bidders to sign a Bid securing declaration (BSD), accepting that if they withdraw or modify their Bids during the period of validity, or if they are awarded the contract and they fail to submit a performance security, or to sign the contract, before the deadline defined in the tender documents, they shall be suspended for the period of time specified in the BSD from being eligible to submit Bids/Proposals for contracts with the procuring entity.

[57]Notified vide OM No F.20/2/2014-PPD(Pt.) issued by Department of Expenditure dated 25.07.2017.
[58]Notified vide OM No. F.1/1/2022-PPD issued by Department of Expenditure dated 02.02.2022.
[59] Notified vide OM No. F.1/4/2022-PPD issued by Department of Expenditure dated 05.08.2022.
[60] A bank guarantee merely advised by a scheduled bank is not acceptable, in lieu of being confirmed.
[61] A set of rules developed by the International Chamber of Commerce first adopted in 1992. The latest version URDG 758 provides a framework for harmonising international trading practices and establishes agreed-upon rules for independent guarantees and counter-guarantees among trading partners for securing payment and performance in worldwide commercial contracts.

6. In appropriate cases, Submission of the bid security may be exempted with the Competent Authority's (CA's) approval, especially in the case of indigenisation/development tenders, limited tenders, and procurements directly from the manufacturer or authorised agents, bidders that are currently registered (firms should normally be registered for the particular trade group (group of services) and monetary values, as decided by the procuring entity), and will also continue to remain registered during the bid validity period with the concerned Ministry/ Department/ Procuring Entity. Micro and Small Enterprises (MSEs) as defined in MSE Procurement Policy issued by Department of Micro, Small and Medium Enterprises (MSME) and registered Startups as recognized by Department for Promotion of Industry and Internal Trade (DPIIT) (please refer to para 1.10.4) are exempt from payment of EMD. In case the bidder falls in these categories, the bidder should furnish a certified copy of its valid registration details.

7. A bidder's bid security shall be forfeited if the bidder withdraws or amends its/his tender or impairs or derogates from the tender in any respect within the period of validity of the tender or if the successful bidder fails to furnish the required performance security, or to sign the contract within the specified period.

8. Bid securities of the unsuccessful bidders should be returned to them at the earliest after expiry of the final bid validity period and latest by the 30th day after the award of the contract. Bid security should be refunded to the successful bidder on receipt of a performance security. However, in case of two packet or two stage tendering, Bid securities of unsuccessful bidders during first stage i.e., technical evaluation etc. should be returned within 30 days of declaration of result of first stage i.e., technical evaluation etc.[62]

6.1.2 Performance Security (*Rule 171 of GFR 2017*)

1. To ensure due performance of the contract, performance security (or Performance Bank Guarantee (PBG) or Security Deposit (SD)) is to be obtained from the successful bidder awarded the contract. Performance security should be for an amount of three (3) to five (5) per cent (3 to 10% for Works) of the contract value, as specified in the tender documents[63]. The procuring Entity may stipulate an upper ceiling for the Performance Security amount, in larger tenders, so as not to restrict competition. For an illustrative example, the ceiling can be Rs 75 Lakhs for tenders upto Rs 50 Crores and Rs 3 Crore for tenders above Rs 50 Cr but below Rs 300 Cr. For tenders of higher value than this, the Procuring Entity may decide the amount of Performance Security (but not less than Rs 3 Cr mentioned above). However, Procuring Entities are free to decide their own quantum for performance security, or dispense with it, with the approval of Competent authority and finance concurrence, based on their perception of performance risks vis-a vis need for competition.

2. **Form of Security**: Performance security may be furnished in the form of an Insurance Surety Bond[64], account payee demand draft from a commercial bank, bank guarantee (including e-bank guarantee[65]) issued/ confirmed[66] from any of the scheduled banks in India, or online payment in an acceptable form, safeguarding the purchaser's interest.

3. In case of a JV, the BG towards performance security shall be provided by all partners in proportion to their participation in the project. In the case of GTE tenders, the performance

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

[63] Notified vide OM No. F.1/2/2023-PPD issued by Department of Expenditure dated 01.01.2024.

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

[65] Notified vide OM No. F.1/4/2022-PPD issued by Department of Expenditure dated 05.08.2022.

[66] A bank guarantee merely advised by a scheduled bank is not acceptable in lieu of being confirmed.

security should be in the same currency as the contract and must conform to the Uniform Rules for Demand Guarantees (URDG 758) – an international convention regulating international securities[67].

4. Securities in the existing contracts in form of bank guarantee may be permitted by Procuring Entity to be replaced by the contractors to Insurance Surety Bonds or e-Bank Guarantee. Adequate safeguards such as such requiring prior submission of new forms of security before releasing the original forms of security shall be ensured. (For further details on Insurance Surety Bond and e-bank guarantee, please refer to para 6.1.3 and 6.1.4 of Manual for Procurement of Goods, 2024)

5. Submission of Performance Security may not be insisted upon in lower valued contracts (say upto Rupees 50 (Fifty) lakh).

6. Procuring Entity may exempt Govt. Ministries, Departments, Attached and Subordinate Offices, Autonomous bodies (on their specific requests or otherwise) from submission of Performance Security[68].

7. Performance Security is to be furnished by a specified date (generally 14 (fourteen) to 28 (twenty-eight) days after notification of the award, depending on the amount) and it should remain valid for a period of 60 (sixty, or any other period mentioned in the tender Documents) days beyond the date of completion of all contractual obligations of the contractor, including warranty obligations.

8. The performance security will be forfeited and credited to the procuring entity's account in the event of a breach of contract by the contractor. It should be refunded to the contractor without interest, after he duly performs and completes the contract in all respects but not later than 60 (sixty) days of completion of all such obligations including the warranty under the contract. Return of Bid/ Performance Securities should be monitored by the senior officers and delays should be avoided. If feasible, the details of these securities may be listed in the e-Procurement Portal/ website of the Procuring entity, to make the process transparent and visible.

9. In the case of service contracts spanning over multiple number of the years, care needs to be taken to decide on the amount of performance security being sought along with the duration. It has been observed that procuring entities retain the performance security over the complete service contract period which may be of 5-7 years or may be more. This practice puts the service provider in a difficult situation as they have to block a substantial amount of their working capital as security for the entire duration of the contract. In such cases the following is suggested:

a) The right quantum of performance security has to strike a balance between protecting the procuring entity's interest in case of default in performance vs. avoiding increase in tendered price and /or reduced competition. If the security is low, the procuring entity may be adversely affected if and when default occurs. If it is high, the extra financial cost of furnishing such security will be factored in by bidders when quoting prices & hence the cost may increase.

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

[68] There is no bar from taking Performance Security from CPSEs

b) Sufficient flexibility is already available in the GFR to design the performance security for procurement of services, both value and duration, duly considering the market conditions and commercial practice for the particular kind of service.
c) Procuring entities may consider to proportionately keep reducing performance security in proportion to the balance service period, wherever feasible. Wherever, it is decided to take lower or proportionally reducing PS, tender conditions may be suitably modified for the future cases.

6.1.3 Verification of Bank Guarantees

1. Bank guarantees submitted by the bidders/ suppliers/ consultants/ service providers as EMD/ performance securities need to be immediately verified from the issuing bank before acceptance. There may not be any need to get the Bank Guarantee vetted from legal/ finance authority if it is in the specified format. Guidelines for verification of BGs submitted by the bidders/ contractors against EMD/ performance security/advance payments and for various other purposes are as follows:

a) BG shall be as per the prescribed formats.
b) The BG contains the name, designation and code number of the Bank officer(s) signing the guarantee(s);
c) The address and other details (including telephone no.) of the controlling officer of the bank are obtained from the branch of the bank issuing the BG (this should be included in all BGs);
d) The confirmation from the issuing branch of the bank is obtained in writing through registered post/speed post/courier/ official email-id of the Bank/ SFMS on the official portal of the procuring entity. The bank should be advised to confirm the issuance of the BGs specifically quoting the letter of Procurement Entity on the printed official letterhead of the bank indicating address and other details (including telephone nos.) of the bank and the name, designation and code number of the officer(s) confirming the issuance of the BG;
e) Pending receipt of confirmation as above, confirmation can also be obtained with the help of responsible officer at the field office, which is close to the issuing branch of the bank, who should personally obtain the confirmation from issuing branch of the bank and forward the confirmation report to the concerned procurement entity.

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

3. Corporate Guarantee or Indemnity Bond shall not be accepted for Bid Security (EMD) or performance Security, or in lieu of any other Bank Guarantee (e.g., for advance payment/ warranty obligations).

4. Please note the ease with which an e-bank guarantee can be verified. (For further details on e-bank guarantee, please refer to para 6.1.4 of Manual for Procurement of Goods, 2024).

6.1.4 Safe Custody and Monitoring of EMDs, Performance Securities and Other Instruments

1. A suitable mechanism for safe custody and monitoring of EMDs and performance securities and other instruments should be evolved and implemented by each Procuring Entity. The Ministries/ Departments shall also make institutional arrangements for taking all

necessary actions on time for extension or forfeiture/ encashment or refund of EMDs and performance securities, as the case may be.

2. Monitoring should also include a monthly review of all bank guarantees and other instruments expiring in next three months, along with a review of the progress of the corresponding contracts.

3. Extension of bank guarantees and other instruments, where warranted, should be sought immediately and implemented within their validity period. Bank Guarantee should never be handed over to the consultant/ service provider for propose of extension of validity. Such a system of monitoring of securities and other instruments may be computerised with automatic alerts about lapse of validity etc.

6.2 Payment Clause

1. The elements of price included in the quotation of a bidder depend on the nature of the consultancy services to be performed, location of the consultant, location of the user, terms of delivery, extant rules and regulations about taxes, duties, and so on, of the Consultant's country and the buyer's country.

2. It is, therefore, necessary that, to enable the bidders to frame their quotations properly in a meaningful manner, the tender documents should clearly specify the desired terms of delivery and also the duties and responsibilities to be performed by the consultant in addition to supply of services.

3. **Elements of Price:** Where the price has several components, bidders should be asked to furnish a cost break-up indicating the applicable prices and taxes for each of such components along with the overall price. The payment schedule and terms will be linked to this cost break-up; and

4. **Currency:** The tender documents are to specify the currency (currencies) in which the tenders are to be priced. As a general rule, domestic bidders are to quote and accept their payment in Indian currency; Indian agents of foreign consultants/ service providers are to receive their agency commission in Indian currency; costs of imported services , which are directly imported against the contract, may be quoted in foreign currency (currencies) and paid accordingly in that currency; and the portion of the services , which are to be undertaken in India, are to be quoted and paid in Indian currency.

6.3 Terms of Payment

1. The usual payment term is 100 (hundred) per cent on receipt and acceptance of deliverables by the procuring entity and on production of all required documents by the Consultant.

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

3. **Modes of Payment:**

a) Procuring Entities should make payments through the Electronic Clearance System (ECS), e.g., Real-Time Gross Settlement systems (RTGS), National Electronic Funds Transfer (NEFT) or Electronic Payment Gateways. As per RBI guidelines, the ECS

mandate in RBI's format may be obtained at the time of consultant registration and in the tender document. The Format is available with all Banks.

b) However, if ECS payments are not feasible, payments may be made in exceptional circumstances by cheque/demand draft drawn on a Government treasury or branch of RBI or any Scheduled Bank authorised by RBI for transacting Government business.

c) Trade Receivables Discounting System (TReDS) is an electronic platform for facilitating the financing / discounting of trade receivables of Micro, Small and Medium Enterprises (MSMEs) through multiple financiers. These receivables can be due from corporates and other buyers, including Government Departments and Public Sector Undertakings (PSUs). Payments can also be made through this platform to MSE suppliers/ consultants.

6.4 Advance Payment

6.4.1 Conditions for Advance Payments

1. **Conditions**: As per Rule 172 (1) of General Financial Rules (GFR) 2017, ordinarily, payments for services rendered should be released only after the services have been rendered. However, in exceptional situations where substantial funds are to be sunk by the contractor before payment becomes due, considering the lower cost of funds for the Government entity as compared to the higher cost of funds for the bidder, advance payment with safeguards (BG) may be considered.

2. **Quantum**: The quantum of such advance payments should not exceed the quantum of funds to be sunk by the contractor before payment becomes due in the contract. The quantum of advance payments should not generally exceed the following limits:

a) Thirty per cent of the contract value to private firms;

b) Forty per cent of the contract value to a state or central Government agency or PSE;

c) In the case of the maintenance contract, the amount should not exceed the amount payable for six months under the contract.

d) In exceptional cases, the competent authority may relax the ceilings mentioned above with prior concurrence of the Associated/Integrated Finance.

3. **Interest-free:** Since the provision of advance payment leverages the difference in interest rate as argued in sub-para 1) above and considering the additional cost of Bank Guarantee for advances for the bidder, interest-free advance payments may be considered with the approval of competent authority and finance concurrence. Where an interest-free advance is permitted, a clause in the tender enquiry and the contract may be stipulated that if the contract is terminated due to default of the contractor, the advance payment would be deemed as an interest-bearing advance at the interest rate (e.g., the interest rate of the General Provident Fund – GPF) prevailing on the date of release of advance payment, plus 2% to be compounded quarterly. In appropriate cases, the competent authority may stipulate advance payments with suitable interest rates (e.g., the interest rate of the General Provident Fund – GPF) to be recovered along with the instalments of recovery of advance payment.

4. **Instalments**: The advance payment should not be made in less than two instalments, as per the expected infusion of funds required in the contract, except in exceptional circumstances for the reasons to be recorded. This will keep a check on contractor misutilisation of full advance when the contract is delayed considerably.

5. **Recovery**: Advance payments, especially interest-free advances, should be recovered (from either running bills or from the Performance/ Advance payment Bank Guarantees) in instalments linked to milestones or specified periods, whichever is earlier. This would ensure that even if the contractor is not executing the assignment or executing it at a slow pace, recovery of advance could commence, and the scope for misuse of such advance could be reduced.

6. **Bank Guarantee**: While making any advance payment as above, adequate safeguards in the form of a bank guarantee (or e-Bank Guarantee of at least 110% of advance) should be obtained from the firm. In case the advances are to be paid/ recovered in instalments, an equal number of part BGs (with proportionate amount and validity) may be taken instead of lumpsum BG, with each BG released after a related recovery is made. An Indemnity Bond is not to be considered in place of a Bank Guarantee. However, no Bank Guarantee should be insisted in case advance is being given to Central Ministry/ Department, there attached/ subordinate offices or the Autonomous Bodies attached with them. The BG may also not be taken, wherever a contract has been placed on a CPSE on nomination basis.

7. Milestone/ stage payments or part payments against the deliverables should not be considered as advance payments for the purpose of this para, as these payments are made after the sinking of funds by the contractor for achieving these milestones/ stage. These should be provisioned in the tender document/ contract, including Bank Guarantee to be taken, if any, in case of milestone/ stage payments. (Rule 172(2) GFR 2017)

8. Provision of advance payment should be anticipated at the procurement planning stage. The quantum of Advance payment and related conditions should be declared in the Tender Documents, with the approval of competent authority and concurrence of associated/ integrated finance. If not so declared, the condition of advance payment for a particular bid should not be agreed to.

6.4.2 Documents for Advance Payments

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

6.5 Firm Price, and Variable Price

1. **Fixed price:** Short-term contracts where the delivery period does not extend beyond 12 (twelve) months should normally be concluded with a firm and price fixed by inviting tenders accordingly.

2. **Variable Price:**

a) In tenders with deliveries longer than 12 (twelve) months, a Price Variation Clause (PVC) may be provided to protect the purchaser's interests, particularly for high-value (more than Rupees three crore) procurements. However, even for shorter deliveries or lower value, the PVC may be stipulated for items with inputs (raw material, labour, etc.) prone to short-term price volatility - especially for critical or high-value items/ services – otherwise, there is a possibility of the contract failing or the purchaser having to pay a higher price if market prices fall.

b) Where it is decided to conclude the contract with a variable price, an appropriate clause incorporating, inter-alia, a suitable price variation formula (to take care of the changes in the input cost of labour, material, and fuel/ power components) should be provided in the tender documents, to calculate the price variation between the base

level and delivery date. It is best to proactively provide our own PVC formula and base dates of indices, 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.

c) The variations are to be calculated periodically (usually quarterly) by using indices published by Governments/ chambers of commerce/London Metal Exchange / any other neutral and fair source of indices. Suitable weights are to be assigned to the applicable elements, that is, fixed overheads and various applicable inputs e.g., material/ fuel/ labour (for which reliable indices are available), in the price variation formula. If the delivery of services needs more than one raw material, the input cost of material may be further sub-divided for various categories of material, for which cost indices are published.

d) **Essential elements of PVC**:

   i) **Base Date & Time Lag**: The price agreed upon should specify the base date, that is, the month and year to which the contract/ bid price is linked, to enable variations to be calculated with reference to the price indices prevailing in that month and year. This base date should be a few weeks/ months (the period is called time-lag) prior to the last date of submission of bids when the last published price indices would be available. Time lag applies both for the base date and delivery date and must be specified in the Tender Documents;

   ii) **Ignorable Variation**: The price variation formula must also stipulate a minimum percentage of variation of the contract price, only above which the price variation will be admissible (for example, where the resultant increase is lower than, say, two per cent of the contract price, no price adjustment will be made in favour of the contractor);

   iii) **Inordinate Variation**: In rare cases, prices may go up to such an extent that it may render the contract unviable for either party, thus frustrating the contract. Therefore, the price variation clause should provide for a ceiling (a percentage per annum or an overall ceiling or both, say 20%/ 25% of the original price) on price variations, beyond which the price variation would be capped at this level. As soon as it comes to light that price variations are likely to go beyond this ceiling, and if the Contractor is not agreeable to the price variation being capped at that level, he may notify the Purchaser under ‘Frustration of Contract’ provisions in the Tender Document/ Clause, for short-closing the contract. (Refer para 10.8.5). However, if the short closing is not in the interest of the procuring entity, the competent authority, with the concurrence of associated/ integrated finance, may allow the continuation of the contract by relaxing/ removing the cap on the price variation.

   iv) Where advance or stage payments are made, there should be a further stipulation that no price variations will be admissible on such portions of the price after the dates of such payment;

   v) Where deliveries are accepted beyond the scheduled delivery date subject to levy of liquidated damages as provided in the contract. The LD (if a percentage of the price) will be recoverable on the price as varied by the operation of the PVC;

   vi) No upward price variation will be admissible beyond the originally scheduled delivery date for defaults on the part of the contractor (e.g., when an extension

of the delivery date is with denial clause). However, the purchaser would avail a downward price variation as per the denial clause in the letter of extension of the delivery period;

vii) Price variation may be allowed beyond the originally scheduled delivery date in case of refixation of delivery date (which is treated like original delivery period – refer para 10.4.2-2 and 10.4.4) through an amendment to the contract in cases of delays attributable to force majeure or defaults by the procuring entity;

viii) The clause should also contain the mode and terms of payment of the price variation admissible.

ix) The buyer should ensure a provision in the contract for the benefit of any reduction in the price in terms of the PVC being passe

x) An illustrative PVC clause is available in Annexure 16.

6.6 Statutory Taxes/ Duties/ Levies

6.6.1 Goods and Services Tax (GST)

1. **GST Registration Status and GSTIN** (15-digit registration number):

a) All the bidders/ Bidders should ensure that they are GST compliant and that their quoted tax structure/ rates are as per the GST Act/ Rules.

b) Bidder should be registered under GST and furnish their GSTIN number and GST Registration Certificate in their offer unless they are specifically exempted from registration under a specific notification/ circular/ section/ rule issued by statutory authorities.

c) If the bidder has multiple business verticals in a state and has separate registrations for each vertical, the GSTIN of each vertical concerned with the supply and service involved, as per the scope of the Schedule of Requirements and Price Schedule shall be quoted.

d) If the supply/ service is from multiple states, the bidder should mention GST registration numbers for each state separately.

e) **Composition scheme:** If the Bidder has opted for a composition levy under Section 10 of CGST, he should declare the fact while bidding along with GSTIN and GST registration certificate.

f) **Exemption from Registration:** If a bidder is not liable to take GST registration, i.e., having turnover below threshold, he shall submit undertaking/ indemnification against tax liability. The bidder claiming exemption in this respect shall submit a valid certificate from a practising Chartered Accountant (CA)/ Cost Accountant with the Unique Document Identification Number (UDIN) to the effect that the bidder fulfils all conditions prescribed in notification exempting him from registration. Such bidder/ dealer shall not charge any GST and/ or GST Cess in the bill/ invoice. In such case, applicable GST shall be deposited under Reverse Charge Mechanism (RCM) or otherwise as per GST Act by the Procuring Entity directly to concerned authorities. Bidder should note that his offer would be loaded with the payable GST under the RCM. Further, the bidder should notify and submit to the Procuring Entity within 15 days of becoming liable for registration under GST.

g) Bidders must also consider the benefits of input tax credit under the GST legislations, as amended from time to time, on Input goods/Capital goods / Input Services while quoting the prices.

h) In their bids, the bidders shall indicate the details of their GST Jurisdictional Assessing Officers (Designation, address, email ID). In case of a contract award, the Purchaser shall immediately forward a copy of the LOA/Purchase Order to the Jurisdictional Assessing Officer mentioned in the bidder's bid.

i) The Procuring Entity's state-wise GSTINs shall be indicated in Tender Documents.

2. **HSN Code and GST Rate:**

a) If provided in the Tender Document, the HSN (Harmonized System of Nomenclature) code for the goods/ services is only indicative. The bidder shall be responsible for ensuring that they quote the correct HSN Code and corresponding GST rate for the goods/ services they offer.

b) As per the GST Act, the bid and contract must show the GST Tax Rates (and GST Cess if applicable) and GST Amount explicitly and separately from the bid/ contract price (exclusive of GST). So, if a Bidder asks for GST (and GST Cess if applicable) to be paid extra, the rate and nature of such applicable taxes should be shown separately. Bidders should quote 'GST' if payable extra on the total basic rate of each cost element and quote GST in '%' inclusive of cess.

c) If the price is stated to include GST, the bidder must declare the current GST rate (and GST Cess, as applicable) included in the price.

d) If GST, other taxes, or duties are not specified, or the column is left blank in the price schedule, it shall be presumed that no such tax/ levy is applicable or payable by the Procuring Entity. No Statutory Variation in GST shall be paid in such a case.

3. **Refund from Consultant**: Sometimes, the consultant, after claiming and receiving reimbursements for GST, from the purchaser, applies to the concerned authorities for refunds, on genuine grounds, of certain portions of such duties and taxes paid by it and receives the allowable refunds. Such refunds contain the purchaser's share also (out of the payments already made by the purchaser to that consultant). The tender enquiry document and the contract are to contain suitable provisions for obtaining such refunds from the consultant.

a) Alternatively, a certificate may be taken from the consultant that the consultant has submitted the bill considering future refunds/ credits/ adjustments.

4. **Statutory Duties/ Taxes/ Levies that are to be borne by the bidder:**

Following Statutory Duties/ Taxes/ Levies are to be entirely borne by the bidder, including any statutory variations thereon and the Procuring Entity would not be responsible for these:

a) **Personal and Corporate Tax:** Bidder shall bear all Personal/ Corporate taxes imposed on owners/ company/ Joint Venture/Subcontractors or their employees.

b) **Taxes on Sub-Contractors**, **Vendors:** Bidder shall bear all taxes, including GST, as may be imposed on Contractor or supply-chain (sub-Contractors, Vendors, etc.).

c) **Duties/ Taxes on Raw Materials:** The Procuring Entity is not liable for any claim from the contractor on account of fresh imposition and/ or increase (including statutory increase) of GST, customs duty, or other duties on raw materials and/ or components used directly in the delivery of the contracted services taking place during the pendency of the contract unless such liability is expressly agreed to in terms of the contract.

6.6.2 Deduction of Income Tax, etc., from Payments

If applicable under relevant tax laws and rules, the Procuring Entity shall deduct from all payments and deposit required taxes to respective authorities as per para 10.5.3-2) below.

6.6.3 Statutory Variation Clause:

Unless otherwise stated in the contract, statutory variation in applicable GST rate, only during the period from the date of submission of the tender to the date of acceptance of the tender (that is, placement of the contract) and during the original/ re-fixed delivery period of the contract shall be borne by the Procuring Entity. The benefit of any reduction in the GST rate must be passed on to the Procuring Entity during the original and extended delivery period. However, GST rate amendments shall be considered for the quoted HSN code only, against documentary evidence, provided such an increase in GST rates is after the tender submission date. However, the Statutory Variation shall not be applicable for any misquotation of the HSN number or incorrect GST rate by the bidder.

(Note: Re-fixed delivery period means the fresh delivery period, which is arrived at by recasting the original contractual delivery period after taking care of the lost period, for which the consultant was not responsible. Refer to para 10.4.2-2)

6.7 Recovery of Public Money from Consultant's Bill

Sometimes, requests are received from a different Ministry/ Department for withholding some payment of a consultant out of the payment or Securities due to it against a contract. Such requests are to be examined by the Procuring Entity (which has received the request) on the merits of the case for further action. It will, however, be the responsibility of the Ministry/Department asking for withholding of payment to defend the Government against any legal procedure arising out of such withholding as also for payment of any interest thereof.

6.8 Payment against Time Barred Claims

Ordinarily, all claims against the Government are time barred after a period of three years calculated from the date when the payment falls due unless the payment claim has been under correspondence. However, the limitation is saved if there is an admission of liability to pay, and fresh period of limitation starts from the time such admission is made. The drill to be followed while dealing with time barred claims will be decided by the Procuring Entity concerned in consultation with the paying authority. The paying authority is to ensure that no payment against such time barred claim is made till a decision has been taken in this regard by the CA.

Chapter 7: Shortlisting of Consultants, Expression of Interest (EoI)

7.1 Basic Considerations

1. Due to inherent complexities of evaluation of physically non-measurable scope and quality standards of consultancy proposals, it is too time consuming and expensive for the Procuring Entity to invite (as well for the Consultancy firms to prepare) and evaluate proposals from all consultants who want to compete. Therefore. in Procurement of Consultancy, is done in a two-stage process.

2. In the first stage of procurement, the qualified firms with requisite experience, technical and financial capabilities, who can be trusted to deliver the required services at the desired level of quality, are shortlisted transparently. This shortlisting is done through Expression of Interest (EoI) process. Care should be taken to avoid stipulation of shortlisting qualification criteria disproportionate to the requirement of the services that may lead to restricted shortlist and lack of competition in the second stage. Adequate time should be allowed for getting responses from interested consultants. The Procuring Entity shall make available copies of the EoI document to the interested consultants in on its website and e-Procurement portal (GeM/ CPPP).

3. In the second stage Request for Proposals (RfP), proposals containing Technical and Financial Bids is invited from such shortlisted bidders. Selection of winning bidder is based on the quality of the proposal and, where appropriate, on the cost of services to be provided.

7.2 Modes of EoI

1. **Open Tender Enquiry (OTE):** (Rule 183 (ii) of GFR 2017, please refer to para 4.2 of the ‘Manual for Procurement of Goods, 2024’ for details) For procurement above Rs 50 (Rupees Fifty) Lakhs shortlisting is done in an openly advertised competitive (OTE mode) shortlisting process called Expression of Interest (EoI), giving equal opportunity to all interested bidders to be considered for shortlisting. Under EoI the "Request for Expression of Interest" (REoI) is advertised on Central Public Procurement Portal (CPPP) at www.eprocure.gov.in and on Government e-Marketplace (GeM). An organisation having its own website should also publish all its advertised tender enquiries on the website. The advertisements for invitation of tenders should give the complete web address from where the bidding documents can be downloaded. A complete ToR should be ready before requesting EoI. Attention of known reputed consultants may also be separately drawn wherever possible. The advertisement must include, among other things, the last date of submission of EoI, how to get/ download copy of the EoI document including ToR, contact information of the Procuring Entity with the name of contact person, and so on.

2. **Global Tender Enquiry (GTE):** In case it is felt that likely consultants may not be available in India, the EoI process may be done on Global Tender Enquiry (GTE) process, by sending REoI notice to foreign embassies in India and Indian embassies in relevant countries. Please see further details of GTE and also restriction on GTE for tenders below Rs. 200 Crore, in para 4.3 of ‘Manual for Procurement of Goods, 2024’.

3. **Limited Tender Enquiry (LTE):** *(Rule 183 (i) of GFR 2017,* please refer to para 4.4 of the Manual for Procurement of Goods, 2024 for details*)* In procurements of consultancy

services below Rs 50 (Rupees Fifty) Lakhs, shortlisting is done without a formal published Expression of Interest (EoI), akin to a Limited Tender Enquiry (LTE) process. To start with, the preparation of a long list of potential consultants may be done on the basis of formal or informal enquiries from other Ministries or Departments or Organisations involved in similar activities, Chambers of Commerce & Industry, Association of consultancy firms etc. The Procuring Entity should scrutinise the preliminary long list of likely contractors as identified above and shortlist the prima facie eligible and capable contractors from the long list. The number of consultants in this moderated long-list should not be less than three. In case sufficient consultants cannot be located, then the responses may be called from lesser number of consultants, but not less than three in any case, after taking CA's approval. To smoothen this shortlisting of consultants for projects below Rs 50 (Rupees Fifty) Lakhs, Procuring entities who do frequent procurement of consultancy services, may consider preparation of a Panel of qualified consultants (please refer to para 3.7 above), after evaluation of their credentials, on the lines of registration of vendors in procurement of goods. If the complexity of the project so justifies, a formal EoI may be advertised as in above, even for procurements below Rs 50 (Rupees Fifty) Lakhs, with the approval of CA.

4. **Special Limited Tender (SLTE):** LTE mode for EoI, even for values higher than Rs. 50 lakh (Rupees Fifty Lakh) (Rule 162 of GFR 2017, please refer to para 4.5 of the Manual for Procurement of Goods, 2024 for details), where normally OTE should have been done, is permissible in certain exceptional circumstances as follows. Powers to sanction procurement on LTE basis in such exceptional cases may be laid down in SoPP based on a certificate of urgency signed by the indentor. This mode has the merit of being quicker, but VfM obtained may be less than in case of OTE; hence it should be restricted to following situations.:

d) The competent authority in the Ministry / Department certifies that there is an existing or prospective urgency for operational or technical requirements and any additional expenditure involved by not procuring through advertised tender enquiry is justified in view of urgency. The Ministry/Department should also put on record the nature of the urgency and reasons why the procurement could not be anticipated earlier.
e) The sources of supply are definitely known and possibility of fresh source(s) beyond those being tapped is remote.
f) There are sufficient reasons, to be recorded in writing by the competent authority, indicating that it will not be in public interest to procure the services through advertised tender enquiry.
g) Government policy designates procurement from specific agencies.

7.3 Evaluation of REoI

7.3.1 General Norms of Evaluation

For role of the evaluation committee, general norms of evaluation, preliminary examination of bids, evaluation of qualifications, please refer to the paras 8.1, 8.2, 8.3 and 8.4 of chapter 8, which shall apply mutatis mutandis. For sake of brevity these are not repeated here.

7.3.2 Evaluation of Responsiveness and Eligibility

1. Only substantively responsive EOIs shall be evaluated for shortlisting. A substantively responsive EOI is complete and conforms to the REOI document’s essential terms and conditions.

2. The procuring entity shall determine, to its satisfaction, whether the Consultants are eligible as per laid down eligibility criteria to participate in the REOI process. The eligibility

evaluation shall be on a “pass” or “fail” basis. A Consultant must achieve a “pass” on all the criteria to proceed to the next step. Any Consultant not achieving a ‘pass' in any of the eligibility criteria shall be rejected as nonresponsive.

7.3.3 Evaluation of Qualification

1. Procuring entity shall determine whether the Consultants are qualified and capable in all respects to be shortlisted to provide the ‘Services’. The Procuring Entity shall evaluate the consultants for shortlisting, inter-alia, based on their past experience of handling general and similar consultancy assignments, and financial capability of the firm.

2. The determination shall not consider the qualifications of other firms, such as the consultant's subsidiaries, parent entities, affiliates, or any other entity different from the consultant. Assignments completed by the Consultant’s individual experts working privately or through other consulting firms cannot be claimed as the relevant experience of the Consultant or that of the Consultant’s partners or sub-consultants.

3. The Procuring Entity reserves the right to waive minor deviations in the qualification criteria if they do not materially affect the capability of a Consultant to perform the contract.

4. The qualification and Experience of Key Experts are not included in the shortlisting criteria but shall be evaluated at the RFP stage. Since the bidders who meet the REoI qualification, can well manage to attract right Key experts during RfP.

5. In case a particular certification/ licence is required to perform the assignment, that may also be included in eligibility or qualification criteria.

6. Each criterion may be sub-divided into sub-criteria, if called for. Table 2 below gives an indicative criterion. The criteria and their weightage may be changed as per the need of Procuring Entity.

Table 2. Suggested Qualification criteria and their weightages

Criteria/ Sub-criteria	Suggested Values	Sub-criteria	Criteria
Criteria 1 General and Similar Experience: Bidders providing Consultancy services for at least the specified period and have completed the specified volume of general and similar consultancy assignments during the specified period.			70%
Similar assignments	Define based on value, general and specific sector of work, region, Key activities/ methodologies/ technologies etc.		
Consultants must have at least **α** years' experience in Consultancy Services	***α*** = *7*	*20%*	
During the last **α** years, Consultancy Assignments completed or substantially completed (at least **γ** payments received) should be at least ***β***	**α** = *7* **γ** = *80%* ***β*** = *7*	*50%*	
Out of the Consultancy Assignments mentioned above, **δ** should be similar assignments	**δ** = *2*	30%	

Criteria/ Sub-criteria	Suggested Values	Sub-criteria	Criteria
Criteria 2 - Financial Capability: Overall financial strength of the consultant in terms of turnover, profitability, and cash flow (liquid assets) situation			30%
Turnover: Minimum average annual turnover of at least Rs. **θ** Crores, at least **κ** of which should be from Consultancy Service Contracts, (total payments received for contracts in progress or completed) within the last α years	***θ** = 200% of the value of assignment* ***κ** = 50%* ***α** = 7*	70%	
Financial Viability - Net Worth: The Net Worth of Bidder firm should not be negative on 'The Relevant Date' and should not have eroded by more than **ξ** in the last 3 years.	***ξ** = 30%*	30%	
Relaxation for Start-ups: Qualification criteria can be relaxed upto ***λ*** % for startups subject to meeting the quality and technical specifications during the RFP. (Please refer to paras 1.10.1-4-b), 5.2.2-6-d) and 1.10.4-2-b))	***λ** = [20% (twenty percent)]*		
Note: During RFP Process Consultant shall be asked to furnish documentary evidence to demonstrate his compliance to Criteria 1 and Criteria 2. *Relevant Date when the specified period ends for different criteria shall be:* *1) For all annual reports, periods mentioned are ending with the financial year of the company [say 2023-24].* *2) For other statements, latest statement available on the last date of bid submission.*			

7. Qualification Criteria shall be based entirely upon the capability and resources required to perform the particular contract satisfactorily, considering bidders' experience and past performance, capabilities with respect to personnel, equipment and manufacturing facilities, financial standing and relevant compliance with environmental protection regulations/ Environment Management System. There should be no qualification criteria that would be advantageous to foreign consultants at the cost of domestically provided consultancy.

8. **Qualification of demerged entities**[69] **(by virtue of a corporate restructuring exercise etc.)**: Tender documents must clearly mention if (and under what conditions) the demerged entity will be permitted to use credentials of original/parent entity (for initial five years from the incorporation of the demerged entities) to satisfy the qualification criteria or not (Refer para 5.2.2-6-d).

9. It is also noted that while shortlisting/ selecting consultants, some procuring entities are keeping the minimum qualifying financial turnover at the level of 5-10 times of the estimated cost of the consultancy work. This, prima facie, appears high. Higher qualification criteria increase the likelihood of adequate experience/ capacity but reduce the competition; if

[69] As per DoE's OM No. No. F .8/78/2023-PPD dated 12.10.2023, in suitable cases procuring entity may consider the credentials based on the merit and circumstances of the cases like type of procurement, nature of demerger, number of eligible bidders available etc.

set unduly high they may increase the cost without any improvement in quality. It is suggested that the criteria should be fixed on a reasonable basis while drafting tender documents and such higher minimum qualifying turnover should be kept only, if adequately justified[70]. In higher value procurements, the minimum annual turnover should not be blindly a multiplier of the assignment value, but there may be an upper cap on demanded turnover, so as not to restrict competition only to the big four or five Consultancy Firms.

10. In EoI, simplified evaluation criteria should be used, instead of marking schemes. A fail-pass, minimum benchmark in each criteria/ sub-criteria can be specified e.g., must have past experience of at least two similar projects; firm must have a turnover of at least Rs 10 (Rupees Ten) Crores and so on. Any firm which passes these benchmarks is declared as qualified.

11. However, in complex situation, marks/ scores may be assigned to the response of each consultant based on weightages assigned to each of the criteria in the EoI. For example, in case of number of assignments in last 7 years, out of maximum 35 marks for the sub-criteria, scoring can be

a) 3 marks per assignment upto 7 assignments (benchmark); and
b) 3.5 marks for additional assignments, subject to maximum of 35.

12. This exercise of scoring is not merely for disqualification of firms below a threshold, but to establish the relative strengths and weaknesses of the applicants, in order to arrive at a robust short list of qualified consultants who have the required experience and qualifications to deliver the required services at the desired level of quality. Please refer to para 8.4.3 also.

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

7.3.4 The EoI Evaluation Report

1. The short list of firms is required for the selection of consultancy services in a competitive process with a minimum of three (*Rule 184 of GFR 2017*) and generally not more than eight (to avoid inordinate delays in evaluation of subsequent RfP). If there are a larger number of consultants meeting the evaluation criteria, the shortlist shall be restricted to a specified number of Consultants (if not specified, eight (8) consultants) based on higher Average Turnover (or any other criteria, if so, stipulated therein).

2. The short list may comprise only national consultants (firms registered or incorporated in the country and having registered office in India), for small assignments and indicated in the EoI. This situation is applicable where qualified national firms are available at a competitive cost or if the nature of the assignment is such that a foreign consultant's inclusion is not justified (for example, a training or outreach to be carried out in local language) or if foreign consultants have not expressed any interest.

3. 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.

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

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

7.3.5 Declaration of Shortlist and issue of RfP:

1. EOIs of Consultants that succeed in the above evaluation shall be shortlisted. Provisionally shortlisted consultants will be informed of the condition(s) that must be met before submitting their Proposal in the RFP process.

2. Only shortlisted (including provisionally shortlisted) Consultants shall be invited to participate in the following RFP process. Such shortlisting shall remain valid for a period specified in the REoI (six months from the date of declaration, if not so specified). It's important that the RfP is issued as early as possible after shortlisting, since the qualification data on which shortlisting based, may tend to become outdated. In case such delay is more than 6 months, it would be better to reinvite EoI.

3. After the EoI Evaluation report is accepted by the competent authority, the name and address of the shortlisted consultant (s) shall be published in the portal and notice board/ bulletin/website of the Procuring Entity. All Consultants shall be advised about shortlisting of their EOIs or otherwise without disclosing the comparative position of their EOIs with that of others. Shortlisted Consultants must not advertise or publish the same in any form without the prior written consent of the Procuring Entity.

4. Shortlisting a consultant is an administrative process and does not confer any legal or contractual rights on the shortlisted bidder. Since original documents/ certificates are not being called for and examined at this stage, all shortlisted shall be conditional upon final verification of such documents/ certificates during the RFP Process.

7.4 Shortlisting – Risks and Mitigation

Risks	Mitigation
1. **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 in specified formats both at the EoI bid stage as also in the technical proposal (and by CEC members before undertaking the evaluation of proposals).
2. **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.

Chapter 8: RfP Evaluation and Award of Contract

8.1 Bid Evaluation Process

8.1.1 Importance of Evaluation of Bids

The evaluation of tenders is one of the most significant areas of purchase management and the process must be transparent. All tenders are to be evaluated strictly based on the terms and conditions incorporated in the tender document and those stipulated by the bidders in their tenders. The Contracting Authority may include in the evaluation criteria in the Tender Document, quality, price, technical merit, aesthetic and functional characteristics, environmental characteristics, running costs, cost- effectiveness, after-sales service and technical assistance, delivery date and delivery period or period of completion etc. No criteria shall be used for evaluation of tenders that cannot be verified. No hearsay information or hitherto undeclared condition should be brought in while evaluating the tenders. Care should be taken that no tender enquiry condition (especially the significant/essential ones) should be overlooked/ relaxed while evaluating the tenders. The aim should be to ensure that no bidder gets undue advantage at the cost of other bidders and/or at the cost of Procuring Entity. The process of tender evaluation process is described in the subsequent paras in this chapter.

8.1.2 Evaluation in Different Tendering Systems

1. In case of single stage single envelop tendering, the evaluation of qualification of bidders, technical, commercial, and financial aspect is done simultaneously. The techno-commercially successful bid that meets the financial evaluation criteria laid down in the tender documents is declared as successful.

2. In single stage two envelops, initially only the techno-commercial bids would be opened and evaluated for bids which successfully meet the qualification criteria and techno-commercial aspects. Financial bids of such successful bidders only would be opened for selecting the L1 bidder among these and in case of manual tenders, financial bids of unsuccessful bidders would be returned unopened to them. In two stage bids, the PQB/ EoI stage would have already been evaluated as detailed in Chapter 4 and this second stage is for evaluation of responses to the Second Stage two envelops from the shortlisted qualified bidders. Evaluation of techno-commercial and financial aspects are, however, discussed separately below. It is of utmost importance that the authenticity, integrity, and sanctity of unopened Financial Bids must be ensured before their opening. All the financial bids may preferably be put in a large envelop, which may be dated, sealed, and signed (including by some of the bidders present), to show that none of the bids were accessed during the custody.

3. In procurement of Consultancy Services, bids would have already been evaluated as detailed in Chapter 7 and this RfP stage is for evaluation of responses of two envelops from the shortlisted qualified bidders, following procedure described in sub-para 2) above.

8.1.3 Preparation and Vetting of Comparative Statement

Except in cases upto Rs 50 Lakh (Rupees Fifty Lakh) the Procuring Entity should prepare a comparative statement of quotations (Technical and Financial) received in the order in which tenders were opened. In case of Techno-Commercial bid comparative statement will have information about deciding responsiveness and eligibility of bids and evaluation of Technical suitability of offers. In case of Financial bid, it would have information about rates quoted (including taxes or otherwise), discount, if any, and any other information having implications on ranking of bids etc. The comparative statement so prepared should be signed by the

concerned officers. It may also be vetted by the associated/ integrated Finance for veracity of information, however in case the comparative statement is prepared by the eProcurement portal, vetting by associated/ integrated Finance is not required.

8.1.4 The Stages of Evaluation

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

8.1.5 Contacting Procuring Entity during the evaluation:

From the time of bid submission to awarding the contract, no Bidder shall contact the Procuring Entity on any matter relating to the submitted bid. If a Bidder needs to contact the Procuring Entity for any reason relating to this tender and/ or its bid, it should do so only in writing or electronically. Any effort by a Bidder to influence the Procuring Entity during the processing of bids, evaluation, bid comparison or award decisions shall be construed as a violation of the Code of Integrity, and bid shall be liable to be rejected as nonresponsive in addition to other punitive actions for violation of Code of Integrity as per the Tender Document.

8.2 Composition and Role of Consultancy Evaluation Committee (CEC)

8.2.1 Composition of CEC:

1. For all cases having financial implications of less than Rs. 50 (Rupees Fifty) lakhs the evaluation of the Bids may be entrusted solely and directly by individual competent authority, without involvement of a Consultancy evaluation committee or any evaluation report. He would himself carry out all the steps in evaluation described in this chapter, instead of the CEC and directly records reasons and decision on the file itself. He may ask for a Technical Suitability report from user departments, if so needed.

2. For all cases having financial implications of more than Rs. 50 (Rupees Fifty) lakhs (including SLTE or Nomination Basis), a Consultancy Evaluation Committee (CEC), comprising of normally three members including Financial Adviser or his representative and a representative of the user, shall be constituted as per SoPP, in order to carry out the consultant selection procedure. The CEC should not be very large as it may slow down the evaluation process. However, suitable domain/technical experts may be included in the committee to render assistance in evaluation of the bids.

3. As per Rule 173 (xxii) of GFR 2017 no member of the tender committee (or the accepting authority) should be reporting directly to any other member of such committee in case estimated value of the procurement exceeds Rs. 50 lakhs. Though the GFR stipulates this provision only when the estimated value of procurement exceeds Rs 50 lakh, it is desirable that the same provision should be followed in the constitution of all purchase committees irrespective of the value of procurement.

4. The representative of the Procuring Entity shall work as a convenor of the CEC. He shall distribute the RfP to the CEC members and request them to familiarize themselves with the characteristics and requirements of the assignment, the selection procedures, and the

evaluation criteria and sub-criteria. The convener of the CEC should also call meeting of the CEC members to review any questions they may have on the evaluation principles, procedures, and objectives etc.

5. CMC may be constituted with the approval of one level higher than the competent authority. It is advantageous for organisations doing procurements regularly to have pre-nominated (by designation) CMC and lay down their powers, jurisdiction, composition, and corresponding Competent Authority for various categories of procurement and different threshold values of procurements. Procuring Entity should lay down a Schedule of Procurement Powers (SoPP) detailing such thresholds. It can also lay down the powers, jurisdiction, and composition of various levels of Tender Committee and corresponding Competent Authority for various categories of procurement and different threshold values of procurements. A suggested format for SoPP is in Annexure 2; however, the exact values of thresholds may have to be decided by the Procuring Entity in conformity with DFPR (Annexure 1).

8.2.2 Role of Consultancy Evaluation Committee

1. Member secretary of the CEC (or competent authority, in direct acceptance cases) shall receive the bids opened along with other documents from the tender opening officials and are responsible for safe-custody of the documents and for processing involved at all steps in finalising the Procurement.

2. The CEC shall be responsible for all aspects and stages of the consultant selection, that is, evaluation of EoI, shortlisting of consultants, deciding TORs, issuance of RfP, evaluation of technical and financial proposals, negotiations, and final selection of the consultant. There is no need to constitute any other committee for technical evaluation, preliminary evaluation, etc.

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

4. After the proposals have been opened, the evaluation process can begin. Before starting the evaluation, the CEC members should ensure that they

a) have no conflict of interest;
b) understand the rating and scoring system;
c) have been provided with evaluation worksheets; and
d) Agree on how to evaluate the proposals.

5. Competent Authority (authority competent to approve the procurement of that value as per the SoPP)'s written approval must be taken at various stages of procurement, before proceeding ahead e.g.:

a) Administrative/ financial sanctions/ Issue of tender
b) Approval of Techno commercial evaluation and Opening of price bids in case of two packet system
c) Price Negotiations if permitted under specified circumstances.
d) Approval of Financial Evaluation and Award of contract to the selected bidder(s)
e) Cancellation of Procurement and Re-tendering

f) In some special cases during Contract execution e.g. - exercise of the option clause or any variation beyond the laid down %age; forfeiture/ release of performance securities; premature termination/ foreclosure of Contract etc.

6. Wherever such competent authority is a Minister of the Central Government (or Board of Director in a CPSE), obtaining approvals at so many stages, may delay the process and un-necessarily overburden the onerous tasks of such authorities. Therefore, in such cases their approval may only be taken at the stage of "Approval of Financial Evaluation and Award of contract". At other stages approval may be taken from the officer to whom such powers are delegated by the Minister (or Board of Director, in case of CPSE).

8.2.3 Handling Dissent among Tender Committee

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

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

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

1. Members of the CEC should not have any conflict of interest and should not directly engage in any communication with short-listed firms from the date of their appointment to the date on which the contract is awarded.

2. Information relating to evaluation of tenders and the Tender Committee's (TC's) deliberations should be confidential and not be shared with persons not officially connected with the process, until the award of contract is notified to the successful firm, except that after technical evaluation, the overall technical score shall be informed to all consultants for each criterion or sub-criterion, if any, as required in the Tender document. Under no circumstances, Tender file or confidential information contained therein shall be provided for scrutiny or for decision to any person/ office who are not involved in decision making.

3. All technical, commercial and finance officials who have contributed to the techno-commercial or financial evaluation of bids, even though they may not be part of the CEC should deal with the procurement in an independent, impartial manner and should have no conflict of interest with any of the bidder involved in the procurement. They should also maintain confidentiality of the information processed during the evaluation process and not allow it to reach any unauthorised person. They should sign a declaration at the end of their reports/notings stating that, "I declare that I have no conflict of interest with any of the bidder in this tender." CEC members may also make such a declaration at the end of their reports.

4. During the processing of the tender, all references/grievances/ complaints/ directives/ request for information from any sources including higher level officials/ authorities within the Ministry or from outside may be forwarded to the CEC/Convener of CEC for its examination

on merits and action as considered necessary, maintaining independence, impartiality, confidentiality and 'No Conflict of Interest.' An interim reply may be provided that the Tender is still under consideration and that final response would be given after the declaration of the award of contract.

8.2.5 Timely Processing of Tenders:

1. Delays in finalising procurement deprive the public of the intended benefits and results in lost revenues and cost over-run. To enable timely decision making, complete Time schedule of finalising the Tender process from the date of issuing the tender to date of issuing the contract, should be published in the Tender Documents. Every official in the chain of the procurement operation is accountable for acting in a specified time so that the tender is finalised on time. Any deviation from the schedule may be monitored and explained, by way of system of Management Reporting (Appendix 4 and 5 of 'Manual for Procurement of Goods, 2024'). As a check, the proposed schedule of tender process may be printed on the inside cover of the Procurement File, where actual date of completion of various stages may be recorded. The suggestive time schedule in Table 3 is a guideline for finalising contracts against various modes of procurements.

Table 3. Indicative time schedule

	Mode of Procurement	**Indigenous**	**Imported**
1	Open tender/ (e-tendering)	45 days	60 days
2	Procurement through registered vendors/ (Special) limited tenders	30 days	45 days
3	Proprietary basis/nomination basis	21days	30 days

2. This time schedule is only indicative, and the schedule shall be subject to change based on the nature of requirements, sourcing, sample evaluation, site visit/pre-bid meeting with prospective bidders and Government, guidelines, and so on.

8.2.6 Extension of Bid Validity Period

1. The entire process of scrutiny and evaluation of tenders, preparation of ranking statement and notification of award must be done expeditiously and within the original bid validity period (Rule 174 (iii) of GFR 2017).

2. If, however, due to some exceptional and unforeseen reasons, the purchase organisation is unable to decide on the placement of the contract within the original validity period, it may request, preferably before expiry of the original validity period, all the responsive bidders to extend validity of their bids up to a suitable period. They may also be requested to extend the validity of the Bid Security for the corresponding additional period. But the bidders, who agree to extend the validity, are to do so without changing any terms, conditions, and so on, of their original tenders. Reasons for seeking extension of bid validity should be recorded by the procuring officers at the time of taking such decisions. A bidder may not agree to such a request, and this will not entail forfeiture of its Bid Security.

3. In case such a refusal by bidder(s) to extend validity (hereinafter called not-extended bids) or withdrawal of offer within validity as per para 5.5.6 (hereinafter referred as withdrawn bids), happens:

a) before completion of the Techno-commercial evaluation, then the Techno-commercial evaluation (including the not-extended and withdrawn bids) shall be completed. If a not-extended or withdrawn bid qualifies in techno-commercial evaluation, financial bid(s) of such bidders shall also be opened, and action shall be taken as per sub-para below.
b) after the techno-commercial evaluation but before the completion of the financial bid evaluation, then the financial bid evaluation (including not-extended and withdrawn bids) shall be completed.
    i) If a not-extended or withdrawn bid happens to be the L1 bidder (lowest acceptable bidder, who is techno-commercially qualified, and would have been awarded a contract, but for his refusal to extend validity or withdrawal of bid within validity), the tender must be re-tendered.
    ii) Since this may take some time, Procuring Entity may cover their immediate short-term needs through an appropriate mode of procurement.
    iii) However, such L1 price of the not-extended or withdrawn bids shall not be taken as precedence for determining price estimates or reasonableness.
    iv) In certain cases, there may be multiple L1 bidders, for example, in Project Management Consultancy hiring on the basis of fixed service charge. In such cases, where a withdrawn bid also happens to be L1, re-tendering may not be necessary. The procuring entity may continue with tender finalization, proceeding with the remaining L1 bids.
c) In case of QCBS system of evaluation, the proposal obtaining the highest total combined score in evaluation of quality and cost is identified which is ranked as H-1 (please refer to para 8.5.3 for the QCBS evaluation methodology). If a not-extended or withdrawn bid happens to be the H-1 bidder, the tender must be re-tendered.

8.2.7 Consideration of Lack of Competition in OTE/ GTE and LTE [Rule 173 (xx), and (xxi) of GFR 2017]

1. The number of bids received, which can indicate adequate competition, depends on the parameters of procurement (value, specification, mode of procurement, tendering system, etc.) and the market situation. This has to be judged by the CEC. However, less than three independent bids (without suspicion of the cartel) may indicate a lack of competition. CEC must record a paragraph in its report about the adequacy or otherwise of competition in the tender.

2. Sometimes, against advertised/ limited tender cases, the procuring entity may not receive enough bids and/ or after analysing the bids, ends up with only one responsive bid – a situation referred to as 'Single Offer.' As per Rule 173(xxi) of GFR, 2017, such situation of 'Single Offer' is to be treated as Single Tender. 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-tendering has costs: firstly, the actual costs of retendering; 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[71]. Even when

[71] As stated under para 11.8 of OM No.F.1/1/2021-PPD issued by Department of Expenditure dated 20.10.2021.

only one Bid is submitted, the contract can be placed provided 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; and
c) Prices are reasonable in comparison to market values.

3. However, as far as delegation/schedule of procurement powers (SoPP, refer Annexure 2) is concerned, competent authority would be as in Single tender mode. In case of price not being reasonable, negotiations (being L1) or retender may be considered as justifiable.

a) Unsolicited offers against LTEs should be ignored; however, Ministries/Departments should evolve a system by which interested firms can register and bid in next round of tendering.

8.2.8 Recommendations/ Report

1. The CEC must make formal recommendations (Annexure 6) for the award of the contract to the bidder whose bid has been determined to be substantially responsive and the lowest evaluated bid, provided further that the bidder is determined to be qualified to perform the contract satisfactorily and his credentials have been verified. It is a good practice that CEC should spell out salient terms and conditions of the offer(s) recommended for acceptance. It should also be ensured by the CEC that any deviation/variation quoted by the consultant in his bid are not left undiscussed and ruled upon in the CEC; otherwise, there may be delay in acceptance of the contract by the consultant. These recommendations are submitted for approval to the tender accepting authority. Since a nominee of Financial Adviser of the Department is usually a member of the Tender Committee, there is no need for the CA to consult the FA of the Department before accepting the CEC recommendations. In any purchase decision, the responsibility of the CA is not discharged merely by selecting the cheapest offer or accepting CEC recommendations, but ensuring whether:

a) Offers have been invited in accordance with this manual and after following fair and reasonable procedures in prevailing circumstances;
b) He is satisfied that the selected offer will adequately meet the requirement for which it is being procured;
c) The price of the offer is reasonable and consistent with the quality required; and
d) The accepted offer is the most appropriate taking all relevant factors into account in keeping with the standards of financial propriety.

2. After the acceptance of these recommendations by the tender accepting authority, the Letter (Notification) of Award (LoA) can be issued.

8.3 Preliminary and Techno-commercial Evaluation

(Rule 189 of GFR 2017)

8.3.1 Preliminary Examination of Bids - Evaluation of Responsiveness of Bids

1. A substantively responsive bid is complete and conforms to the Tender Document's essential terms, conditions, and requirements, without substantive deviation, reservation, or omission. Only substantively responsive bids shall be considered for further evaluation. Other bids shall be treated as unresponsive and ignored. All bids received shall first be scrutinised to identify unresponsive bids, if any. Some important points based on which a bid may be declared as unresponsive and be ignored during the initial scrutiny are:

a) The bid is not in the prescribed format or is incomplete (i.e., when the required bid formats have not been submitted) or is unsigned (or not signed as per the stipulations in the tender document);
b) The required EMD has not been provided or exemption from EMD is claimed without acceptable proof of exemption;
c) The bidder is not eligible to participate in the bid as per laid down eligibility criteria (example: the tender enquiry condition says that the bidder must be a registered MSE unit, but the bidder is a, say, a large-scale unit);
d) The bid departs from the essential requirements specified in the tender document (for example, the bidder has not agreed to give the required performance security); or
e) Against a schedule in the list of requirements in the tender enquiry, the bidder has not quoted for the entire requirement as specified in that schedule (example: in a schedule, it has been stipulated that the bidder will supply the equipment, install, and commission it and also train the purchaser's operators for operating the equipment. The bidder has, however, quoted only for supply of the equipment).
f) Bidder has quoted conditional bids or more than one bid or alternative bids unless permitted explicitly in the Tender Document.
g) The bid validity is shorter than the required period. However, in case of STE procurement, shorter bid validity may be accepted.
h) Non-submission or submission of illegible scanned copies of stipulated documents/ declarations.
i) The bid has unresolved substantive deviations (please refer to para 8.3.4 below).

8.3.2 Non-conformities between Figures and Words

Sometimes, non-conformities/errors are also observed in responsive tenders between the quoted prices in figures and in words. This situation normally does not arise in case of e-Procurement. This should be taken care of in the manner indicated below:

a) If, in the price structure quoted for the required services, there is discrepancy between the unit price and total price (which is obtained by multiplying the unit price by the quantity), the unit price shall prevail and the total price corrected accordingly;
b) If there is an error in a total corresponding to the addition or subtraction of sub-totals, the sub-totals shall prevail, and the total shall be corrected; and
c) If there is a discrepancy between words and figures, the amount in words shall prevail.
d) Such a discrepancy in an offer should be conveyed to the bidder asking him to respond by a target date and if the bidder does not agree to Procuring Entity’s observation, the tender is liable to be rejected.

8.3.3 Discrepancies between Original and Additional/ Scanned Copies of a Tender:

Normally, as far as feasible, no submission of original documents in physical format (other than Cost of Tender Documents, if any, (refer Para 5.5.1 Availability and Cost of Tender Documents), Bid Security and statutory certificates if any) should be asked for in e-Procurement. In e-Procurement there could be discrepancies between the uploaded scanned copies and the Originals submitted by the bidder. In offline tenders, discrepancies may be observed in responsive tenders between the original copy and other copies of the same tender set. If discrepancies exist between the uploaded scanned or other copies and the originals submitted by the bidder, the original copy's text, etc., shall prevail. Here also, this issue is to be taken up with the bidder in the same manner as above and subsequent actions taken

accordingly. Any substantive discrepancy shall be construed as a violation of the Code of Integrity, and the bid shall be liable to be rejected as nonresponsive in addition to other punitive actions under the Tender Document for violation of the Code of Conduct.

8.3.4 Deviations/ Reservations / Omissions - Substantive or Minor

1. During the evaluation of Bids, the following definitions apply:
   a) "Deviation" is a departure from the requirements specified in the Tender Document;
   b) "Reservation" is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the Tender Document; and
   c) "Omission" is the failure to submit part, or all the information or documentation required in the Tender Document.

2. **Substantive Deviations**: A deviation/ reservation/ omission from the requirements of the Tender Document shall be considered as a substantive deviation as per the following norm, and the rest shall be considered as Minor deviation:
   a) which affects in any substantive way the scope, quality, or performance of the product;
   b) which limits in any substantive way, inconsistent with the Tender Document, the Procuring Entity's rights, or the Bidder's obligations under the contract; or
   c) Whose rectification would unfairly affect the competitive position of other Bidders presenting substantively responsive Bids.

3. The decision of the Procuring Entity shall be final in this regard. Bids with substantive deviations shall be rejected as nonresponsive.

4. Variations and deviations and other offered benefits (techno-commercial or financial) above the scope/ quantum of the services specified in the Tender Document shall not influence evaluation Bids. If the bid is otherwise successful, such benefits shall be availed by the Procuring Entity, and these would become part of the contract.

5. During the preliminary examination, some minor infirmity and/or irregularity and/or non-conformity may also be found in some bids. Such minor issues could be a missing pages/ attachment or illegibility in a submitted document; non-submission of requisite number of copies of a document.

6. **Considering Minor Deviations:** There have been also cases where the bidder submitted the amendment Bank Guarantee but omitted to submit the main portion of the document. The court ruled that this is a minor irregularity. The Procuring Entity reserves the right to accept bids with such minor issues provided they do not constitute any substantive deviation and do not have fiscal impact and, also, do not prejudice or affect the ranking order of the bidders. Wherever necessary, the Procuring Entity shall convey its observation, on such 'minor' issues to Bidder as per para 8.3.5 below. If Bidder does not reply by the specified date or gives an evasive reply without clarifying the point at issue in clear terms, that bid shall be liable to be rejected as nonresponsive.

8.3.5 Clarification of Bids/Shortfall Documents

1. During evaluation and comparison of bids, the purchaser may, at his discretion, ask the bidder for clarifications on the bid, in a consolidated manner, ordinarily not more than once. The request for clarification shall be given in writing by registered/ speed post/ courier/ email/ eProcurement portal (CPPP/ GeM), asking the bidder to respond by a specified date, mentioning therein that, if the bidder does not comply or respond by the date, his tender will be liable to be rejected. Depending on the outcome, such tenders are to be ignored or

considered further. No change in prices or substance of the bid, which may grant any undue advantage to such bidder, shall be sought, offered, or permitted. No post-bid clarification at the initiative of the bidder shall be entertained.

2. The Procuring Entity reserves its right to, but without any obligation to do so, to seek any shortfall information/ documents only in case of historical documents which pre-existed at the time of the Bid Opening, and which have not undergone change since then. Provision may be made by eProcurement portals to allow shortfall documents to be asked for (specifying a target date for submission, as in sub-para above) and taken from any bidders after the technical bid opening. (Example: if the Permanent Account Number, registration with GST has been asked to be submitted and the bidder has not provided them, these documents may be asked for with a target date as above). As far as the submission of documents is concerned regarding qualification criteria, after submission of the tender, only related shortfall documents should be asked for and considered. For example, if the bidder has submitted a supply order without its completion/performance certificate, the certificate can be asked for and considered. However, no new supply order should be asked for to qualify the bidder.

3. Ministries/ Departments/ CPSEs with a significant volume of procurement may develop a data-base of QR data of different bidders to minimize the time taken to ascertain QR compliance. Bidders may also be given viewing rights for its own data. In such case, over and above the documents submitted by the bidder in its bid, the above data-base may also be considered irrespective of the fact whether or not such data/details have been declared by the bidder in its bid.

8.3.6 Evaluation of Eligibility:

Procuring Entity shall determine, to its satisfaction, whether the Bidders are eligible as per the eligibility criteria in the Tender Document to participate in the Tender Process. Tenders that do not meet the required eligibility criteria prescribed shall be rejected as unresponsive.

8.4 Evaluation of the Quality – Technical Proposals

1. Only substantively responsive bids shall be evaluated for further evaluation.

2. Please refer to the paras 8.4.3, 8.4.4 and 8.4.5 below for Rating/ Grading Schemes, Individual/ Joint Review, and mitigation of subjectivity in evaluation of quality by the CEC.

8.4.1 Responsiveness to ToR

CEC shall evaluate each proposal on the basis of its responsiveness to the ToR. Proposals not responding to the ToR fully and properly will be summarily rejected as being non-responsive, before taking up the appraisal of the technical proposal for evaluation of quality. A technical proposal pre-disclosing any material pricing information shall also be rejected.

8.4.2 Criteria and Sub-criteria

1. CEC shall evaluate quality of the technical proposal by awarding marks so as to make the total maximum technical score of 100 (one hundred) for the criteria and sub-criteria for Quality/ Technical Proposals - (a) the consultant's relevant experience for the assignment; (b) the quality of the methodology proposed; (c) the qualifications of the key staff proposed; and (d) capability for transfer of knowledge (if relevant). Each proposal should be judged on its own merits and assigned an absolute - not comparative -grade against predefined criteria and sub-criteria. A comparative evaluation would single out the best proposal on a relative scale, but still could leave the Procuring Entity with a poor proposal.

2. The criteria and weightage to each criterion or sub-criterion would depend on the requirements of each case and may be fixed objectively. A model scheme of maximum/minimum marks in terms of percentage is, however, proposed in Table 4.

Table 4. A model scheme of maximum/minimum marks in terms of percentage

Rated Criteria	Range of Percentage for Score
1.Consultantcy firm's Experience relevant to assignment	5-10%
2. Proposed approach Methodology, work plan, and understanding of requirements	20-50%
3. Qualification and adequacy of experience of Key Staff	30-60%
4.Transfer of Knowledge, if relevant*	0-10%
Overall	100 %

*Note: * If this criterion is not required, the marks can be adjusted against some other criteria. The weight given to the firm's experience can be relatively modest since this criterion has already been considered when short listing the consultant. More weight shall be given to the methodology in the case of more complex assignments (for example, multidisciplinary feasibility or management studies). Evaluation of only the key personnel is recommended. Since key personnel ultimately determine the quality of performance, more weight shall be assigned to this criterion if the proposed assignment is complex. The CEC shall review the qualifications and experience of proposed key personnel in their curricula vitae, which must be accurate, complete, and signed by an authorized official of the consultant and the individual proposed. The experience criteria mentioned in point 1 in the table above holds true for Consultancy Firm and not for an individual consultant.*

3. The CEC shall normally divide the above criteria mentioned in Table 4 into sub-criteria. However, the number of sub criteria should be kept to the minimum that is considered essential. For example, methodology Criteria can be sub-divided into sub-criteria as:

a) understanding of ToR (30% weightage);
b) acceptability and detailing of methodology and work plan (50% weight);
c) innovation, if it is important (20% weightage);

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

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

Similar to in LCS (para 4.2.1) and EoI (para 7.3.3-10), a simplified evaluation criteria laying down minimum qualifying fail-pass benchmarks for each criteria/ sub criteria (instead of marking schemes) may also be used in appropriate cases. All offers that pass the qualifying benchmarks are declared as technically qualified and their financial bids are opened.

8.4.3 Rating/ Grading Schemes to Mitigate Subjectivity

1. Technical proposals for consultancy services are an intellectual product. Their evaluation must be based on individual professional judgement of competent evaluators and should not be reduced to a purely arithmetical exercise. The difficulty is to ensure that this judgement is not exercised in an unreasonable or arbitrary manner. It is important that

subjectivity, implicit to any individual professional judgement, be complemented by transparency, consistency, and fairness. The individual evaluator entrusted with the evaluation, when required, should be able to explain to the satisfaction of a qualified reviewer from the higher authority or to enforcement agencies the reason for his/her scoring and recommendation. One way to achieve this objective is by adopting a rating/ grading scheme for evaluation of the criteria and sub-criteria (if so specified in the RfP) in the technical proposals.

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

Rating	Assessment	Detailed Evaluation, in case of unquantifiable Criteria	Marks
A	Very Good	The consultants have outstanding, advanced expertise in specific problem areas of the assignment that can promise an excellent execution of the assignment. The consultants' staff includes top experts in the field of the assignment. The consultants are considered world-class specialists in the approaches and methodologies dealing with specific issues in the assignment. The consultants operate according to well-established Quality Management (ISO 9002 etc.) Procedures.	Full Marks
B	Good	The consultants have extensive experience in the field of the assignment and have worked in Regions and Sectors with similar physical and institutional conditions, including similar critical issues. Permanent staff are adequate and highly qualified to cover the requirements of the assignment. The consultants have experience with advanced approaches and methodologies for dealing with the specific requirements of the assignment.	80% of full Marks
C	Satisfactory	The consultants have experience in the field of assignments similar to the one being considered but have not dealt with critical issues specific to it (such as, for instance, delicate social or environmental issues). The consultants are experienced in the use of standard approaches and methodologies required for the assignment. The consultants' permanent staff are adequate.	60% of full Marks
D	Unsatisfactory	The consultant has experience which is not considered adequate for the quality needed by the Project.	30% of full Marks

Rating	Assessment	Detailed Evaluation, in case of unquantifiable Criteria	Marks
E	Not Relevant	The consultant' experience has no or little relevance to the Project under consideration.	10% of full Marks

3. Each member of the CEC should first read all proposals, without scoring them. This first review helps determine whether the proposals are free of significant omissions or deviations from the ToR; it also allows CEC members to assess the overall clarity of the proposals and identify elements that will require special attention in the evaluation.

4. After the review, the CEC meets to define the grades of the rating system to be adopted for scoring the technical proposals (if not detailed in the RfP), according to the criteria and sub criteria set out in the RfP. To discourage subjectivity and avoid the use of points and fractions of points, the rating system provides a few grades (from three to four) for each criterion and sub-criterion. Minimum qualifying marks or relative qualifying method for quality of the technical proposal will be prescribed and indicated in the RfP. The grading system must be defined before the technical proposals are opened to prevent bias (or perceived bias) occurring because of the CEC's knowledge of the opened proposal contents. It is recommended that the evaluation and scoring of technical proposals be carried out only after defining the grading system. Otherwise, CEC members would have to assign a level of responsiveness of the proposals to each of the different criteria and sub criteria without guidance and support from predefined grades. This could easily distort the evaluation for the following main reasons:

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

5. After the rating/ grading scheme has been defined and proposals have been opened, the evaluation process can begin.

8.4.4 Individual Scoring of Proposals

CEC members should carry out the evaluation independently and score the proposal based on the rating criteria. The CEC evaluation should be based on the proposal as submitted. Under no circumstances can the CEC request information or clarifications that may change the proposals. Issues to be clarified with the selected consultant will have to be discussed during negotiations. Individual evaluators' results are recorded on pre-established worksheets. After each member has independently rated all criteria and sub-criteria, it is good practice to read each proposal again to ensure that scores reliably reflect the quality of the proposal.

8.4.5 Joint Review and Mitigation

1. The CEC should conduct a joint review and discuss the merits of individual evaluations and scores. Some evaluators tend to be generous while others will be rigid in their judgment and ratings. Such disparity does not matter, provided each evaluator is consistent and differences in scores are not too large. Large differences should be reviewed and explained; because they often are caused by improper or inaccurate use of the rating system. Reconciling

differences that are considered too large by the CEC may result in members revising some of their ratings and scores. As such, any changes should be recorded. If a discussion is needed to reach a final decision, an independent party should prepare minutes. Finally, the scores given by different members may be averaged out. During the meeting, the CEC should also comment on the strengths and weaknesses of all proposals that have met the minimum technical score indicated in the RfP. This will help identify any elements in the winning proposal that should be clarified during negotiations.

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

8.4.6 Evaluation of Conformity to Commercial and Other Clauses:

Bidder must comply with all the Commercial and other clauses of the RfP Document. The Procuring Entity shall also evaluate the commercial conditions quoted by Bidder to confirm that all terms and conditions stipulated in the RfP Document have been accepted without substantive omissions/ reservations/ exception/ deviation by the Bidder. Deviations from or objections or reservations to critical provisions identified in the Tender Documents will be deemed to be a material deviation. If critical provisions are not explicitly stated in the Tender document, then these shall be taken to be Governing laws and Jurisdiction, Contractor's Obligations and Restrictions of its Rights, Performance Bond/ Security, Force Majeure, Taxes & Duties, and Code of Integrity). Only minor deviations may be accepted/allowed, provided these do not constitute substantive deviations as per para 8.3.4 above.

8.4.7 Technical Evaluation Report

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

8.4.8 Declaration of Results

After evaluation of quality has been completed, the Procuring Entity shall notify those consultants whose proposals did not meet the minimum qualifying standard or were

considered non-responsive to the RfP and/or ToR, indicating that their financial proposals will be returned unopened after completing the selection process. The Procuring Entity shall simultaneously notify the consultants that have successfully satisfied the qualifying standard or where marks have been awarded, the minimum qualifying marks. The date/ time and place (or on the portal in case of e-procurement) are announced for the opening of Financial Bids in the presence of technically suitable bidders who are willing to attend the bid opening. Such a date should be two to five (5) days after the announcement.

8.5 Evaluation of Cost and Selection of Winning Bidder

8.5.1 Basic Considerations

1. The financial proposals shall be opened publicly in the presence of representatives of the technically qualified consultants who choose to attend. The Evaluation Committee demonstrably verifies that the financial proposals have remained sealed and then opens them. The name of the consultant, quality scores, and proposed prices shall be read aloud and recorded when the financial proposals are opened. No modification to financial proposals is permitted. The Procuring Entity shall prepare the minutes of the public opening. Format at Annexure 5 may be used for this purpose. When electronic submission of proposals is used, this information shall be posted online.

2. For a time-based contract, any arithmetical errors shall be corrected, and prices shall be adjusted if they fail to reflect all inputs that are included in the respective technical proposals. For a lump-sum contract, the consultant is deemed to have included all prices in its/his financial proposal so neither arithmetical correction nor any other price adjustment shall be made.

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

4. If any bidder offers conditional discounts/ rebates in his bid or suo-motu discounts and rebates after the Bid Opening (techno-commercial or financial), such rebates/ discounts shall not be considered for ranking the offer. But if such a bidder does become L1 or H-1 without discounts/ rebates, such discounts/ rebates shall be availed and incorporated in the contracts;

5. Unless announced beforehand, the quoted price shall not be loaded based on deviations in the commercial conditions. If it is so declared, such loading of a financial bid shall be done as per the relevant provisions;

6. As per policies of the Government, from time to time, the Procuring Entity reserves its option to give purchase preferences to eligible categories of Bidders as indicated in the Tender Document.

7. Financial evaluation of Bids shall include and consider the following taxes/ duties as per para 6.2:

a) in the case of Services performed in India or incidental goods of foreign origin already located in India, GST & other similar duties, which shall be contractually payable, on the Services and incidental Goods, if a contract is awarded on the bidder;
b) The offers shall be evaluated based on the GST rate quoted by each bidder, and the same shall be used for determining the inter-se ranking. The Procuring Entity shall not be responsible for any misclassification of HSN Number or incorrect GST rate if

quoted by the bidder. Any increase in GST rate due to misclassification of HSN number shall have to be absorbed by the consultant; and

c) If GST is quoted extra, but with the provision that it shall be charged as applicable at the time of delivery, the offer shall be evaluated for comparison purposes by loading the maximum existing rate of GST for the product/ HSN code.

8. **Price Variation:** If the bids have been invited on a variable price basis, they will be evaluated, compared, and ranked based on the position prevailing on the bid submission deadline and not based on any future date. If a Bidder submits a firm price quotation against the requirement of a variable price quotation, that bid shall be prima facie acceptable and considered further, taking the price variation asked for by the Bidder as nil.

(Rule 190 of GFR 2017)

8.5.2 Least Cost Selection (LCS)

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

8.5.3 Quality and Cost Based Selection (QCBS Rule 192 of GFR 2017)

1. **Weightages:** Under QCBS selection, the technical proposals will be allotted weightage of 70% (Seventy per cent) while the financial proposals will be allotted weightages of 30% (Thirty per cent) or any other respective weightages as declared in the RfP (Example, 60:40, 50:50, but not greater than 80%). The proposed weightages for quality and cost shall be specified in the RfP.

2. **Evaluation of Technical Score:** Similarly, proposal with the highest technical marks (as allotted by the evaluation committee) shall be given a score of 100 (Hundred) and other proposals be given technical score that are proportional to their marks w.r.t. the highest technical marks. Minimum qualifying marks (normally 70-80 (seventy – eighty) out of maximum 100 (hundred) marks) as qualifying benchmark for quality of the technical proposal shall be prescribed and indicated in the Tender Document along with a scheme for allotting marks for various technical criteria/ attributes. Bids scoring less than the minimum threshold shall not be considered for further evaluation. Since the weightage of the cost element adopted in Consultancy services is as high as 70 (seventy) percent, financial considerations would dominate the selection, though to a lower extent as compared to LCS (Least Cost Selection – L1 basis). In such cases, it is essential to ensure that the minimum qualifying marks in the evaluation is set sufficiently high, to weed out low quality bids with low prices.

3. **Evaluation of Financial Score:** Proposal with the lowest cost may be given a financial score of 100 (Hundred) and other proposals given financial scores that are inversely proportional to their prices w.r.t. the lowest offer.

4. **Weighted QCBS Score:** 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

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

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

where

C = Evaluated Bid Price

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

T = the total Technical Score awarded to the Bid

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

X = weightage for the Price as specified in the BDS

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

7. **Example:** Following example illustrates the evaluation of QCBS:

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

A: 75 Marks

B: 80 Marks

C: 90 Marks

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

A: 75/90 = 83 points

B: 80/90 = 89 points

C: 90/90 = 100 points

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

A: Rs.100.

B: Rs.104.

C: Rs.106.

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

A: 100/100 = 100 points

B: 100/104 = 96 points

C: 100/106 = 94 points

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

Proposal A: 83x0.70 + 100x0.30 = 88.10 points.

Proposal B: 89x0.70 + 96x0.30 = 91.10 points

Proposal C: 100x0.70 + 94x0.30 = 98.20 points.

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

Proposal A: 88.10 points: H-3

Proposal B: 91.10 points: H-2

Proposal C: 98.20 points: H-1

j) Proposal C at the evaluated cost of Rs.106 (Rupees One hundred and six) was, therefore, declared as winner and recommended for negotiations/approval, to the competent authority.

8.5.4 Single Source Selection (SSS)

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

8.5.5 Fixed Budget Selection (FBS)

Under FBS, the selection of the consultant shall be made by one of the following two methods:

a) 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.

b) In cases of repetitive or multiple assignments, by empanelling Consultants for a period, using suitable eligibility/ qualification 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.

8.5.6 Global Tender Enquiry (GTE, International Competitive Bidding)

If stipulated in the TIS/ AITB that this is a Global Tender Enquiry (International Competitive Bidding), the following additional aspects of the evaluation of the financial offer shall also apply:

1. **Currency of Bid:** In GTE (Global Tender Enquiry), foreign bidders have the flexibility to quote prices and receive payments in either Indian Rupees or freely convertible currencies such as US Dollars, Euros, Pound Sterling, Yen, other relevant currencies[72], or a combination thereof. However, prices for incidental goods/works (including Agency Commission) performed or sourced in India must be quoted and paid for in Indian Rupees. Indian bidders are required to quote in INR only. All offers are to be converted to Indian Rupees based on the “Bill currency selling” exchange rate on the bid submission deadline, quoted by a source

[72] The Central Board of Indirect Taxes and Customs in India (CBIC) issues Exchange Rate Notification under Customs Act, 1962, which lists currencies and exchange rates for imported goods in Schedule I – which may indicate relevant currencies for indicate. The current notification is Exchange Rate Notification No. 30/2024 - Customs (N.T.).

as specified (if not specified, authorised exchange bankers approved by RBI) in the tender document.

2. **Evaluation of Offers:** Import of Goods or services or both attract integrated tax (IGST). The IGST rate and GST cess shall be applicable on the 'Customs Assessable Value' plus the 'Basic Customs duty applicable thereon.' The offers would be compared based on the principle of the total outgo from the Procuring Entity's pockets, including all applicable taxes and duties (Customs duty, IGST, and GST Cess).

3. **Agency Commission to the Consultant:** Provisions contained in para 4.3.1-9 of the Manual for Procurement of Goods, 2024 maybe followed.

8.5.7 Negotiations for Reduction of Prices, Abnormally Low Bids and Cartel/ pool Rates

Negotiation with bidders after bid opening must be severely discouraged, especially in procurement of consultancy services. Since both quality and price are to be considered in procurement of consultancy services, negotiations for reduction in price is not advisable. Likewise, abnormally low bids and cartel/ pool rates are not of much relevance. However, if required provisions mentioned under para 7.6.7 (Consideration of Abnormally Low Bids) and para 7.6.8 (Cartel Formation/ Bid Rigging) of the Manual for Procurement of Goods, 2024 may be referred.

8.5.8 Evaluation of Concurrent Application: MSE and Make in India Policies

The concurrent application of the two procurement orders i.e., MSE Procurement Order of 2012 and PPP-MII Order may create confusion to the procuring entities on how to evaluate the bidders falling within the purview of both policies. To bring predictability both to the procuring entities as well as bidders, DoE issued guidelines[73]. These guidelines are explained in Annexure 25, along with examples.

8.5.9 Cancellation of Procurement Process/ Rejection of All Bids/Re-tender [Rule 173 (xix) of GFR 2017]

1. The Procuring Entity has the right to cancel the process of procurement or reject all bids at any time before intimating acceptance of successful bid under circumstances mentioned below. 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. The Procuring Entity may cancel the process of procurement or rejecting all bids under circumstances mentioned below:

a) If the quantity and quality of requirements have changed substantially or there is an un-rectifiable infirmity in the tender process;
b) when none of the tenders is substantially responsive to the requirements of the Procurement Documents;
c) none of the technical Proposals meets the minimum technical qualifying score;

[73] Notified vide OM No.F.1/4/2021-PPD issued by Department of Expenditure dated 18.05.2023.

d) If effective competition is lacking. However, lack of competition shall not be determined solely based on the number of Bidders. (Please refer to para above also regarding receipt of a single offer).
e) the Bids'/Proposals' prices are substantially higher than the updated cost estimate or available budget;
f) If the bidder, whose bid has been found to be the lowest evaluated bid (L1) or highest scorer (H-1) withdraws (Para 8.2.6-3) or whose bid has been accepted, fails to sign the procurement contract as may be required, or fails to provide the security as may be required for the performance of the contract (Para 8.7.3) or otherwise withdraws from the procurement process (para 5.5.6), the Procuring Entity shall re-tender the case[74].

2. In case where responsive bids are available, the aim should be to finalise the tender by taking mitigating measures even in the conditions described below. If it is decided to rebid the tender, the justification should balance the perceived risks in finalisation of tender (marginally higher rates) against the certainty of resultant delays, cost escalations, loss of transparency in re-invited tender. It may be noted that once a Tender is retendered, the bids in the old tender cannot be revived and reconsidered, as per the Indian Contract Act, even if prices received in the new tender turn out to be higher.

3. Approval for re-tendering should be accorded by the CA based on the reasons/proper justification in writing. The decision of the procuring entity to cancel the procurement shall be immediately communicated to all bidders that participated in the procurement process and bids if not opened would not be opened and in case of manual tenders be returned unopened. Bid securities, if any, should also be returned without delay.

4. Before retendering, the procuring entity should first check whether, while floating/issuing the enquiry, all necessary requirements, and formalities such as standard conditions, industry friendly qualification criteria, and technical and commercial terms, wide publicity, sufficient time for tendering, and so on, were fulfilled. If not, a fresh enquiry should be issued only after rectifying the deficiencies.

8.6 Negotiations to Freeze Description of Service

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, Procuring Entity'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.

[74] Notified vide OM No. F.1/1/2021-PPD issued by Department of Expenditure dated 21.04.2022.

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

8.7 Award of Contract

8.7.1 LoA to Successful Bidder

1. Before a final award is announced, the technical and financial credentials of the selected bidders/ consultant should be crosschecked to the extent feasible. This is especially important at RfP stage, since normally such a verification is not done at the EOI stage. The Procuring Entity may, at its discretion, ask Bidder to submit for verification the originals of all such documents whose scanned copies were submitted during EOI and RfP stages. If so decided, the photocopies of such self-certified documents shall be verified and signed by the competent officer and kept in the records as part of the contract agreement. If the Bidder fails to provide such originals or in case of substantive discrepancies in such documents, it shall be construed as a violation of the Code of Integrity. Such bid shall be liable to be rejected as nonresponsive in addition to other punitive actions in the Tender Document. The evaluation of Bids shall proceed with the subsequent ranked offers.

2. Prior to the expiry of the period of bid validity, the successful bidder will be notified (briefly indicating therein relevant details such as quantity, description of the services ordered, prices, and so on) in writing by a registered letter or any other acknowledgeable and fool proof method that his bid has been accepted. Legally communication of acceptance of offer is considered complete as soon as it is submitted to Postal authorities (please refer to Para 2.9-1) of Appendix 2 in Manual for Procurement of Goods, 2024). A template for the Letter of Acceptance (or Notice of Award, or Acceptance of Tender) is given in Annexure 20. In the same communication, the successful bidder is to be instructed to furnish the required performance security within a specified period (generally 14 (fourteen) to 28 (twenty-eight), depending on the amount).

3. Letter of Award - LoA shall state the sum (hereinafter and in the contract called the "Contract Price") that the Procuring Entity shall pay the contractor in consideration of the supply of the services. The Letter of Award (LoA) shall constitute the legal formation of the contract, subject only to the furnishing of performance security as per the provisions of the sub-clause below. The Procuring Entity, at its discretion, may directly issue the contract subject only to the furnishing of performance security, skipping the issue of LoA.

4. The value of Contract should include Taxes/ duties/ levies, if any.

5. In respect of contracts for purchases valued Rupees Five (5) lakhs and above, where tender documents include the GCC, SCC and schedule of requirements, the letter of acceptance will result in a binding contract. All delivery liabilities would be counted from the date of LoA.

6. It shall be mandatory for the successful bidder to get registered on GeM and obtain a unique GeM Seller ID. before the placement of LoA or the contract. This ID shall be incorporated in the contract.

8.7.2 Publication of Award of Contract and Return of EMD of Unsuccessful Bidders [Rule 173 (xviii) of GFR 2017]

1. **Mandatory Publication of Award of Contract:** The details of award of contract and name of the successful bidder should be mentioned mandatorily on the CPPP/ GeM (as relevant) and in the notice board/ bulletin/ website of the concerned Ministry or Department/ eProcurement Portal.

2. **Exceptions to Publishing of Award of Contract:** In case publication of such information is sensitive from commercial or security aspects, dispensation may be sought from publishing of such results by obtaining sanction from the Secretary of the Department with the concurrence of associated Finance. Open, transparent declaration, of price, sources, and delivery schedule of Central Public Sector Enterprises (CPSEs) contractors as per extant instructions adversely impacts ability of CPSEs to compete in highly competitive market. CPSEs are denied a level playing field. At the time of tender formulation, commercial organisations like CPSEs will disclose whether the subject of procurement is for commercial re-sale. Contract Award details of such cases may be shared on electronic Procurement Portals such as GeM, CPPP etc. after six (06) months of finalization of procurement. Such a system shall protect financial data of the CPSEs for a reasonable time while also complying with requirement of transparency.

3. **Bid Securities:** Upon the successful bidder furnishing the signed agreement and performance security, each unsuccessful bidder will be promptly notified, and their bid security be returned without interest within 30 (thirty) days of notice of award of contract in terms of para 6.1.1 above. The successful consultant's bid security shall be adjusted against the SD or returned as per the terms of the tender documents.

8.7.3 Performance Security

The consultant receiving the LoA is required to furnish the required performance security, if it is part of tender conditions, in the prescribed form within period prescribed in the tender document (generally 14 (fourteen) to 28 (twenty-eight), depending on the amount), as per para 6.1.2 above. In case performance security is not submitted within the stipulated time, procuring entity may pursue the contractor upto a reasonable grace period further for submission. In case the firm fails to submit the requisite Performance Security even thereafter or fails to sign the contact it may be treated as withdrawal of offer by L1 or H-1 bidder (as the case may be), and the tender may be reinvited, besides taking necessary punitive actions including forfeiture of EMD against such bidders.

8.7.4 Acknowledgement of Contract by Successful Bidder and Execution

1. After the successful bidder is notified that his bid has been accepted, he will be sent an agreement in duplicate for signature and return, incorporating all agreements between the parties.

2. The consultant should acknowledge and unconditionally accept, sign, date and return the agreement within 14 (fourteen) days from the date of issue of the contract in case of OTE and 28 (twenty-eight) days in case of GTE. Such acknowledgements may not be required in low value contracts, below Rupees Five (5) Lakh or when the bidders offer has been accepted in entirety, without any modifications. While acknowledging the contract, the consultant may raise issues and/ or ask for modifications against some entries in the contract; such aspects

shall be immediately be investigated for necessary action and, thereafter, the consultant's unconditional acceptance of the contract obtained. If both parties (Procuring Entity and the consultant) simultaneously sign the contract across the table, further acknowledgement from the consultant is not required. It should also be made known to the successful bidder that in case he does not furnish the required performance security or does not accept the contract within the stipulated target dates, such non-compliance will constitute sufficient ground for forfeiture of its EMD and processing the case for further action against it (the successful bidder). Procuring Entity may also consider getting the contract digitally signed.

3. All contracts shall be signed and entered into after receipt and verification of the requisite performance security, by an authority empowered to do so by or under the orders of the President of India in terms of Article 299 (1) of the Constitution of India. The words "for and on behalf of the President of India" in case of Ministry/ Department should follow the designation appended below the signature of the officer authorised on this behalf. The various classes of contracts and assurances of property, which may be executed by different authorities, are specified in the DFPR (Annexure 1). In case of CPSE and other organisations the contract shall be signed for and on behalf of the head of the organisation. No contract should be entered into by any authority which has not been empowered to do so.

8.7.5 Framing of Contract

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

1. Any agreement shall be issued strictly as per approved CEC recommendations, be vetted by the Associated/ integrated Finance, and approved by CA. The terms of contract must be precise, definite and without any ambiguities. The terms should not involve an uncertain or indefinite liability, except in the case of a cost-plus contract or where there is PVC in the contract. In other words, no contract involving an uncertain or indefinite liability, or any condition of an unusual character should be entered into without the previous consent of the Associated/ integrated Finance.

2. All contracts shall contain a provision for
   a) Recovery of liquidated damages (LD) for delay in performance of the contract on the part of the contractor;
   b) Payment of all applicable taxes by the contractor; and
   c) for an unconditional power of revocation or cancellation by the Procuring Entity at any time on the expiry of six months' notice to that effect, when a contract is likely to endure for a period of more than two years, it should, wherever feasible, include a provision.

3. Standard forms of contracts should be invariably adopted, except in following cases:
   a) Authorities competent to make purchases may, at their discretion, make purchases of value up to Rupees Five (5) lakh by issuing purchase orders containing basic terms and conditions;
   b) With respect to contracts for purchases valued from Rupees One Lakh to upto Rupees Ten lakhs, where tender documents include the GCC, SCC, and schedule of requirements, the letter of acceptance will result in a binding contract, *provided no performance security is called for or due to be submitted*. All delivery liabilities would be counted from the date of LoA. (Rule 225 iv)b) GFR 2017).
   c) In cases where standard forms of contracts are not used or where modifications in standard forms are considered necessary in respect of individual contracts, legal and

financial advice should be taken in drafting the clauses in the contract and approval of CAs is to be obtained; and

d) Copies of all contracts and agreements for purchases of the value of Rs. 50 (Rupees Fifty) lakh and above, and of all rates and running contracts entered into by civil Departments of the Government should be sent to the Accountant General.
e) Copies of the LOA/Purchase Order should also be sent to the Jurisdictional Assessing Officer for GST, mentioned in the bidder's bid.

8.7.6 Audit Trails - Procurement Records

1. The procuring entity must 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.

2. However, many organisations now process procurements on their own eProcurement Portals. In such cases, taking printouts and making a physical file just for records may be counter-productive, provided the portals have provisions for audit trails. The documents and records to be maintained electronically or physically will include the following:

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 tendering;
d) Documents relating to pre-qualification and registration of bidders, if applicable;
e) Particulars of issue, receipt, opening of the bids and the participating bidders at each stage;
f) Requests for clarifications and any reply thereof including the clarifications given during pre-bid conferences;
g) Bids evaluated, and documents relating to their evaluation; and
h) Contracts and Contract Amendments
i) Complaint handling, correspondences with clients, consultants, banks.

3. In organisations where physical files are still maintained, the Procurement file should start with the Indent and related documents. All subsequent documents relating to procurement planning; Copy of Tender Document and documents relating to its and formulation, publishing and issue/ uploading; Bid Opening; Bids received; Correspondence and documents (including Technical Evaluation and CEC report) relating to pre-qualification, evaluation, Award of Contract; and finally, the Contract copy, should be kept on the file. In case of bulky Bids received, all bids received may be kept in a separate volume, with a copy of accepted bids later being put on the main volume. To maintain integrity of the records relating to Procurement, these files should be kept secure and for contract management a new volume of file may be opened to obviate frequent exposure of sensitive procurement file. In contract management volume, copies of successful bid, Tender Committee Report, Contract may also be kept for ready reference, besides correspondence and documents relating to Contract Management and its closure.

8.8 RfP, Evaluation and Award Stage – Risks and Mitigation

Risks	Mitigation
1. ***No key expert proposed from the main qualified partner in consortium/ JV:*** It is seen that though the shortlisting and contract is won by a consortium/ 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.
2. ***Request for substitution of key experts at the time of contract negotiation:*** After the firm is invited for negotiation, it asks for substitution of key staff in the contract. This is an unacceptable practice unless the selection process is unreasonably delayed.	Any request for substitution should be examined very closely and agreed only if permitted by the RfP
3. ***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.
4. **Evaluation of bids** is subjective or leaves room for manipulation and biased assessments. Some CEC members may not be independent or neutral or may have conflict of interest (CoI).	CEC should give an undertaking at the appropriate time (as per para 8.2.4-3) that none of the members has any CoI with the companies/agencies participating in the tender process. Any member having an CoI with any company should refrain from participating in the CEC. Some members of a CEC may be subordinate to or related others in a strictly hierarchical organisation, so that they are not free to express independent views – such a situation

Risks	Mitigation
	must be avoided when constituting the CEC.
5. **Discriminating against a Best Value Bid:** In case a bidder's bid (not in the good books of the procuring entity) becomes the best value bid as per the evaluation criteria, some of the following actions may have risks of misuse. There is also a reverse risk in these actions if a favourite becomes best value bid:	Mitigation for each type of risk is mentioned below.
6. **Unwarranted retendering:** Rejecting all bids and calling for retendering on the pretext of prices being high, change of specifications, budget not being available, and so on.	**In case a procurement is rebid more than once**, approval of one level above the CA may be taken. Please also see the complaint mechanism.
7. **Sudden quantity reduction/increase or splitting of quantity work at the time of award:** Many organisations have provisions for change/ splitting in the bid quantity at the time of award. Some organisations vary quantity even without such provisions	**Bid conditions must specify a limit** beyond which originally announced quantity/scope cannot be reduced/increased. If parallel contracts are envisaged, clear criteria for the splitting may be specified in the tender documents beforehand.
8. **Unwarranted negotiations:** negotiations are called without justification. Sometimes a counter-offer is made to discourage lowest acceptable bidder.	Normally, there should be no post-tender negotiations. In certain exceptional situations, for example, procurement of proprietary items, items with limited sources of supply, and items where there is suspicion of a cartel formation, negotiations may be held with L-1. In case of L-1 backing out, there should be re-tendering.
9. **Unwarranted delays in finalizing or varying the terms of preannounce contract agreement:** even after the CEC recommendations are accepted, signing of the contract is delayed on one pretext or the other. Although there is a standard contract form in the tender documents, the contract may be drafted in a fashion to favour or discourage the successful bidder.	**A target timeline of** finalisation of procurement should be laid down. Delays and reasons thereof should be brought out before the CA on the file at the time of CEC's acceptance or contract signing. The contract should be strictly as per the bid conditions and accepted offer.
10. **Anti-competitive practices:** Bidders, which would otherwise be expected to compete, secretly conspire to frustrate the buyer's attempts to get VfM in a tender process. Anti-competitive conspiracies can take many forms. Sometimes the	These strategies, in turn, may result in patterns that procurement officials can detect, and steps can be taken to thwart such attempts. Such anti-competitive activities come under the purview of the competition law, where

Risks	Mitigation
officers involved in procurement may be part of such collusion. a) **Bid coordination:** The bidders collude to the quote same or similar rates that are much higher than the reasonable price to force the buyer to settle the procurement at exorbitant prices. b) **Cover bidding:** Cover bidding is designed to give the appearance of genuine competition by way of supporting bids for the leading bid-rigger. c) **Bid suppression:** Bid suppression means that a company does not submit a bid for final consideration in support of the leading bid-rigger. d) **Bid rotation:** In bid-rotation schemes, conspiring firms continue to bid but they agree to take turns being the winning (i.e., lowest qualifying) bidder in a group of tenders of a similar nature. e) **Market allocation:** Competitors carve up the market and agree not to give competitive bids for certain customers or in certain geographic areas.	there is provision of stringent penalties. Regular training should be held for officers involved in procurement to detect and mitigate such practices and also use of the competition law against such bidders.

Chapter 9: Special Types of Engagements

9.1 Single Source Selection (SSS)

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

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

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 carrying out the initial work is not excluded from consideration if it expresses interest.

4. For selecting a consultant under this method, the Procuring Entity should prepare a full justification and take the approval of the competent authority as per the Annexure 2: Schedule of Procurement Powers (SoPP).

5. While selecting the consultant under this method, the Procuring Entity shall ensure that the consultant has the requisite qualification and experience to undertake the assignment. Normally the Procuring Entity shall adopt the same short-listing criteria as applied to similar assignments while evaluating the EoI.

6. Its CFA's (Competent Financial Authority) responsibility to ensure that a statement of all selections by nominations, every month are to be reported to Secretary/ Head of Ministry/ Department.

9.2 Selection of Individual Consultants

1. Individual consultants are normally employed on assignments for which
   a) Teams of personnel is not required;
   b) No additional outside professional support is required, and
   c) The experience and qualifications of the individual are the paramount requirement.

2. The procedures for selecting individual consultants are similar to, but much simpler than, those for selecting teams of consultants from a firm. Process of selection of Individual consultants entails:
   a) Preparing a Consultancy Services package including the ToR, time frame, number of person-months, budget, EoI Short-listing criteria and getting it approved by the CA;

b) **Advertising:** Advertisement in such case should be given on Central Public Procurement Portal (CPPP) at www.eprocure.gov.in and on Government e-Marketplace (GeM). An organisation having its own website should also publish all its advertised tender enquiries on the website. The advertisements for invitation of tenders should give the complete web address from where the bidding documents can be downloaded.

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

d) **Direct Negotiation:** Individual consultants 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 has carried out and for which the consultant was selected competitively; (b) emergency situations resulting from natural disasters; and (c) when the individual is the only consultant qualified for the assignment. Individual consultants may be (among others) independent consultants; consultants recruited from firms; or consultants recruited from academic, government, or international agencies.

e) **Staff or Associates of Consultancy 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.

3. **Retired Government Servants:**

a) Rule 177 of GFR, 2017, says that the consulting services do not include direct engagement of retired Government servants. They should not be engaged as consultants against regular vacant posts under this rule. Such engagements should be handled as a personnel matter.

b) Engagement/ hiring of retired Government servants should be regulated as per DoE's OM F.No. 3-25/2020-E.IIIA dtd 9th December 2020.

9.3 Selection of Specialized Agencies/ Institutions

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

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.

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

4. Individual consultants recruited from agencies and institutions may be selected in the same way as any other individual consultants.

9.4 Selection of Non-governmental Organizations (NGO)

1. Non-governmental organizations (NGOs, not-for-profit organisations) may be hired for Consultancy/ NC Services, if they express interest and/ or if the Procuring Entity finds their qualifications satisfactory. Assignments which emphasize experience in and bonding with grassroot historically disadvantaged communities, e.g., experience in community participation and in-depth local knowledge are typically attributed to NGOs and short lists may comprise NGOs entirely. In this case, QCBS should be followed, and the evaluation criteria of proposals should reflect the NGO-unique qualifications, such as the following:

a) History of work with grassroots communities and evidence of satisfactory performance;
b) Familiarity with participatory development approaches and low-cost technologies;
c) Experienced staff conversant with the cultural and socioeconomic dimensions of beneficiaries;
d) Committed leadership and adequate management;
e) Capacity to co-opt beneficiary participation.

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

9.5 Procurement Consultants

1. **Consultancy or Non-consultancy**:

a) Hiring of Procurement agents (PAs) can either be done as a Consultancy Service or Non-consultancy service, depending on the objectives and scope of assignment.
b) **Consultants:** If the role of Procurement Agents primarily involves intellectual analysis, strategic planning, spend analysis, cost control, and advisory functions, it would be appropriate to hire them as Consultancy Services i.e. when they are asked to design/ implement new system or improve value for money or develop strategic procurement or carry out market building/ sourcing etc, where quality weightage of more than 30% is called for.
c) **Non-consultancy**: On the other hand, if their responsibilities are only outsourcing of routine procedures without intellectual decision making, classifying them as outsourcing of Non-Consultancy Services would be suitable, i.e. when they only operate the existing procedures and crucial decisions are made by the client himself, where quality weightage can be 30% or less. In such a case please also refer to para 4.5.3 above.

2. **Specific Items**: When Procurement consultants are specifically used for 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 of savings realised) or a combination of a percentage and a fixed fee. In such cases, they are selected under QCBS, with cost being given a weight of less than 50 (fifty) percent. If the weight of the cost element adopted were as high as 50 (fifty) percent, financial considerations

would dominate the selection, creating the risk of an unacceptably lower service quality. In such cases, it is essential to ensure that the quality threshold in the evaluation is set sufficiently high. They shall be selected following the appropriate procedures for other Consultancy assignments using QCBS and time-based contracts, as specified for other Consultancy assignments.

3. **Outsourcing of Procurement Function**: When Procurement Agents provide services for procurement for a whole project in a specific unit of Procuring Entity, it is usually a non-consultancy service, unless criteria in sub-para 1-b) above is met.

9.6 Financial Advisors

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

   a) in the preparation of studies and financial Consultancy; or
   b) As advisers on financial restructuring, Mergers and Acquisitions (M&A), or demerger etc.

2. In the first case, the advisers can be selected under any of the methods described in Chapter 4 (that is, whichever is considered most suitable, depending on the scope of work of the assignment). In the second case, QCBS shall be adopted, whereby the RfP specifies technical evaluation criteria similar to those relevant to standard Consultancy assignments. The financial proposal would include two distinct forms of remuneration:

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

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

9.7 Auditors

1. Quality audits of federal or state expenditures, are an important accountability mechanism for ensuring financial integrity. Therefore, public organisations have a vital fiduciary responsibility to ensure that their audit is of the highest quality.

2. Auditors typically carry out auditing tasks under well-defined ToR and professional standards. The ToR should consider applicable statutory, Government, organisational requirements and applicable auditing and accounting standards. Scope of Audit should cover the jurisdiction, Type of audit, contract period and any additional services. The Technical

qualifications should be based on licensing requirement, general and similar experience, quality certifications, quality and adequacy of staffing, financial capability, auditing approach and scheduling of the auditor. Auditors' independence and lack of conflict of interest is also an important requirement. A presentation or interview also may be part of the RfP process. A pre-proposal conference may also be considered.

3. Since in recent time quality of audit has been a matter of concern, selection of auditors may preferably be done as a consultancy service on QCBS basis with emphasis on weightage of quality.

9.8 Public competition for Design of symbols/logos

(Rule 196 of GFR 2017)

1. Certain Ministries/Departments are required to conduct competitions for the design of logos/symbols for their use, which should be conducted in a transparent, fair, and objective manner. Following guidelines shall be followed by all Ministries/ Departments as well as their attached/ subordinate offices and the autonomous bodies/ organizations controlled by them, while conducting public competitions for design of symbols/ logos for their use:

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

x) It may be clearly stipulated that the intellectual property rights of the successful design(s) would rest with the sponsoring agency. The status of the unsuccessful designs and whether it is intended to return them should be indicated clearly.

xi) If the selection is to be done by a jury of experts nominated for the purpose, the composition of the jury may also be notified.

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

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

9.9 Procurement of Integrated IT Projects

1. Procurement of integrated IT Projects (refer to para 1.4-3-b) 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:

a) bespoke software development;
b) cloud based services and
c) 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.

2. IT services procurement involves aligning business goals, assessing vendor capabilities, and adopting agile practices. Whether it's bespoke software, cloud services, or system integration, a well-defined procurement process ensures optimal outcomes for organizations.

3. **QCBS Selection:** Since quality is of prime importance in procurement of IT services, QCBS selection with due emphasis on quality weightage (even up to 80%, depending on quality requirements) may be used. In cloud services in particular, alternative pricing models may be allowed to be quoted.

4. **Caution against Restrictive and discriminatory Qualification Conditions**: Ministry of Electronics & Information Technology (MeitY) has cautioned[75] that qualification conditions for cloud service provider should not be restrictive/ discriminatory like insistence on 'Gartner's 'Magic Quadrant etc., and very high financial turnover, which impede the domestic service providers and does not add value to the users. They have also cited Department for Promotion of Industry and Trade & Internal Trade (DPIIT), Ministry of Commerce and Industry has similar advisory[76] that such discrimination against domestic players is a violation of Make India Order which provide purchase preference to local content requirement. Therein, common examples of restrictive and discriminatory conditions against the local suppliers, in procurement of IT Services have been cited as:

a) Restrictive and Discriminatory Eligibility Criteria in Tender Conditions
   i) Mandatory Presence in Gartner Magic Quadrant - IT and Telecom Products;
   ii) Mandatory USFDA/ European CE - Medical Devices;

[75] D.O. No. 10(13)/2022-EG-II dated 25.08.2022
[76] OM No. P-45021/121/2018- (B.E.-II) dated 20.06.2019

iii) ExcessiveTurnover.requirementRs.1000 Cr for-procurement of Rs.70 Cr;
iv) Excessive past Experience - 10 years;
v) Export experience to G8 countries;
vi) Additional requirement of Bank Guarantee for Local Supplier;
vii) Delayed Payment Terms to Local suppliers

b) Restrictive and Discriminatory specifications -Foreign Brands specified
i) CISCO, NEC, Alcatel, Siemens - Telecom Products
ii) HP, Dell, Lenovo - IT products
iii) OTIS, Mitsubishi, Schindler, Kone, Johnson - Lifts

c) Restrictive and Discriminatory specifications/ Preapproved foreign brands in works/ turnkey projects
i) Local manufacturer not included in pre-approved list;
ii) Specification tailor made to suit foreign products;
iii) Foreign technical standards indicated in the specification;
iv) Technical parameters to favour foreign products viz. (-) 25-degree temperature compatibility (or EPBX equipment being procured for airport in Central India).

5. **Bespoke Software Development:** Bespoke software development involves creating customized software solutions tailored to specific organizational needs. Unlike off-the-shelf software, bespoke applications are designed from scratch, considering unique requirements, workflows, and business processes. Here are key considerations for procuring bespoke software:

a) Defining Requirements: The procurement process begins with a thorough understanding of business needs. Engage stakeholders, gather functional and non-functional requirements, and define clear objectives. Stipulate an agile development approach that allows iterative development, frequent feedback, and adaptability. Agile ensures alignment with evolving requirements and minimizes risks.
b) Technical Qualifications: Evaluate bidders based on their expertise, track record, and ability to deliver custom solutions. Consider factors like technical proficiency, domain knowledge, scalability, security, and support and project management capabilities.

6. **Cloud-Based Services:** Cloud-based services offer scalability, flexibility, and cost-effectiveness. When procuring cloud services, consider the following:

a) Defining Requirements**:**
i) SLAs and Data Privacy: Define service-level agreements (SLAs) regarding uptime, performance, and support. Address data privacy and compliance requirements, especially if handling sensitive information.
ii) Migration Strategy: Plan the migration process carefully. Assess existing applications for cloud readiness, choose the right migration approach (lift-and-shift, re-architecting, or hybrid), and ensure minimal disruption.

b) Service Models: Understand the different cloud service models:
i) Software as a Service (SaaS): Ready-to-use applications hosted by the provider.
ii) Platform as a Service (PaaS): Development platforms and tools for building custom applications.
iii) Infrastructure as a Service (IaaS): Virtualized computing resources (servers, storage, networking).

c) Technical Qualifications: Evaluate cloud providers based on factors such as reliability, security, compliance, data sovereignty. Consider well-established cloud services providers.

7. **Composite IT System Integration Services:** Composite IT system integration involves connecting disparate systems, applications, and data sources to create a cohesive ecosystem. Here's how to approach procurement:

a) Defining Requirement**:**
   i) Integration Strategy: Define the integration scope, including APIs, middleware, and data synchronization. Consider whether real-time or batch processing is required.
   ii) Interoperability and Scalability: Ensure that integrated components can communicate seamlessly. Scalability is crucial to accommodate future growth and changing business needs.
   iii) Testing and Maintenance: Specify testing requirements (unit, integration, and end-to-end testing). Also, outline ongoing maintenance and support expectations.

b) Technical Qualification: Select vendors with expertise in integrating complex systems. Look for experience in integrating diverse technologies (ERP, CRM, legacy systems) and handling data transformations.

8. **Cyber auditing and Testing of hardware**: The tenders issued by the Procuring Entities should include detailed requirements for security auditing and testing of devices intended for perpetual internet connectivity e.g., Servers, IoT (Internet of Things) devices/ CCTV cameras etc., to mitigate security vulnerabilities and breaches of Government Systems. The specifications must underscore the necessity of security measures at both hardware and software levels to ensure the security and integrity of such devices or systems. CERT-IN77 empanelled organizations specialize in conducting security auditing, vulnerability assessments, and penetration testing of computer systems, networks, and applications. However, their primary domain may not encompass comprehensive hardware security testing and evaluation of IoT Devices/ CCTV cameras, which is the domain of STQC-IN. STQC, under the aegis of the Ministry of Electronics and Information Technology (MeitY), has expertise for thorough evaluation of IoT Devices' hardware to ensure adherence to specified standards and comprehensive evaluation of security aspects in the IoT Devices.

9. For more details, Ministry of Electronics & Information Technology's latest Model RfP Documents for Selection of Implementation Agencies[78] (which includes Guidance Notes) may please be referred.

9.10 Hiring Consultants for Digital India Projects

1. **Overview:** The Digital India initiative, under the Ministry of Electronics and Information Technology (MeitY), seeks to transform India into a digitally empowered society and knowledge economy. The hiring of consultants is pivotal for implementing large-scale e-governance and technology projects that support this vision. National e-Governance Division (NeGD) an autonomous business division within Digital India Corporation, has established a robust framework for hiring consultants through empanelment of qualified consulting organizations. More details are available in NeGD's notification[79].

[77] Detailed in IPHW Division of MeitY' s No.W-43/6/2020-IPHW dtd 24.02.2024

[78] *https://www.meity.gov.in/writereaddata/files/model_rfp_for_selection_of_implementation_agencies-2018.pdf*

[79] F.N. N-22018/33/2022-NeGD dated 17.05.2024

2. **Empanelment and Scope of Services** NeGD has empanelled consulting organizations through a competitive Request for Empanelment (RFE) process. This empanelment is valid for three years, extendable by two years. The empanelment framework simplifies the hiring process, ensuring quick access to skilled professionals while maintaining cost and quality control. This ensures the availability of specialized skills, adherence to national standards, and alignment with the program's vision of fostering a digitally empowered society. Government entities are encouraged to utilize this framework to achieve seamless execution of their digital transformation projects. By leveraging following three pre-defined categories and standardized rates, government organizations can efficiently implement diverse Digital India initiatives, ranging from large-scale IT system rollouts to innovative technology adoption.:

3. **Categories:**

a) Project/Program Management and Advisory Services (Category A)
   i) Developing project proposals, roadmaps, and templates.
   ii) Managing e-governance projects, including agile methodologies, bid processes, and change management.
   iii) Conducting audits (security, performance, and quality) and risk assessments.

b) Digital Ecosystem and Architecture Development (Category B)
   i) Designing digital ecosystem blueprints in line with national standards.
   ii) Preparing implementation plans, including business requirements, data governance strategies, and technology modernization approaches.
   iii) Supporting the adoption of scalable and agile solutions.

c) Technology Management and Emerging Technologies (Category C)
   i) Advising on emerging technologies such as AI, blockchain, IoT, and quantum computing.
   ii) Ensuring technology compliance and managing cybersecurity and GIS solutions.

4. **Hiring Process**: The hiring of consultants involves the following steps:

a) Request for Proposals or Concept Notes: Ministries, departments, and other government organizations leveraging NeGD's empanelment notify empanelled agencies about specific assignments. Agencies submit technical proposals or concept notes, which are evaluated on merit.

b) Selection and Deployment: Selected agencies deploy consultants with expertise relevant to the project. Consultants are required to provide their own equipment and work collaboratively with government teams at designated project sites.

c) Terms of Engagement: Empanelled consultants operate on a time-limited project basis without implying employment obligations by NeGD. Sub-contracting of services is prohibited.

d) **Compliance and Terms**:
   i) **Intellectual Property Rights**: All intellectual property generated during the project belongs to NeGD or the client organization.
   ii) **Performance Standards**: Consultants must adhere to timelines and quality benchmarks specified in the work order.
   iii) **Penalties and Termination**: Delays or non-performance can result in penalties up to 10% of the project value or termination of the engagement.

iv) **Confidentiality**: Consultants must maintain confidentiality of all project-related data.

Chapter 10: Monitoring Consultancy Services Contract

10.1 Contract Management

10.1.1 The Purpose of Contract Management

1. The purpose of contract management is to ensure that the contract delivers the desired outcomes as per the terms and conditions of the contract. It also ensures that the payments made to the contractor match the performance. Implementation of the contract should be strictly monitored, and notices issued promptly whenever a breach of provisions occurs. Monitoring should ensure that contractor adhere to contract terms, performance expectations are achieved (such as timelines, quality of outcomes, discharge of Consultant's contracted obligations, and so on) and any problems are identified and resolved in a timely manner. Without a sound monitoring process, there can be no assurance that "*we get what we pay and contract for and pay for only for what we get."* Normally, the following issues are handled in management of Services Contracts:

a) Contract Administration:
   i) Issuing the notice to proceed;
   ii) Meetings and Reviews
   iii) Amendments/ variations to the contract;
   iv) Obligations Control: Monitoring that key experts and contracted resources are actually employed.
   v) Safeguards for handing over Procuring Entity materials/ equipment to contractors;
   vi) Resolving problems faced by consultants;
   vii) Dispute resolution and arbitration;
   viii) Breach of contract, remedies, and termination of services prior to the end of the contract;
   ix) Contract closure upon completion;
b) Scope Control and Quality Assurance:
   i) Deciding on possible modifications to scope of work and issuing contract variations;
   ii) Monitor that all deliverables are delivered as per contract - reports including draft final report and the final report.
   iii) Quality assurance: Review quality of outcomes at inception phase, mid-term, and final phase.
c) Time Control: Monitoring progress and delays in timelines/ milestones of assignment;
d) Cost Control:
   i) Billing, payment and monitoring the expenditure vis-à-vis progress;
   ii) Release of final payment and guarantees (if any) and closing the contract;
e) Post contract evaluation.

2. Due to lack of physically/ tangibly measurable outcomes in Services contracts, intense and continuous monitoring of the Contract by the Procuring Entity is essential for the success of the assignment. Suitable provision for this should be made in the contracts which should

also take care of the need to terminate/ penalize the consultant or to suspend payments till satisfactory progress has not been achieved. The Procuring Entity shall form a Contract Monitoring Committee (CMC) to monitor the Contract. The Procuring Entity should also designate a counterpart Project Manager with adequate technical qualification, managerial experience, and power and authority as the nodal person to interact with the consultant's team. A system of reporting may be developed so that a statement covering all ongoing Consultancy contracts may be submitted within the Department in detail, so as to enable Management by Exception based on various Risk and Mitigation strategies pointed out at relevant process milestones in this manual. (Rule 195 of GFR 2017).

10.1.2 Contract Monitoring Committee – (CMC)

1. Rule 205 of GFR 2017 enjoins that the Ministry or Department be involved throughout the conduct of the contract and continuously monitor the performance of the contractor. The Procuring Entity shall constitute a CMC comprising at least three members at the appropriate level, including the user's representative, after the selection procedure is over for monitoring the progress of the contract. If considered appropriate, the Procuring Entity may select all or any of the members of CEC as members of CMC. The Procuring Entity may also include individual experts from the government/ private sector/ educational/ research institute or individual consultant in the CMC. The cost of such members, if any, shall be borne by the Procuring Entity. The CMC shall be responsible for monitoring the progress of the assignment, to oversee that the assignment is carried out as per the contract, to assess the quality of the deliverables, to accept/ reject any part of assignment, to levy appropriate liquidated damages or penalty if the assignment is not carried out as per the contract and if the quality of services is found inferior and for any such deficiency related to the completion of the assignment.

2. For the assignments which are overly complex and/ or are of highly technical nature, the Procuring Entity may decide to appoint another qualified consultant to assist the CMC in carrying out its functions.

10.2 Contract Administration

10.2.1 Issuing Notice to Proceed, Kick-off Meeting and Pre-requisites.

1. A notice to proceed is required to initiate consultancy services. It is normally issued as soon as possible after the contract has been signed. After the issuance of the notice to proceed, the contract normally commences upon the arrival of the consultant or the Consultancy team's members at the premises for the Procuring Entity, if so required under the description of services.

2. A kick-off meeting is held, where the parties discuss and make sure that they are on same page as far as the outcomes and the contract management issues are concerned. The Procuring Entity and the consultant agree on the detailed content of outputs - inception, progress, and final report. Schedule of meetings and reviews are also laid down during this discussion.

3. Before issuing notice to proceed, the Procuring Entity and the consultant should check that all pre-requisites for the contract execution are in place:

a) Supervising/ monitoring arrangements (including CMC) are in place;
b) Procuring Entity's counterpart staff (including counterpart project manager) are nominated and are available;
c) Facilities to be provided by the Procuring Entity as per the contract are ready for use by the consultant;

d) All parties involved in the assignment (users, security team and other relevant departments) are informed;
e) All consortium/ JV members and key experts needed at the beginning of the assignment are effectively participating in the assignment as required by the Contract;
f) Guarantees and advance payments, if any, are implemented;
g) Data and background information are made available; and
h) All authorisations (if needed) are provided.

10.2.2 Review of Inception Phase

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

1. Overall, Scope of Work;
2. Work Plan and Staffing Schedule;
3. Specific Terms of Reference;
4. Access to Professional and Logistic Support;
5. Working Arrangements and Liaison

10.2.3 Reporting and Monitoring of Progress

1. Monitoring of Contract should ensure that Consultants adhere to contract terms, performance standards are achieved (such as timely deliverables, service outputs/ outcomes, adherence to the proper procedure for submitting invoices, and so on), and any problems are identified and resolved in a timely manner. Without a sound monitoring process, there can be no assurance that the buyer has received what was contracted and is paying only for what is received. A sound system for monitoring the performance of the contractor in a contract would also be useful in selecting a good consultant for future procurement of the same or similar assignments. Implementation of the contract should be strictly monitored, and notices should be issued promptly whenever a breach of provisions occurs.

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

3. **Costs of Delays in Contract Management Decisions:** Payments and decisions in contract management requested by the contractor should be made within a reasonable time. An atmosphere of lackadaisical dilatory functioning in such matters is liable to lead to bidders quoting higher prices in future bids, besides delays in services and disputes in the contract.

4. **Monitoring Deliverables/ Outputs/ Outcomes:** Especially in consultancy services, progress of deliverables/ outcomes/ outputs has also to be monitored. There should be a stipulation in the contract for large value works (magnitude to be specified), for the Consultant to submit project specific monthly progress report of the work in a computerized form (Management Information System Reports– MIS reports). The progress report shall contain the following apart from whatever else may be required to be specified:

a) Project information, giving the broad features of the contract.
b) Introduction, giving a brief scope of the work/ Activity Schedule under the contract.
c) Progress of assignment through a bar chart for the next three quarters for as may be specified, showing the milestones, targeted tasks and up to date progress.
d) Progress chart of the various components of the assignment that are planned and achieved, for the month as well as cumulative up to the month, with reasons for deviations, if any, in a tabular format.
e) Resources/ tools/ equipment statement, indicating those deployed, and their working status.
f) Man-power statement, indicating individually the names of all the key-staff. Monthly or fortnightly progress review by Procuring Entity with contractor may be necessary to ensure that contractor deploys sufficient resources to meet the deadlines.
g) Financial statement, indicating the broad details of all the running account payments received up to date, such as gross value of work done, advances taken, recoveries effected, amounts withheld, net payments, details of cheque payments received, etc.
h) A statement showing the variations/ change requests submitted by the contractor, and the payments received against them, broad details of the bank Guarantees, clearly indicating their validity periods, broad details of the insurance policies taken, if any, the advances received and adjusted from the department, etc.
i) Progress photographs/ videography, in colour, of the various items/ components of the work done up to date, to indicate visually the actual progress of the work. Use of Geotagging (adding geographical metadata - latitude and longitude coordinates) in photos, videos, reports, may help in monitoring physical progress on the ground. Such information would also be useful later during use of such facilities.
j) Quality assurance and quality control tests conducted (for example in the case of construction supervision consultancy contracts) during the month, with the results thereof.
k) Any hold-up shall be specified.
l) Dispute, if any, shall also be highlighted.

5. **Monitoring a Time-based Contract:** As indicated earlier, the performance of a time-based contract may depend on the progress in other contracts (for example, the progress of a construction supervision contract depends on the progress of a construction contract). In such situations, the mobilisation and demobilisation of resources/ key experts and time employed by them should be mobilised and monitored carefully as it is possible that the contract period and the total amount under the contract are spent fully, and construction work

being supervised is not even half complete. These situations could lead to claims and disputes.

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

10.2.4 Issuing Contract Amendments/ Variations

1. The formal method of making and documenting a change in the Consultancy Services contract is through a contract variation. There are few Consultancy Services contracts of any type that do not require a contract variation at one time or another. Contract variations are issued when there are agreed-upon changes in the scope of work, personnel inputs, costs, timing of the submission of reports, or out-of-pocket expenditures. Normally, these relate to changes that have a cost implication, but when there is a significant change in the timing of an activity or a particular output, these should also be recorded through a contract variation. No amendment to the contract should be made that can lead to a vitiation of the original tender decision or bestow an undue advantage on the contractor. Where it becomes necessary/ inescapable, any modification shall be carried out with the prior approval of the CA.

2. Normally, the request for contract variation is prepared by the consultant or Consultancy firm and submitted to the Procuring Entity. However, these can also be initiated by the Procuring Entity, suo-moto. If the contractor does not raise objections within 14 days to any suo-moto modifications/ amendments made by the Procuring Entity, it shall be assumed that the contractor has consented to the amendment.

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

4. No amendment shall be binding on the Procuring Entity unless and until the same is written and signed/ authorised by a competent authority.

5. Any amendment to the contract may have, inter alia, financial/ technical/ legal implications. The indentor may be consulted regarding the technical implications. Associated/ integrated Finance’s concurrence should be obtained before issuing any amendment that has financial implications/ repercussions. Further, if considered necessary, legal opinion may also be sought.

10.2.5 Obligations Control: Deployment of Resources

1. **Deployment of Resources and Penalty for Absence:**
   a) Consultant must deploy the contracted resources, maintaining adequate records of attendance and audit trails. The Consultant 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 Consultant 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.
   b) Penalty for absence: In the case of absence (apart from allowed leaves) of a resource during project period, no payment will be made for the days a resource is absent (Daily wage will be calculated by dividing man month rate by number of working days in that month). In addition, a penalty (say 5% of the daily wage) per working day per resource will be levied on such absence. Fraction of a day in reckoning period in supplies shall be eliminated if it is less than half a day. Penalty would be deducted from the applicable payments.
2. **Substitution of key personnel** during the execution of a consultancy contract is a common type of variation that may occur due to unavoidable circumstances such as resignation, illness, accident, inadequate performance, or personality conflicts. Given the importance of key personnel in ensuring the quality of consultancy services, the following provisions and guidelines should be incorporated into the contract and tender documents to manage such substitutions effectively:
   a) **Conditions for Substitution**: Substitution of key personnel should only be allowed in compelling or unavoidable situations.
      i) The replacement should be of equivalent or higher qualifications and experience compared to the person being replaced, to ensure the continued quality of service.
      ii) Any replacement should be subject to the procuring entity's approval, ensuring satisfaction with the substitute’s credentials.
   b) **Limitations on Substitutions**: Substitution should typically be limited to no more than 30% of the total key personnel deployed under the contract. This is to maintain the overall integrity and continuity of the project. The remuneration for replacements should not exceed the amount agreed upon for the original personnel. A system of remuneration reduction should be introduced for substitutions, with decreasing payment structures for repeated replacements: For the first 10% of replacements, a 5% reduction in remuneration may be applied.
      i) For the next 10%, a 10% reduction may be applied.
      ii) For the third 10%, a 15% reduction may be applied.
      iii) These reductions would apply from the date of replacement until the contract's completion. If necessary, the procuring entity may develop a different but similar remuneration adjustment system, reflecting these principles, to suit specific contract needs.
   c) **Cost Implications**: The consultant should bear all costs arising from or incidental to the replacement, such as travel expenses for the substitute expert.
   d) **Monitoring Substitution and Deployment**: To ensure compliance, public authorities may implement IT-enabled systems at the deployment site to monitor the presence of key personnel as per the deployment schedule.
3. **Unsatisfactory Performance by Personnel**: Poor performance may involve one or more particular staff from the consultant’s team, or the whole team or non-participation by the

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

4. **Changes in Constitution/ Financial Stakes**: The Contractor must proactively keep the Procuring Entity informed of any changes in its constitution/ financial stakes/ responsibilities during the execution of the contract, since that may vitiate the legal basis of the Contract. Where the contractor is a partnership firm, the following restrictions shall apply to changes in the constitution during the execution of the contract:
   a) a new partner shall not be introduced in the firm except with the previous consent in writing of the Procuring Entity, which shall be granted only upon execution of a written undertaking by the new partner to perform the contract and accept all liabilities incurred by the firm under the contract before the date of such undertaking.
   b) On the death or retirement of any partner of the contractor firm before the complete performance of the contract, the Procuring Entity may, at his option, terminate the contract for default as per the Contract and avail any or all remedies thereunder.
   c) If the contract is not terminated as provided in Sub-para (b) above:
      i) the remaining partners should give a written undertaking to perform the contract and accept all liabilities (including those of the expired/ retired partner) incurred by the firm under the contract before the date of such an event.
      ii) notwithstanding the retirement of a partner from the firm, that partner shall continue to be liable under the contract for acts of the firm until a copy of the public notice given by him under Section 32 of the Partnership Act, has been sent by him to the Procuring Entity in writing or electronically.

4. **Obligation to Maintain Capability - Key Personnel, Critical Equipment:** The contract is awarded to the contractor based on specific eligibility and qualification criteria. The Contractor is contractually bound to maintain such eligibility and qualifications during the execution of the contract. Any change which would vitiate the basis on which the contract was awarded to the contractor should be pro-actively brought to the notice of the Procuring Entity within 7 days of it coming to the Contractor's knowledge. These changes include but are not restricted to change regarding any declarations in this regard made by it in its bid. Contractor should also indicate remedial measures he is taking in this regard, and how he proposes to ensure smooth execution of contract.

5. **Avoiding Conflict of interest:** Neither the contractor nor its Subcontractors nor the Personnel shall engage, either directly or indirectly, during the term of this Contract, any business or professional activities in India that would conflict with the activities assigned to them under this Contract and after the termination of this Contract, such other activities as may be stipulated in the contract.

6. **No Assignment/ Sub-contracting:** The contractor shall not, save with the previous consent in writing of the Procuring Entity, sublet, transfer, or assign the contract or any part thereof or interest therein or benefit or advantage thereof, in any manner whatsoever. He shall notify the Procuring Entity in writing, all sub-contracts awarded under the contract, if not already stipulated in the contract, in its original bid or later. Such notification shall not relieve

the contract from any of its liability, or obligation under the terms and conditions of the contract. Sub-contracts shall be only for bought out items and incidental Works/ Services. Sub-contracts must comply with and should not circumvent Contractor's compliance with its obligations. If the Contractor sublets or assigns the contract or any part thereof without such permission, the Procuring Entity shall be entitled, and it shall be lawful on his part, to treat it as a breach of contract and avail any or all remedies thereunder.

7. **Indemnifying Procuring Entity regarding Intellectual Property (IPR):** All deliverables, outputs, plans, drawings, specifications, designs, reports, and other documents and software submitted by the contractor under this Contract shall become and remain the property of the Procuring Entity and subject to laws of copyright and must not be shared with third parties or reproduced, whether in whole or part, without the Procuring Entity's prior written consent. The contractor shall, not later than upon termination or expiration of this Contract, deliver all such documents and software to the Procuring Entity, together with a detailed inventory thereof. The contractor shall indemnify the Procuring Entity against any breach of third party's IPR. The Contractor (and its allied firms) shall maintain confidentiality and secrecy of Procuring Entity's information provided to it (or that it comes across during execution of Contract).

8. **Performance Security:**

a) The Contractor must maintain the Performance Security of the required amount in specified format during the currency of the Contract. In the event of any amendment issued to the contract, the contractor shall furnish suitably amended value and validity of the Performance Security in terms of the amended contract within twenty-eight days of issue of the amendment.

b) If the contractor during the currency of the Contract fails to maintain the requisite Performance Security, it shall be lawful for the Procuring Entity at its discretion at its discretion to either terminate the Contract for breach of contract and avail any or all contractual remedies, or without terminating the Contract, recover from the contractor the amount of such security deposit by deducting the amount from the pending bills of the contractor under the contract or any other contract with the Procuring Entity or the Government or any person contracting through the Procuring Organisation or otherwise.

c) The Procuring Entity shall be entitled, and it shall be lawful on his part, to deduct from the performance securities or to forfeit the said security in whole or in part in the event of:

   i) any default, or failure or neglect on the part of the contractor in the fulfilment or performance in all respect of the contract under reference or any other contract with the Procuring Organisation or any part thereof;

   ii) for any loss or damage recoverable from the contractor which the Procuring Entity may suffer or be put to for reasons of or due to above defaults/ failures/ neglect;

   iii) and in either of the events aforesaid to call upon the contractor to maintain the said performance security at its original limit by making further deposits, provided further that the Procuring Entity shall be entitled, and it shall be lawful on his part, to recover any such claim from any sum then due or which at any time after that may become due to the contractor for similar reasons.

d) The performance security should be refunded to the contractor without interest, after he duly performs and completes the contract in all respects but not later than 60

(sixty) days of completion of all such obligations including the warranty under the contract. No claim shall lie against the Procuring Entity regarding interest on cash deposits or Government Securities or depreciation thereof. Return of Bid/ Performance Securities should be monitored by the senior officers and delays should be avoided. If feasible, the details of these securities may be listed in the e-Procurement Portal/ website of the Procuring entity, to make the process transparent and visible.

10.2.6 Incentives for Excellence in Contract Execution

Procuring Entities are encouraged to explore strategies that may incentivize contractors, service providers and consultants, such as offering bonuses, improved ratings, or recognition for early, timely, and quality completion of projects.

10.2.7 Safeguards for Handing over Procuring Entity Materials/ Equipment to Contractors

For performance of certain contracts, Procuring Entity may have to loan stores, drawings, documents, equipment, and assets (such as accommodation, identity cards and gate passes, and so on) to the contractor. In certain situations, the contractor may also be supplied electricity, water etc. on payment/ hire basis. Whenever stores or prototypes or sub-assemblies are required to be issued to the firm/ contractor, these should be issued against an appropriate bank guarantee. In addition to the bank guarantee, appropriate insurance may be asked for if it is considered necessary. The Contractor shall use such property for the execution of the contract and no other purpose whatsoever. These assets shall remain the property of the Procuring Entity, and the contractor shall take all reasonable care of all such assets. The contractor shall be responsible for all damage or loss from whatever cause caused while such assets are possessed or controlled by the contractor, staff, workers, or agents. As a measure of transparency, the possibility of provision of such resources by Procuring Entity should have been announced in the tender document/ RfP or at least requested by the contractor in the tender and written in the contract. Before the final payment or release of PBG/ SD, a certificate may be taken from the concerned Department that the contractor has returned all documents, drawings, protective gear, material, equipment, facilities, and assets loaned, including all ID cards and gate passes, and so on, in good condition. Further, it should be certified that payment from the contractor has been received for usage of electricity, water, crane, accommodation, weighing facility, and so on. For low value items of less than Rs. 1,00,000 (Rupees One Lakh), this stipulation of the bank guarantee may be waived and, if feasible, an indemnity bond may be taken.

10.3 Controlling Scope of Supply and Quantity

10.3.1 Scope of Services

1. The Contractor must perform/ delivery Services of the description, scope/ quantum, performance standards and quality outlined in the contract during the contract Period specified therein. The Services shall conform to performance and quality standards as stipulated in the contract or as per the best standards in the market, where not so specified. The Services shall include all incidental works/ Goods, and such other work-elements not mentioned explicitly in this Contract, but that can be reasonably inferred from the Contract as being required for attaining Completion of the Services.

2. The contractor shall perform the Services and its obligations with all due diligence, efficiency, and economy, observing sound management practices, and employ appropriate advanced technology and safe methods as per the performance standards and quality control parameters stipulated in the contract. For matters where the contract does not specify any Standard, the Services delivered shall conform to National/ International Standards or generally accepted professional techniques and practices.

10.3.2 Performance Standards, Quality Control

1. The Procuring Entity shall check the quality of the Services and shall inspect the contractor's performance according to the Contract. The Procuring Entity shall promptly notify the contractor of any identified defects, requesting the correction of the notified defect within a reasonable time.

2. If the contractor has not corrected notified defect within the time stipulated in the Procuring Entity's notice, the Procuring Entity shall assess the cost of having the defect corrected. Without prejudice to any of its other remedies under this Contract or applicable law, procuring Entity shall be legally entitled to deduct such cost from the contract's payments, together with the damages for the shortfall in performance (as per clause below), a sum equivalent to the percentage stipulated in the contract.

3. **Damages for Shortfall in Performance:** Procuring Entity's shall, without prejudice to other rights and remedies under the contract, recover as damages for the shortfall in performance, but not as a penalty, 0.5 (half) percent (or any other percentage prescribed) of the delivered price (including elements of GST & freight) of the defective Services, without having to prove actual loss incurred.

10.4 Time Control

10.4.1 Delays in Performance of Services:

1. Contractor shall be required to adhere to the delivery schedule (including any incidental Work/ Goods) specified in the Contract (or as extended) and, if there is a delay in performance of services, it amounts to breach of contract, since 'Time is the Essence of the Contract'. The consultant should notify the Procuring Entity and explain the causes of such delays. Consultancy Services may be delayed for a variety of reasons, including sometimes delays in discharge of its obligations by the Procuring Entities.

2. **Delays Attributable to the Consultant**: In case of delays attributable to the Consultant. the Procuring Entity may without prejudice to his other rights:

   a) recover from the contractor liquidated damages as per para 10.4.5 below, or
   b) treat the delay as a breach of contract as per para 10.8.1 below and avail all the remedies therein, although it is in purchaser's interest to resort to this provision only as a last resort, in case of inordinate delays.

3. **Delay in Performance for which Consultant is not Responsible**:

   a) In cases where there is a delay for which the Consultant is not responsible; the delivery period needs to be re-fixed without imposing any penalty (i.e., without LD and without a denial clause). If corrective action requires extra work and the delay cannot be attributed to the consultant the extra work should be reimbursed in accordance with the contract. Normally, in the following circumstances, the Consultant may not be considered to be responsible for the delay:

i) Cases where the Consultant is dependent on the approval/ decision of the Procuring Entity, and the delay occurs in such approval/ decision, though requested by the Consultant in time;
ii) Where extension in the delivery period is granted on account of some omission on the part of the purchaser, which affects the due performance of the contract by the Consultant,
iii) Cases where the service delivery has been affected by Force Majeure or statutory change or specific executive instructions issued by Govt.

b) There may be delays for which both buyer and consultant may be responsible to a different extent. In such cases, the levy of LD and Denial clause may be decided on merits.

4. **Inordinate Delays:** Inexcusable delays of more than one-fourth (25%) of the total completion period shall be treated as inordinate delays. Such inordinate delays may be treated as breach of contract and shall be noted as deficient performance and be held against the contractor in future tenders. A show-cause notice shall be issued to the contractor before declaring it a deficient performance. Such delays may be considered as a breach of the contract at the option of the Procuring Entity.

10.4.2 Extension or Refixation of Delivery

1. If at any time during the currency of the contract, the contractor encounters conditions hindering timely delivery of services, he shall promptly inform the concerned officer in writing. He should mention its likely duration and make a request for extension of the schedule accordingly. On receiving the contractor's communication, the procuring entity shall examine whether the delay is attributable to the contractor or not (Please refer to para 10.4.1 above).
2. **Refixation of Delivery:** In case the delay is not attributable to the Consultant (or in case of Force Majeure) the proposal (refer to Annexure 21) and, on approval from the CA, may agree to re-fix delivery period (i.e. a fresh delivery period, treated like original delivery period), which is arrived at by recasting the original contractual delivery period after taking care of the lost period for which the consultant was not responsible, without LD and without the denial clause (as defined in Para 10.4.4 below), for completion of the contractor's contractual obligations.
3. **Extension of Delivery:** In case the delay is attributable (fully or partly) to the Consultant the proposal (refer to Annexure 21) and, on approval from the CA, may agree to extend the delivery schedule, with or without LD and with or without the denial clause (as defined in Para 10.4.4 below), for completion of the contractor's contractual obligations, provided:
   a) That a higher rate in the original tender was not accepted against other lower quotations in consideration of the earlier delivery; and
   b) That there is no falling trend in prices for this item as evidenced from the fact that, in the intervening period, neither orders have been placed at rates lower than this contract nor any tender been opened where such rates have been received even though the tender is not yet decided. In cases of certain raw material supplies, where prices are linked to the PVC, extension may be granted even in case of a falling trend in price indices, since the purchaser's interests are protected by the price variation mechanism. However, in such cases it should be ensured that extensions are done with the denial clause.
4. **Extension/ Refixation of time after its expiry:** The power to extend the time for performance under Section 63 of the Indian Contract Act is not inherently limited to

extensions granted before the original deadline. It can be exercised even after the stipulated time has passed, provided there is consent from both parties. The contract does not automatically terminate upon the expiry of the initial delivery date, if there is a shared intention to continue the contractual relationship and fulfil the obligations, albeit under a revised timeline. Therefore, such extension/ refixation of time can be done, even after expiry of original period, provided consent of the contractor is obtained. However, it is prudent to formalize the extension before the original delivery period expires, to avoid any arguments about the contract's validity or of extension of time after the initial deadline.

5. **Extension/ Refixation** of the delivery date amounts to amendment of the contract. Such an extension can be only done with the consent of both parties (that is, the purchaser and supplier). No extension/ refixation of the delivery date is to be granted suo motu unless the supplier specifically asks for it. However, in a few cases, it may be necessary to grant an extension/ refixation of the delivery period suo motu in the interest of the administration. In such cases, it is legally necessary to obtain clear acceptance of the extension letter from the supplier.
6. No correspondence should be entered into with the supplier after expiry of the contract delivery period or towards the end of it, which has the legal effect of condoning the delay/breach of contract. When it is necessary to obtain certain information regarding past supplies, it should be made clear that calling for such information is not intended to keep the contract alive and that it does not waive the breach and that it is without prejudice to the rights and remedies available to the purchaser under the terms of the contract. The last line of such a communication should therefore be: “This letter is issued without any prejudice to Procuring Entity’s rights and remedies under the terms and conditions of the subject contract and without any commitment or obligation.” A format for such correspondence is given in Annexure 23.
7. When it is decided to extend the delivery period subject to recovery of Liquidated Damages (LD) for delay in supplies, contractors must be given a warning to this effect in writing at the time of granting extensions. It is not correct to grant extensions without any mention of the LD if it is proposed to recover such charges eventually. It is also not correct to grant an extension of the delivery period by merely stating that the extension is granted “without prejudice to the rights of the purchaser under the terms and conditions of the contract” as this would mean that all the options given in the conditions of the contract would be available to the purchaser on expiry of the extended delivery period and would not amount to exercise of the option to recover LD. To take care of complex legalities brought out above, extension of the delivery period when granted should only be done in writing in the laid down format given in Annexure 22.
8. Organisations 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.

10.4.3 Performance Notice

A situation may arise where the supply/services has not been completed within the stipulated period due to negligence/fault of the consultant; however, the supplier has not made any request for extension of the delivery period, but the contracted goods/services are still required by the purchaser and the purchaser does not want to cancel the contract at that stage. In such a case, a performance notice (also known as notice-cum-extension letter) may be issued to the supplier by suitably extending the delivery date and by imposing LD with denial clauses, and so on, along identical lines as in para 10.4.2 above. The supplier's acceptance of the

performance notice and further action thereof should also be processed in the same manner as mentioned above. The text of the performance notice will be on similar lines to the Annexure 22.

10.4.4 Denial Clause

If delay in delivery is attributable to the consultant, the procuring entity should protect itself against extra expenditure during the extended period by stipulating a denial clause (over and above levy of LD) in the letter informing the supplier of extension of the delivery period. In the denial clause (applicable for delays attributable to consultant), any increase in statutory duties and/or upward rise in prices due to the PVC clause and/or any adverse fluctuation in foreign exchange are to be borne by the consultant during the extended delivery period, while the purchaser reserves his right to get any benefit of a downward revisions in statutory duties, PVC, and foreign exchange rate. Thus, in cases of delays attributable to Consultant, PVC, other variations, and foreign exchange clauses operate only during the original delivery period. The format of the denial clause is available in Annexure 22.

10.4.5 Liquidated Damages

Compensation of loss on account of late delivery (actually incurred as well as notional) where loss is pre-estimated and mutually agreed to is termed as LD. Law allows recovery of pre-estimated loss provided such a term is included in the contract and there is no need to establish actual loss due to late supply [MallaBaux Vs. UOI (1970)]. However, it would strengthen Procuring Entity's rights, if it is established and kept on record, that inconvenience and loss has been caused due to the delay in supplies, though the loss cannot be exactly quantified, and hence liquidated damages are applicable as a genuine pre-estimate of the loss.

10.4.6 Quantum of LD

1. While granting extension of the delivery period for delays attributable entirely to the contractor, where the delivery of services or any activity thereof is accepted after expiry of the original delivery period, the Procuring Entity may recover from the contractor, as liquidated damages for each week of delay or part thereof until actual delivery or performance, but not as a penalty, a sum equivalent to the 0.5% (half percent, or any other percentage if prescribed) of the value of delayed portion (that includes variations, taxes and duties) of the Services, subject to a maximum of 5% (Five percent) of the total contract value. Besides liquidated damages during such a delay, the denial clause shall also apply. The Procuring Entity may deduct liquidated damages from payments due to the consultant. Payment of liquidated damages shall not affect the consultant's liabilities. For purpose of GST, LD should be shown as deduction on the invoice value by the contractor.

2. In case of inordinate delays, this upper limit of LD shall be 10% (Ten percent) of the contract value. (Refer para 10.4.1-4 to understand inordinate delay).

3. In contracts governed by any type of variation (PVC, ERV or statutory variations), LDs (if a percentage of the price) will be applicable on the price as varied by the operation of the PVC.

4. In case of delays for which both procuring entity and consultant may be responsible to a different extent, procuring entity with the approval of CA and concurrence of finance decide a lower quantum of LD, and consider waiver of denial clause on the merit of the case.

5. LDs accrue only in case of delayed services. Where or as far as no services have been rendered under a contract, upon cancellation, recovery of only the loss occasioned by breach

of contract can be made, notwithstanding the fact that prior to the cancellation one or more extensions of the delivery period with reservation of the right to LD are granted.

10.4.7 Waiver of LD

1. There should normally be no system of waiver of LDs for delayed services and it may strictly be an exception rather than a rule. For an extension of the delivery date with waiver of LD, approval of the CA with consultation of associated Finance may be taken and justifications recorded.

2. Government establishments/ Departments, as distinct from PSUs, which execute contract should not be dealt with as ordinary contractors and not generally be penalised for late delivery and claims for loss on risk-purchase should not be enforced against them. Serious cases of defaults should, however, be brought to the notice of the HOD or the Government Department concerned.

3. As mentioned in para 10.5.3-3-e) below, for purpose of GST, liquidated damages should be shown as deductions on the invoice value by the contractor

10.4.8 Limit on total Damages.

Deduction on account of damages for delays and performance, put together shall be subject to a maximum of 5% (Five percent) (or any other percentage if prescribed) of the entire value of Contract of Services. The damages cannot exceed the amount stipulated in the contract.

10.4.9 Force Majeure

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

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

10.5 Cost Control: Billing and Payments

10.5.1 Payment to Consultants

1. **Periodic Payments**:
   a) Payment is made to the consultant based on a schedule agreed on in contract, often based on certain milestones or outputs.
   b) Release of payment and settlement of the final bill should be processed through the Associated/ integrated Finance as per the terms and conditions of the contract;

c) No payments to contractors by way of compensation or otherwise outside the strict terms of the contract or more than the contract rates should be allowed;

d) All correspondence with the supplier will be handled by procuring entity.

2. **Invoices**:

a) The consultant submits an invoice to the Procuring Entity detailing the expenditures for personnel and out-of-pocket items.

b) The documents, which are needed from the supplier for release of payment, are to be clearly specified in the contract. The paying authority is also to verify the documents received from the supplier with corresponding stipulations made in the contract before releasing the payment. The invoice submitted by the supplier shall be verified and signed by the contract manager and pay order form or any other relevant forms shall be prepared by the procuring entity and signed by an officer authorised to sign pay-orders.

c) Before the payment is made, the invoice should be cross-checked with the actual receipt of services to ensure that the payment matches the actual performance;

d) In normal practice, if any item needs further scrutiny before the Procuring Entity can approve payment, payment of undisputed items should be made. But payment of any disputed items will be withheld until the circumstances are clarified.

e) While claiming the payment, the supplier must also certify on the bill that the payment being claimed is strictly in terms of the contract and all the obligations on his part for claiming this payment have been fulfilled as required under the contract. There should also be a suitable provision for verification of the authenticity of the person signing the invoice, and so on, to claim the payment.

3. **Deductions of Taxes**: Deduction of applicable taxes at source from payments to consultant shall be done as per the existing law in force during the currency of the contract. As soon as possible, but not later than the date of submission of tax returns, the procuring entity must provide the statutory certificates for the taxes deducted from the supplier so that he can claim set-offs and refunds from the concerned authorities. Detailed payment advice showing the calculations and reasons for the amounts disallowed and taxes deducted must be issued to the supplier along with payment.

4. **Timely Payment**:

a) In a services contract, delivery of services is the essence of the contract for the purchaser. Similarly, receiving timely payment for the services is the essence of the contract for the consultant. A healthy buyer-contractor relationship is based on the twin foundation of timely and quality service, on the one hand, and prompt and full payment to the contractor, on the other. It should be ensured that all payments due to the firm, including release of the performance security, are made on a priority basis without avoidable delay as per the tender/contract conditions. Any foreseeable payment delays should be communicated to the contractors in advance. Payments and decisions in contract management requested by the contractors should be made within a reasonable time. An atmosphere of lackadaisical dilatory functioning in such matters is liable to lead to bidders quoting higher prices in future bids, besides delays in services and disputes in the contract.

b) Additionally, procuring entities are encouraged to ensure final bill payments are processed within three months of project completion. For contracts with payments exceeding Rs.100 crore annually, it is recommended to implement an online system

to track bill submissions and payments, providing contractors with transparency and timely updates[80].

5. **Delay in payment to the contractors**:

a) 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 of General Provident Fund. In case of unwarranted discretionary delays in payments, as prescribed above, responsibility shall be fixed on the concerned officers. There should be a system to monitor delays in payments and to identify such unwarranted delays including 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 contractor's bills to be entered into the system with date of submission and date of payment. [81]

b) As far as MSE contractors are concerned, MSME Act 2006 has provisions (refer to para 1.10.1-4-c) for details) for timely payments within 45 days and a levy of penal interest for delayed payment and arbitration/ conciliation for related complaints by Micro and Small Enterprises Facilitation Councils.

6. **Handling Securities**: Proper procedures for safe custody, monitoring and return of bank guarantees and other instruments may be followed. Chapter 6 has more details in this regard. Before making a final payment or before releasing the performance bank guarantee, a 'No Claim Certificate' (Annexure 24) may be insisted upon from the contractor to prevent future claims. Whenever a bank guarantee is released following due procedure and safeguards, acknowledgement thereof should also be taken from the contractor.

7. **Advance Payment, as per Contract**: The terms and conditions of such payments are set out in the contract wherein the amount of advance payment is specified, as are the timing of the payment and the amount of advance payment security to be provided by the Consultant. The advance payment is set off by the Procuring Entity in equal instalments against monthly billing statements until it has been fully set off. Once an advance has been provided, requests for any additional advance are not considered until the consultant liquidates the previous advance. The advance payment security is then released. In some contracts there may be provision for mobilization fee to be paid. (Please refer to para 6.4)

8. **Electronic Bill (e-Bill) processing system** was announced in Union Budget 2022-23, as part of 'Ease of Doing Business and Digital India eco-system' to bring broader transparency and expedite the process of payments. It will enhance transparency, efficiency, and faceless-paperless payment system. Contractors shall submit their bills electronically through the e-Bill portal, wherever such facilities are available. Concerned authorities verify these bills for discrepancies, authenticity, and adherence to rules. Once verified, the bills shall be approved for payment. The approved bills are integrated with the electronic payment systems. Funds are allocated from the relevant budget heads. The system generates payment orders. The e-Bill system allows real-time on-line tracking of bill processing by Contractors.

10.5.2 Price Variations

1. In case the contract provides for a Price Variation Clause (PVC) or variation on any other account, the price shall be subject to adjustment on a quarterly basis, as per such

[80] DoE's OM NO.F.1/1/2021-PPD dtd 29.10.2021

[81] DoE's OM NO.F.1/1/2021-PPD dtd 29.10.2021

clauses, only during the original Delivery Period. With the payment of such variations, no additional individual claim shall be admissible on account of fluctuations in market rates, increases in taxes/any other levies/tolls, etc.

2. Please refer to para 6.5-2) for provisions of PVC (formula, base date, delivery date, time lag for both base/ delivery dates, lower and upper cap on PVC, applicability of PVC during after original delivery period);

3. Calculations for all variations should be based on the basic price without taxes and duties. Therefore, contracts involving customs duty, foreign exchange fluctuations, GST, duties and taxes, the percentage and element of duties and taxes included in the price should be specifically stated, along with the selling rate of foreign exchange element considered in the calculation of the price of the imported item. Taxes/ duties chargeable and payable ad-valorem shall be charged at the nett price after variations.

4. In contracts governed by any type of variation (PVC or statutory variations), LDs (if a percentage of the price) will be applicable on the price as varied by the operation of the PVC. For purpose of GST, LD should be shown as deduction on the invoice value by the contractor.

5. If the Contract provides for some inputs to be provided by the Procuring Entity free or at a fixed rate, or advance or stage payments have been already made, the value of such inputs and advance/ stage payments shall be excluded from the value of the Services delivered in the relevant quarter for payment/recovery of price variation.

6. If there is a downward price trend, the Contractor may tend to hide this fact. Therefore, while claiming payments where such variations are applicable, the contractor must submit its calculations for each invoice, even if the payment on account of these variations is zero. Price reductions due to such variations must be passed on to the Procuring Entity. Care should be exercised to finalise the price before final payment is made and after obtaining data and documents in support of claims for escalation, if any. Where the contractors submit no such claims, an examination of whether there has been a downward trend in the cost, which the contractor may not bring out, is required. At any rate, an undertaking should be obtained from the contractor to the following effect in case it becomes necessary to make the final payment before he has submitted the required data/documents related to the PVC:

> *"It is certified that there has been no decrease in the price because of a decrease in price variation indices in the price variation formula. In the event of any decrease of such indices that come to light later regarding the payment claimed by us, we shall promptly notify the purchaser, and we undertake to refund and agree to the purchaser deducting from our future payment due any excess payment made to us in this regard."*

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

10.5.3 Payment of Taxes and Duties

1. The contractor shall be entirely responsible for all taxes, duties, fees, levies etc., incurred until delivery of the Services to the Procuring Entity.

2. If applicable under relevant tax laws and rules, the Procuring Entity shall deduct required taxes on account of GST Reverse Charge Mechanism; Tax Deducted at Source (TDS), and Tax Collected at Source (TCS) relating to Income Tax, labour cess, royalty etc from all payments due to the Contractor and deposit these to respective authorities as per the

existing law in force during the currency of the contract. In the case of foreign bidders, Corporate tax shall be deducted at source from each invoice as per instructions/orders of the Government of India, Indian Income Tax Authority.

3. **Goods and services Tax:** GST shall be paid as per the rate at which it is liable to be assessed or has been assessed, provided the transaction of the sale is legally liable to such taxes and is payable as per the terms of the contract subject to the following conditions:

a) The payment of GST and GST Cess to the contractor shall be made only on the latter submitting a GST compliant Bill/ invoice indicating the appropriate HSN code and applicable GST rate thereon duly supported with documentary evidence as per the provision of relevant GST Act and the Rules made there under. The delivery shall be shown being made in the name, location/ state, and GSTIN of the consignee only; the location of the procurement office of the procuring entity has no bearing on the invoicing.

b) The Procuring Entity shall not pay a higher GST rate if leviable due to any misclassification of the HSN number or incorrect GST rate quoted mistakenly by the Contractor. Wherever the contractor invoices the Services at GST rate or HSN number, which is different from that incorporated in the contract, payment shall be made as per GST rate, which is lower of the GST rates incorporated in the contract or billed. However, the Procuring Entity shall not be responsible for the contractor's tax payment or duty under a misapprehension of the law. The Contractor shall be required to adjust his basic price to the extent required by a higher tax rate billed as per invoice to match the all-inclusive price mentioned in the contract.

c) In case of undue profiteering by the contractor relating to GST tax, the Procuring Entity shall treat it as a violation of the Code of Integrity in the contract and avail any or all punitive actions thereunder, in addition to recovery and action by the GST authorities under the Act.

d) The contractor should issue Receipt vouchers immediately on receipt of all types of payments along with tax invoices after adjusting advance payments, if any, as per Contractual terms and GST Provisions.

e) Liquidated damages or any other variations (Price Variation or Exchange Rate variation, etc.) should be shown as deductions on the invoice, and GST shall be applicable only on the net balance payment due.

f) While claiming reimbursement of duties, taxes etc. (like GST) from the Procuring Entity, as and if permitted under the contract, the contractor shall also certify that in case it gets any refund out of such taxes and duties from the concerned authorities later, it (the contractor) shall refund to the Procuring Entity, the Procuring Entity’s share out of such refund received by the contractor. The Contractor shall also refund the appropriate amount to the Procuring Entity immediately on receiving the same from the concerned authorities.

g) All necessary adjustment vouchers such as Credit Notes/ Debit Notes for any short/ excess services delivered or revision in prices or any other reason under the contract shall be submitted to the Procuring Entity in compliance with GST provisions.

4. **For Procuring Entities eligible for availing Input Tax Credit:**

a) Contractors shall provide necessary documents/ compliances / invoices for enabling Procuring Entity (for commercially run entities) to avail of Input tax credit benefits under GST legislation.

b) The successful bidders should upload the details of the invoices raised on Procuring Entity on the GST Network within the prescribed time limits and undertake to adhere to all other compliances under the GST regulations/ legislations.

c) In case any credit, refund or other benefit is denied or delayed to the Procuring Entity due to any non-compliance of GST legislation by the bidder, such as failure to upload the details of the supply on the GST portal, failure to pay GST to the Government or due to non-furnishing or furnishing of incorrect or incomplete documents/ information by the bidder, the bidder would reimburse the loss to the Procuring Entity or it shall recover may recover the same, but not limited to, the tax loss, interest and penalty.

5. **Statutory Variation Clause:** Unless otherwise stated in the contract, statutory increase in applicable GST rate only during the original delivery period (or refixed delivery period – para 10.4.2 above) shall be to Procuring Entity's account. Any increase in the rates of GST beyond the original completion date during the extended delivery period (for delays attributable to the consultant) shall be borne by the contractor, however the benefit of any reduction in GST rate must be passed on to the Procuring Entity during the original and extended delivery period. GST rate amendments shall be considered for quoted HSN code only, against documentary evidence, provided such an increase of GST rates after the last date of bid submission. The Procuring Entity is not liable for any claim from the contractor on account of fresh imposition and/ or increase (including statutory increase) of GST, customs duty, or other duties on raw materials and/ or components used for the purpose of delivery of the contracted services taking place during the pendency of the contract unless such liability is expressly agreed to in terms of the contract.

10.6 Concluding the Assignment and Post Contract review

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

2. While making the final payment to the contractor and before releasing the PBG, it should be ensured that there is nothing outstanding from the contractor, because it would be difficult to retrieve such amounts after releasing the bank guarantee/final payment. Before the bank guarantee is released a "no claim certificate" may be taken from the contractor as per the format given in Annexure 24.

3. The contract shall stand closed upon

a) successful performance of all obligations by both parties, including completion of warrantee obligations and final payment.

b) termination and settlements after that, if any.

4. At least in large contracts [above Rs. 50 (Rupees Fifty) lakhs], it should be ensured that before the release of the bank guarantee (final payment, if there is no bank guarantee), the following reconciliations should be done across Departments involved in the execution of the contract:

5. **Deliverables Reconciliation**: The user department and/or the indentor should confirm that all deliverables specified in the consultancy contract and paid for have been received in

acceptable quality and completeness, in line with Terms of Reference (ToR). Full reconciliation of all outputs- such as reports, data sets, software tools, advisory notes, presentations, or other consultancy products – should be done, including documents of any deviations, delays, or shortfalls. All interim and final submissions should be verified and archived appropriately.

6. **Reconciliation with the User Department**: Besides deliverables reconciliation, the user Department should certify in writing that the following activities (wherever applicable) have been completed by the contractor, to the Department's satisfaction, as per the contract:

a) Achievement of performance indicators or service levels defined in the ToR;
b) Completion of fieldwork, data collection, or stakeholder consultations (if applicable);
c) Provision of support or handholding during the implementation phase or transition period which ended on _____;
d) Capacity building or training of departmental staff (if part of the contract);
e) Return of all ID cards, gate passes, documents, draft versions, drawings, tools, devices, or any assets or facilities provided to the consultant; and
f) Any post contract support, advisory, or monitoring obligations (if part of the contract), which concluded on _____.

7. **Payment Reconciliation**: The indenting/ user Departments may reconcile payments made to the consultant to ensure that there is no liability outstanding or dues recoverable from the consultant on account of:

a) LD;
b) Price reduction enforced on account of shortfall in quality, deliverables or performance standards;
c) Variations/deviations from the scope of the contract or Terms of Reference (ToR);
d) Overpayments/duplicate payments, if any;
e) Services availed from Procuring Entity and vacation thereof such as accommodation, electricity, water, security, transport, internet, or other support services;
f) Reimbursements or claims related to travel, lodging, communication, and other expenses where the payment responsibility lies with the consultant but was initially borne by the procuring entity;
g) Deliverables reconciliation;
h) Price and exchange rate variations;
i) Statutory duties paid on behalf of the contractor by Procuring Entity; and
j) Testing, validation, or review charges incurred by the procuring entity on draft deliverables, software, models, or pilot exercises, including any losses due to failure of such validations.

8. On satisfactory reconciliation and against a "no claim certificate" from the contractor, the bank guarantee may be released, and its acknowledgement taken from the contractor.

9. On completion of all activities against a contract, the purchase file should be preserved for a period of five years in the record room and then destroyed after expiry of the applicable mandatory retention period with the approval of the CA. However, Procuring Entity, at its discretion, may retain important records for future reference.

10.7 Disputes and Conflicts

10.7.1 Disputes

1. Normally, there should not be any scope for dispute between the purchaser and contractor after entering a mutually agreed valid contract. However, due to various unforeseen

reasons, problems may arise during the progress of the contract leading to a disagreement between the purchaser and contractor. Therefore, the conditions governing the contract should contain suitable provisions for settlement of such disputes or differences binding on both parties.

2. In its directives[82] regarding contractual disputes, Department of Expenditure, Ministry of Finance has stressed that:

> *"Government departments/ entities/ agencies should avoid and/ or amicably settle as many disputes as possible using mechanisms available in the contract. Decisions should be taken in a pragmatic manner in overall long-term public interest, keeping legal and practical realities in view, without shirking or avoiding responsibility or denying genuine claims of the other party."*

3. All disputes and differences between the parties, as to the construction or operation of the contract, or the respective rights and liabilities of the parties on any matter in question; dispute or difference or any other account whatsoever, but excluding the Excepted Matters (detailed below); arising out of or in connection with the contract, whether before or after the completion/ termination of the contract, that cannot be resolved amicably between the Procurement Officer and the contractor within thirty (30) days from aggrieved Party notifying the other Party of such matters, shall be hereinafter called the "Dispute".

4. The aggrieved party shall give a 'Notice of Dispute' indicating the Dispute and claims citing relevant contractual clause to the designated authority and requesting for invoking the following dispute resolution mechanisms. The Dispute shall be attempted to be resolved without recourse to courts through dispute resolution mechanisms detailed subsequently, in the sequence as mentioned below, and the next mechanism shall not be invoked unless the earlier mechanism has been invoked or has failed to resolve it within the deadline mentioned therein. While processing a case for dispute resolution/litigation/arbitration, the procuring entity is to take legal advice, at appropriate stages.

a) Adjudication
b) [83]Mediation
c) Arbitration

10.7.2 Excepted Matters

Matters for which provision has been made in any clause of the contract shall be deemed as 'excepted matters' (matters not disputable/ arbitrable), and decisions of the Procuring Entity, thereon shall be final and binding on the contractor. The 'excepted matters' shall stand expressly excluded from the purview of the Dispute Resolution Mechanism, including Arbitration. However, where the Procuring Entity has raised the dispute, this sub-clause shall not apply. Unless otherwise stipulated in the contract, excepted matters shall include but not limited to:

1. any controversies or claims brought by a third party for bodily injury, death, property damage or any indirect or consequential loss arising out of or in any way related to the performance of this Contract ("Third Party Claim"), including, but not limited to, a Party's right to seek contribution or indemnity from the other Party in respect of a Third-Party Claim.

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[82] OM issued by PPD, DoE, MoF: No. F. 11212024-PPD dtd 03.06.2024

[83] The conciliation part of the Arbitration and Conciliation Act, 1996 has been replaced by mediation by the recent Mediation Act, 2023.

2. Issues related to the pre-award tender process or conditions.

3. Issues related to ambiguity in contract terms shall not be taken up after a contract has been signed. All such issues should be highlighted before the signing of the contract by the contractor.

4. Issues related to contractual action/ termination of contract etc., by the Procuring Entity on account of fraud, corruption, debarment of contractors, criminal or wilful negligence of the contractor etc.

5. Issues that are already under investigation by CBI, Vigilance, or any other investigating agency or government.

6. Provisions incorporated in the contract, which are beyond the purview of The Procurement Entity or are in pursuance of policies of Government, including but not limited to

a) Provisions of restrictions regarding local content and Purchase Preference to Local suppliers in terms of Make in India policy of the Government.
b) Provisions regarding restrictions on Entities from Countries having land-borders with India in terms of the Government's policies in this regard.
c) Purchase preference policies regarding MSEs and Start-ups

10.7.3 Adjudication

1. After exhausting efforts to resolve the Dispute with the Purchasing Officer executing the contract on behalf of the Procuring Entity, the contractor shall give a 'Notice of Adjudication' specifying the matters which are in question, or subject of the dispute or difference indicating the relevant contractual clause, as also the amount of claim item-wise to Head of Procurement or any other authority mentioned in the contract (hereinafter called the "Adjudicator") for invoking resolution of the dispute through Adjudication.

2. Where necessary, e.g., matters of high value, Procuring Entity may proceed with adjudication by a high-level committee as para 10.7.4-3-a) to e) below.

3. During his adjudication, the Adjudicator shall give adequate opportunity to the contractor to present his case. Within 60 days after receiving the representation, the Adjudicator shall make and notify decisions in writing on all matters referred to him. The parties shall not initiate, during the adjudication proceedings, any mediation or arbitral or judicial proceedings in respect of a dispute that is the subject matter of the adjudication proceedings.

4. If not satisfied by the decision in adjudication, or if the adjudicator fails to notify his decision within the abovementioned time-frame, the contractor may proceed to invoke the process of Mediation as follows.

10.7.4 Mediation

1. Any party may invoke Mediation by submitting "Notice of Mediation" to the Head of the Procuring Organisation. A neutral third party, known as the Mediator, facilitates the mediation process. If the other party is not agreeable to Mediation, the aggrieved party may invoke Arbitration.

2. **The Mediation Act**: The Mediation shall be conducted as per The Mediation Act 2023[84].

[84] The Act would be fully notified at a later date. Hence some of the provisions like registration of mediators, and MSPs/ MCI may get activated later.

3. **Guidelines for Mediation**: Department of Expenditure, Ministry of Finance has issued guideline on Mediation[85]. Government departments/ entities/ agencies are encouraged to adopt mediation under the Mediation Act 2023 and/ or negotiate amicable settlements to resolve disputes. Where necessary, e.g., matters of high value, they may proceed in the manner discussed below:

a) Government departments/ undertakings may, where they consider appropriate, e.g., in high-value matters, constitute a High-Level Committee (HLC) for dispute resolution, which may include the following (this composition is purely indicative and not prescriptive):
   i) A retired judge.
   ii) A retired high-ranking officer and/ or technical expert.

b) In cases where a HLC is constituted, the Government department entity/ agency may either
   i) negotiate directly with the other party and place a tentative proposed solution before the HLC or
   ii) conduct mediation through a mediator and then place the tentative mediated agreement before the HLC or
   iii) use the HLC itself as the mediator.

c) This will enable decisions taken for resolving disputes in appropriate matters to be scrutinized by a high-ranking body at arms-length from the regular decision-making structure, thereby promoting fair and sound decisions in the public interest, with probity.

d) There may be rare situations in long-duration works contracts where a renegotiation of the terms may best serve public interest due to unforeseen major events. In such circumstances, the terms of the tentative re-negotiated contract may be placed before a suitably constituted High-Level Committee before approval by the competent authority.

e) Approval of the appropriate authority will need to be obtained for the final accepted solution. Section 49 of the Mediation Act 2023 is also relevant in this regard.

f) Mediation agreements need not be routinely or automatically included in procurement contracts/ tenders. The absence of a mediation agreement in the contract does not preclude pre-litigation mediation. Such a clause may be incorporated where it is consciously decided to do so.

g) Disputes not covered in an arbitration clause and where the methods outlined above are unsuccessful should be adjudicated by the courts.

h) General or case-specific modification in the application of the above guidelines may be authorised by the Secretary concerned (or an officer not below the level of Joint Secretary to whom the authority is delegated by him) in respect of Government Ministries/ Departments, attached/ subordinate offices and autonomous bodies, or the Managing Director in respect of Central Public Sector Enterprises including Banks and Financial institutions etc.

[85] OM issued by PPD, DoE, MoF: No. F. 11212024-PPD dtd 03.06.2024

4. **Appointment of Mediator(s)**:

a) Mediators can be of any nationality and must be registered with the Mediation Council of India (MCI) or empanelled by a court-annexed mediation centre or empanelled by an Authority constituted under the Legal Services Authorities Act, 1987 or empanelled by a mediation service provider (MSP) recognised by MCI.

b) Within 30 days of receipt of the “Notice of Mediation”, the Head of the Procuring Organisation shall propose names of three likely mediators from its panel, asking the other party to choose one as Mediator. The mutually accepted mediator shall then be appointed to conduct mediation.

c) If parties do not agree on the mediator, they can approach a mediation service provider ("MSP", recognised by MCI), who shall appoint a mediator based on the suitability and preferences of the parties within 7 days.

d) As brought out in Annex-2 of Annexure 18, in contracts having an Integrity Pact, Independent External Monitors (IEMs) can be appointed as mediators, as per the Standard Operating Procedure (SOP) issued by the Central Vigilance Commission (CVC).

e) After a mediator is appointed, they must disclose any conflict of interest. Either party can seek a replacement of the Mediator after such disclosure.

5. **Venue:** Mediation must be conducted within the territorial jurisdiction of the Court, which has jurisdiction to decide the dispute unless both parties agree to do it online or at any other place.

6. **The Process**:

a) The Mediator independently and impartially encourages open communication and cooperation between disputing parties to reach an amicable settlement, but he does not have the authority to impose a settlement upon the parties to the dispute. The parties shall be informed expressly by the mediator that he only facilitates in arriving at a resolution of the dispute and that he shall not impose any settlement nor give any assurance that the mediation may result in a settlement.

b) Unlike court proceedings, Mediation is informal and flexible and allows for creative problem-solving and exploration of various solutions. The Code of Civil Procedure or the Bhartiya Sakshya Adhiniyam (BS), 2023 shall not be binding on the mediator. The parties can determine the mediation’s venue, manner, and language.

c) **Confidentiality**: All the acknowledgements, opinions, suggestions, promises, proposals, apologies, and admissions made during the mediation; acceptance/ willingness to accept proposals in the mediation; documents prepared solely for the conduct of mediation are strictly confidential. These can neither be relied upon as evidence in any subsequent court proceedings nor be asked to be disclosed by any court/ tribunal. No audio or video recording of the mediation proceedings shall be made or maintained by the parties or the participants, including the mediator and mediation service provider, whether conducted in person or online, to ensure the confidentiality of the mediation proceedings.

d) **Online Mediation**: The Act allows parties to opt for online/ virtual Mediation, which shall be deemed to occur within the jurisdiction of a competent court. The Act also requires online mediation communication mechanisms to ensure confidentiality.

e) The mediator initially meets the parties separately and communicates the view of each party to the other to the extent agreed upon by them. He assists them in

identifying issues, advancing better understanding, clarifying priorities, exploring areas of the parties' responsibility, identifying common interests, and encouraging compromise. He then meets them jointly to encourage a mutually acceptable resolution. At any stage of the mediation proceedings, at the parties' request, the mediator may suggest a dispute settlement in writing.

f) **Termination of Mediation**: The process must be completed within 120 days, though parties can extend it by another 60 days through mutual consent. If Mediation is not completed within this timeline, the Mediator shall prepare a non-settlement report without disclosing the cause of non-settlement or any other matter or thing referring to their conduct during mediation for the parties or the Mediation Service Provider (MSP). Mediation shall also stand terminated on a declaration of the mediator, after consultation with the parties or otherwise, that further efforts at mediation are no longer justified or on communication by a party(ies) in writing, addressed to the mediator and the other parties that they wish to opt out of mediation. On termination of Mediation, if the dispute is still alive, the aggrieved party shall be free to invoke Arbitration.

g) **Mediated Settlement Agreement (MSA)**: If the parties resolve the dispute and execute a mediated settlement agreement ("MSA"), then the Mediation is successful. An MSA is a written agreement settling some or all disputes and may extend beyond the disputes referred to mediation. It must be valid under the Indian Contract Act, signed by both parties, and duly authenticated by the Mediator for the parties or the MSP. The Act provides options for MSA registration. During the pendency of proceedings, parties can also execute other agreements, settling some of the subject-matter disputes.

h) **Challenge to MSA**: MSA can be challenged within 90 days on limited grounds of (a) fraud, (b) corruption, (c) impersonation, and (d) subject matter being unfit for Mediation.

i) **Execution of MSA**: If there is no challenge or a challenge is unsuccessful, the Act ensures that the MSA is binding and enforceable, akin to a judgment or decree. This means that if one party fails to comply with the MSA, the non-defaulting party has a right to enforce it through the Court.

j) **Costs**: The parties shall equally bear all costs of mediation, including the fees of the mediator and the charges of the mediation service provider.

k) **No claim of Interest during Mediation proceedings**: Parties shall not claim any interest on claims/counter-claims from the date of notice invoking Mediation till the execution of the settlement agreement if so arrived. If parties cannot resolve the dispute, either party shall claim no interest from the date of notice invoking Mediation until the date of Termination of Mediation Proceedings.

l) The parties shall not initiate, during the mediation proceedings, any arbitral or judicial proceedings in respect of a dispute that is the subject matter of the mediation proceedings.

10.7.5 Arbitration

1. **Arbitration Agreement:** If an amicable settlement is not forthcoming, provided an Arbitration clause agreement is included in the contract, recourse may be taken to the settlement of disputes through arbitration as per the Indian Arbitration and Conciliation Act,

1996 [Amended 2015[86] and 2021[87]]. For this purpose, when the contract is with a domestic contractor, a standard arbitration clause (hereinafter called the 'Agreement') may be included in the Tender Document (Please refer to the Model Tender Document) indicating the arbitration procedure to be followed, based on which the Arbitration Act shall become applicable.

2. This Agreement shall continue to survive termination, completion, or closure of the Contract for 3 years after that. Unless otherwise stipulated in the Contract, the venue of arbitration should be the place from where the contract has been issued.

3. The Micro, Small and Medium Enterprises Development (MSMED) Act, 2006 provides parties to a dispute (where one of the parties is a Micro or Small Enterprise) to be referred to Micro and Small Enterprises Facilitation Council if the dispute is regarding any amount due under Section 17 of the MSMED Act, 2006. If a Micro or Small Enterprise, being a party to dispute, refers to the provisions in MSMED Act 2006, these provisions shall prevail over this Agreement.

4. **Government Guidelines on Arbitration in Contracts[88]**: Department of Expenditure, Ministry of Finance has issued following guidelines for arbitration in contracts of domestic procurement by the Government and by its entities and agencies (including Central Public Sector Enterprises [CPSEs], Public Sector Banks [PSBs] etc. and Government companies) :

a) Arbitration as a method of dispute resolution should not be routinely or automatically included in procurement contracts/ tenders, especially in large contracts.
b) As a norm, arbitration (if included in contracts) may be restricted to disputes with a value less than Rs. 10 crores. This figure is regarding the value of the dispute (inclusive of both claims and counterclaims) not the value of the contract, which may be much higher. It may be specifically mentioned in the bid conditions/ conditions of the contract that arbitration will not be a method of dispute resolution in all other cases.
c) Inclusion of arbitration clauses covering disputes with a value exceeding the norm specified in sub-para (b) above should be based on careful application of mind and recording of reasons and with the approval of:
    i) Regarding Government Ministries/ Departments, attached/ subordinate offices and autonomous bodies, the Secretary concerned or an officer (not below the level of Joint Secretary) to whom authority is delegated by the Secretary.
    ii) Regarding CPSEs/ PSBs/ Financial institutions etc., the Managing Director.
d) In matters where arbitration is to be resorted to, institutional arbitration may be given preference (where appropriate, after considering the reasonableness of the cost of arbitration relative to the value involved).
e) General or case-specific modification in the application of the above guidelines may be authorised by the Secretary concerned (or an officer not below the level of Joint Secretary to whom the authority is delegated by him) in respect of Government Ministries/ Departments, attached/ subordinate offices and autonomous bodies, or the Managing Director in respect of Central Public Sector Enterprises including Banks and Financial institutions etc.

[86] https://lawmin.gov.in/sites/default/files/ArbitrationandConciliation.pdf

[87] https://egazette.nic.in/WriteReadData/2021/225832.pdf

[88] OM issued by PPD, DoE, MoF: No. F. 11212024-PPD dtd 03.06.2024

10.7.6 Foreign Arbitration

1. The Arbitration and Conciliation Act 1996 has provisions for international commercial arbitration, which shall be applicable if one of the parties has its central management and control in any foreign country.

2. When the contract is with a foreign contractor, the contractor has the option to choose either the Indian Arbitration and Conciliation Act, 1996 or arbitration in accordance with the provisions of the United Nations Commission on International Trade Law (UNCITRAL) arbitration rules.

3. The arbitration clause with foreign firms should be in the form of self-contained agreements. This is true especially for large value contracts or those for costly plant and machinery. The venue of arbitration should be in accordance with UNCITRAL or arbitration rules of India, whereby it may be in India or in any neutral country.

10.7.7 Notice for Arbitration

1. 'The Appointing Authority,' to appoint the arbitrator shall be Head of the Procuring Organisation named in the contract and includes if there be no such authority, the officer who is for the time being discharging the functions of that authority, whether in addition to other functions or otherwise.

2. In the event of any dispute as per para 10.7.1 above, if the Adjudicator fails to decide within 60 days (as referred in para 10.7.3 above), or the Mediation is terminated (as referred in sub-para 10.7.4 above) then, parties to the contract, if there is an Arbitration clause in the contract, after 60 days but within 120 days of 'Notice of Dispute" shall request the Appointing Authority through a "Notice for Arbitration" in writing requesting that the dispute or difference be referred to arbitration.

3. The "Notice for arbitration" shall specify the matters in question or subject of the dispute or difference indicating the relevant contractual clause, as well as the amount of claim item-wise.

10.7.8 Reference to Arbitration

After appointing Arbitrator(s), the Appointing Authority shall refer the dispute to them. Only such dispute or difference shall be referred to arbitration regarding which the demand has been made, together with counter-claims or set off. Other matters shall be beyond the jurisdiction of Arbitrator(s)

10.7.9 Appointment of Arbitrator

1. **Invalidation of Unilateral Appointment Clauses**: On November 8, 2024, the Supreme Court of India, in a landmark ruling, stemming from the case (2024 INSC 857) Central Organisation for Railway Electrification (CORE) v. ECL-SPIC-SMO-MCML, ruled that:

a) arbitration clauses allowing a government department or PSU to unilaterally appoint a sole arbitrator or mandate that the private party select an arbitrator from a panel curated exclusively by the government department or PSU are invalid.

b) PSUs or government departments cannot compel the private party to choose from their panel of arbitrators. The private party must have the autonomy to nominate its arbitrator independently, ensuring a balanced and fair process.

c) a private party can waive objections to bias or ineligibility under Section 12(5) of the Act, but this waiver must be explicit, in writing, and made after the dispute arises—not at the contract formation stage. Pre-dispute waivers embedded in contracts are not valid.

2. Therefore, the appointing authority for arbitrators, may ask the contractor to recommend his nominee arbitrator either from names suggested from approved panel of the Procuring Organisation or from an approved panel of the Indian Council of Arbitration (ICA) within 30 days from the date of dispatch of the written and valid acceptance of the demand for arbitration by the appointing authority. Guidelines of ICA Rules for Domestic Commercial Arbitration are as under:-

a) The contractor may access the ICA's panel of arbitration through the ICA's official webpage: https://icaindia.co.in/pdf/Engineers.pdf.

b) A formal request for nomination shall be submitted to ICA, accompanied by:-
   i) A brief Statement of Claim outlining the nature and quantum of the disputes
   ii) A copy of the relevant contract and any supporting documents
   iii) A copy of the notice intimating the other party of the initiation of arbitration proceedings, with proof of delivery (if any).

c) Ad-hoc appointment fees for the nomination and appointment of arbitrators shall be as per the ICA Rules for Domestic Commercial Arbitration and revised from time to time. The fee shall be submitted along with the request.

d) The nomination and appointment of arbitrators from the ICA panel shall be as per the ICA Rules for Domestic Commercial Arbitration and shall be amended from time to time.

3. **Qualification of Arbitrators:**

a) In the case of retired officers of The Procuring organisation, he shall have retired in the rank of Senior administrative grade (or equivalent) and shall have retired at least 1 years prior and must not be over 70 years of age on the date of Notice for arbitration.

b) In the case of serving officers, they shall not be below JA Grade level.

c) In case of serving or retired officer, he should not have been:
   i) involved in current vigilance/ CBI cases or against whom disciplinary or prosecution proceedings are not in process.
   ii) imposed a major penalty or two or more minor penalties or undergone administrative action three times or more, or
   iii) imposed a minor Penalty and undergone two administrative actions due to vigilance/CBI action while in service.

d) **Independence and Impartiality:**
   i) Retired or serving officers shall not have had an opportunity to deal with the matters to which the contract relates or who, in the course of his/ their duties as officers of the Procuring Organisation, expressed views on any or all the matters under dispute or differences. Arbitrator shall make a declaration in this regard as per Annexure 29. The proceedings of the Arbitral tribunal or the award made by such Tribunal shall, however, not be invalid merely because one or more arbitrators had in the course of his service, an opportunity to deal with the matters to which the contract relates or who in the course of his/ their duties expressed views on all or any of the matters under dispute.
   ii) Arbitrators (including from panel of ICA) shall be independent and impartial (section 12(1) of the Arbitration Act) and disclose in writing any circumstances (past or present relationships with parties or counsel) that may give rise to justifiable doubts about their independence or impartiality. Disclose any direct or indirect interest in the dispute’s outcome.
   iii) Disclosure by all arbitrators shall be in format of Annexure 29.

e) An Arbitrator may be appointed notwithstanding the total no. of arbitration cases in which he has been appointed in the past.

f) Not be other than the person appointed by The Appointing Authority and that if for any reason that is not possible, the matter shall not be referred to arbitration at all.

4. **Panel of Arbitrators**: The procuring Organisation may prepare, with the approval of the head of the procuring organisation, a panel of serving and retired officers who are willing and qualified (as per sub-para 3 above) to be empanelled as Arbitrators based on integrity, ethics, the experience of dealing in contracts/ tenders, temperament of taking fair decisions, feedback, general image, career profile etc. Such persons should have vigilance clearance and should not be working in the vigilance wing. The performance of empanelled arbitrators should be reviewed annually. The empanelment of a retired officer as arbitrator shall be limited to three procuring entities only, and at any given time, a maximum of two arbitration cases shall be assigned to any arbitrator in a Procuring entity.

5. **Replacement of Arbitrators:** If one or more of the arbitrators appointed as above refuses to act as arbitrator, withdraws from his office as arbitrator, or in the event of the arbitrator dying, neglecting/ unable or unwilling or refusing to act for any reason, or his award being set aside by the court for any reason, or in the opinion of The Appointing Authority fails to act without undue delay, the Appointing Authority shall appoint new arbitrator/ arbitrators to act in his/ their place in the same manner in which the earlier arbitrator/ arbitrators had been appointed. Such a re-constituted Tribunal may, at its discretion, proceed with the reference from the stage at which the previous arbitrator (s) left it.

6. **Appointment of Arbitrator:**

a) **Appointment of Arbitrator where the applicability of section 12 (5) of the Arbitration and Conciliation Act has been waived off**: (refer para 1-c) above)

i) In cases where the total value of all claims in question added together does not exceed ₹ 1,00,00,000/- (Rupees One Crore), the Arbitral Tribunal shall consist of a Sole Arbitrator who shall be a serving officer of the procuring organisation, not below Junior Administrative Grade, nominated by the Appointing Authority. The sole arbitrator shall be appointed within 60 days from the day when a written and valid demand for arbitration is received by the designated Appointing Authority.

ii) In cases not covered by sub-para i) above, the Arbitral Tribunal shall consist of a panel of three serving officers not below Junior Administrative Grade or two serving officers not below Junior Administrative Grade and a retired officer (retired not below the rank of Senior Administrative Grade Officer), as the arbitrators. For this purpose, the Appointing Authority shall send a panel of at least four (4) names of Officers, which may also include the name(s) of retired Officer(s) empanelled to work as Arbitrator, to the Contractor within 60 days from the day when a written and valid demand for arbitration is received by the Appointing Authority. The contractor will be asked to suggest at least 2 names out of the panel for appointment as the Contractor's nominee within 30 days from the date of dispatch of the request to him. The Appointing Authority shall appoint at least one out of them as the Contractor's nominee and shall also simultaneously appoint the balance number of arbitrators either from the panel or from outside the panel, duly indicating the 'presiding arbitrator' from amongst the 3 arbitrators so appointed. The Appointing Authority shall complete this exercise of appointing the Arbitral Tribunal within 30 days from the receipt of the names of the Contractor's nominees. While nominating the arbitrators, it shall be

necessary to ensure that one of them is from the Finance/ Accounts Department (officer of Selection Grade of the Finance/ Accounts Department shall be considered as of equal status to the officers in Senior Administrative Grade of other departments for appointment of an arbitrator).

iii) The serving officer working in arbitral tribunal in the ongoing arbitration cases as per sub-para i) and ii) above can continue as arbitrator in the tribunal even after his retirement.

b) **Appointment of Arbitrator where the applicability of Section 12 (5) of the Arbitration and Conciliation Act has not been waived off**:

i) In cases where the total value of all claims in question added together does not exceed ₹ 50,00,000/- (Rupees Fifty Lakh), the Arbitral Tribunal shall consist of a sole arbitrator. For this purpose, the Appointing Authority will send a panel of at least four (4) names of retired Officer(s) (retired not below the rank of Senior Administrative Grade Officer) empanelled to work as Appointing Authority Arbitrator duly indicating their retirement dates to the Contractor within 60 days from the day when a written and valid demand for arbitration is received by the Appointing Authority. The contractor will be asked to nominate to the Appointing Authority at least 2 names of arbitrators. These can be out of the panel suggested by the approving authority or from an approved panel of the Indian Council of Arbitration (ICA – refer sub-para 2 above) within 30 days from the date of dispatch of the request by the Appointing Authority. The Appointing Authority shall appoint at least one out of them as the arbitrator within 30 days from the receipt of the names of the Contractor's nominees.

ii) In cases where the total value of all claims in question added together exceeds ₹ 50,00,000/- (Rupees Fifty Lakh), the Arbitral Tribunal shall consist of a Panel of three (3) arbitrators. For this purpose, the Appointing Authority will send a panel of at least four (4) names of retired Officers (retired not below the rank of Senior Administrative Grade Officer) empanelled to work as Arbitrator duly indicating their retirement date to the Contractor within 60 days from the day when a written and valid demand for arbitration is received by the Appointing Authority. The contractor will be asked to nominate to the Appointing Authority at least 2 names of arbitrators. These can be out of the panel suggested by the approving authority or from an approved panel of the Indian Council of Arbitration (ICA – refer sub-para 2 above) within 30 days from the date of dispatch of the request by the Appointing Authority. The Appointing Authority shall appoint at least one out of them as the Contractor's nominee and shall also simultaneously appoint his nominee arbitrator either from the panel or from outside the panel. The Appointing Authority shall complete this exercise of appointing the Arbitral Tribunal within 30 days of the receipt of the names of the Contractor's nominees. Two selected arbitrators are free to select a presiding arbitrator (3rd arbitrator) within thirty (30) days from their appointment. The presiding arbitrator may be selected from an approved panel of the procuring organisation or from an approved panel of the Indian Council of Arbitration (as per mutual agreement), which will be approved by the appointing authority within 30 days of receipt of such name.

c) If the contractor does not suggest his nominees for the arbitral tribunal within the prescribed timeframe, or the two appointed arbitrators fail to nominate a presiding

arbitrator, the Appointing Authority shall proceed with the appointment of the arbitral tribunal within 30 days of the expiry of such time provided to the contractor.

d) **Failure to Appoint Arbitrators**: If The Appointing Authority fails to appoint an arbitrator, or two appointed arbitrators fail to agree on the third arbitrator, within 60 (sixty) days, then subject to the survival of this Arbitration Agreement, in international commercial arbitration, the Supreme Court of India shall designate the arbitral institution for the appointment of arbitrators. In case of national arbitrations, the High Court shall designate arbitral institutions. The Arbitration Council of India must have graded these arbitration institutions. These arbitral institutions must complete the selection process within thirty days of accepting the request for the arbitrator's appointment.

10.7.10 The Arbitral Procedure

1. **Effective Date of Entering Reference:** The arbitral tribunal shall be deemed to have entered the reference on the date on which the arbitrator(s) have received notice of their appointment. All subsequent time limits shall be counted from such date.

2. **Seat and Venue of Arbitration:** The seat of arbitration shall be the place from which the Letter of Award or the contract is issued. The venue of arbitration shall be the same as the seat of arbitration. However, in terms of section 20 of The Arbitration Act, the arbitrator, at his discretion, may determine a venue other than the seat of the arbitration without in any way affecting the legal jurisdictional issues linked to the seat of the arbitration. The Arbitral Tribunal shall decide any matter related to Arbitration not covered under this Arbitration Agreement as per the provisions of The Arbitration Act.

3. If the Adjudication and/ or Mediation mechanisms had not been exhausted before such reference to Arbitration, the Arbitrator should ask the aggrieved party to approach designated authority for such mechanisms before the Arbitration proceedings are started.

4. The claimant shall submit to the Arbitrator(s) with copies to the respondent his claims stating the facts supporting the claims along with all the relevant documents and the relief or remedy sought against each claim within 30 days from the date of appointment of the Arbitral Tribunal unless otherwise extension has been granted by Arbitral Tribunal.

5. On receipt of such claims, the respondent shall submit its defence statement and counter claim(s), if any, within 60 days of receipt of the copy of claims, unless otherwise extension has been granted by Arbitral Tribunal.

6. No new claim shall be added during proceedings by either party. However, a party may amend or supplement the original claim or defence thereof during arbitration proceedings subject to acceptance by the Tribunal having due regard to the delay in making it.

7. Statement of claims, counterclaims and defence shall be completed within six months from the effective reference date.

8. **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. The arbitrator (s) may impose an exemplary cost on the party seeking adjournment without sufficient cause.

9. **Award within 12 (twelve) months:** The arbitral tribunal is statutorily bound to deliver an award within 12 (twelve) months from the date when the arbitral tribunal enters reference. The award can be delayed by a maximum of six months only under exceptional circumstances where all parties consent to such extension of time. The court's approval shall be required for further extension if the award is not made out within such an extended period. During the

period of an application for extension of time is awaiting before the court, the arbitrator's proceedings shall continue until the disposal of the application.

10. **Cost of Arbitration and Fees of the Arbitrators:** The concerned parties shall bear the cost of arbitration in terms of section 31 (A) of The Arbitration Act. The cost shall inter-alia include fees of the Arbitrator. Further, the fees payable to the Arbitrator shall be governed by instructions issued on the subject by the Procuring Entity and/ or the Government from time to time, in line with the Arbitration and Conciliation Act, irrespective of the fact whether the Arbitrator is appointed by the Procuring Entity or the Government under this clause or by any court of law unless directed explicitly by Hon'ble court otherwise on the matter. However, if any of the three arbitrators is selected from the Panel of Indian Council of Arbitration (ICA), the fee of the arbitrators shall be determined as per the rates fixed/revised by the Indian Council of Arbitration from time to time and the fee shall be borne equally by both the parties. A sole arbitrator shall be entitled to a 25% extra fee over such a prescribed fee. The arbitrator shall be entitled to a 50 percent extra fee if the award is made within 6 months in terms of provisions contained in section 29(A) (2) of The Arbitration Act. Besides the above, Arbitrator shall also be entitled to this extra fee in cases where Fast Track Procedure in terms of section 29 (B) of The Arbitration Act is followed.

11. **Fast Track Procedure:** The parties to arbitration may choose to opt for a 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, and the arbitral tribunal shall be entitled to additional fees. The salient features of the fast-track arbitration are:

a) The dispute is to be decided based on written pleadings only.
b) Arbitral Tribunal shall have the power to call for clarifications in addition to the written pleadings where it deems necessary.
c) An oral hearing may be held only if all the parties request or the arbitral tribunal considers it necessary.
d) The parties are free to decide the fees of the arbitrator(s) for fast-track procedure.

12. **Powers of Arbitral Tribunal to grant Interim Relief:** The parties to arbitration may approach the arbitral tribunal for seeking interim relief on the grounds available under section 9 of the act. The tribunal has the powers of a court while making interim awards in the proceedings before it.

13. **Confidentiality:** As provided in Section 42A of The Arbitration Act, all the details and particulars of the arbitration proceedings shall be kept confidential, except in certain situations like if the disclosure is necessary for the implementation or execution of the arbitral award.

14. **Obligation During Pendency of Arbitration:** Performance of the contract shall, unless otherwise directed by the Procuring Entity, continue during the arbitration proceedings, and no payment due or payable by the Procuring Entity shall be withheld on account of such proceedings, provided; however, it shall be open for Arbitral Tribunal to consider and decide whether or not the performance of the contract or payment therein should continue during arbitration proceedings.

15. **The Arbitral Award:** In the case of the Tribunal, comprising of three members, any ruling on award shall be made by a majority of members of the Tribunal. In the absence of such a majority, the views of the Presiding Arbitrator shall prevail. The arbitral award shall state item-wise the sum and reasons upon which it is based. The analysis and reasons shall be detailed enough so that the award can be inferred from it. It shall be further a term of this arbitration agreement that where the arbitral award is for the payment of money, no interest shall be payable on whole or any part of the money for any period till the date on which the

award is made in terms of Section 31 (7) (a) of The Arbitration Act. The award of the arbitrator shall be final and binding on the parties to this contract. A party may apply for corrections of any computational errors, typographical or clerical errors, or any other error of similar nature occurring in the award or interpretation of a specific point of the award to the Tribunal within 60 days of receipt of the award. A party may apply to the Tribunal within 60 days of receiving the award to make an additional award as to claims presented in the arbitral proceedings but omitted from the arbitral award.

10.7.11 Challenging Arbitration/ Judicial Awards

1. In matters covered by arbitration/ court decisions[89], the guidance contained in 'General Instructions on Procurement and Project Management' dated 29.10.2021[90] should be kept in mind. In cases where there is a decision against the government/ public sector enterprise, the decision to challenge/ appeal should not be taken routinely, but only when the case genuinely merits going for challenge/ appeal and there are high chances of winning in the court/ higher court.

2. In cases where the Ministry/ Department has challenged an arbitral award and, as a result, the amount of the arbitral award has not been paid, 75% of the arbitral award (which may include interest up to date of the award) shall be paid by the Ministry/ Department to the contractor/ concessionaire against a Bank Guarantee (BG). The BG shall only be for the said 75% of the arbitral award as above and not for the interest which may become payable to the Ministry/ Department should the subsequent court order require refund of the said amount.

3. The payment may be made into a designated Escrow Account with the stipulation that the proceeds will be used first, for payment of lenders' dues, second, for completion of the project and then for completion of other projects of the same Ministry/ Department as mutually agreed/ decided. Any balance remaining in the escrow account after settlement of lenders' dues and completion of projects of the Ministry/ Department may be allowed to be used by the contractor/ concessionaire with the prior approval of the lead banker and the Ministry/ Department. If otherwise eligible and subject to contractual provisions, retention money and other amounts withheld may also be released against BG.][91]

4. 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.

5. The Organisation should monitor the success rate of appealing against arbitration awards. There should be a clear delegation to empower officials to accept arbitration / court orders. A special board/ committee may be set up to review the case before an appeal is filed against an order. Arbitration/ court awards should not be routinely appealed without due application of mind on all facts and circumstances including realistic probability of success. The board/ committee or other authority deciding on the matter shall clarify that it has

[89]Notified vide OM No. F. 11/21/2024-PPD issued by Department of Expenditure dated 03.06.2024

[90]Notified vide OM No. F./1/9/2021-PPD issued by Department of Expenditure dated 29.10.2021.

[91]New rule 227A of GFR, 2017 notified vide OM No. F./1/9/2021-PPD issued by Department of Expenditure dated 29.10.2021.

considered both legal merits and the practical chances of success and after considering the cost of, and rising through, litigation/ appeal/ further litigation as the case may be, it is satisfied that such litigation/ appeal/ further litigation cost is likely to be financially beneficial compared to accepting the arbitration/ court award.

6. Statistics have shown that in cases where the arbitration award is challenged, a large majority of cases are decided in favour of the contractor. In such cases, the amount becomes payable with the interest, at a rate which is often far higher than the government's cost of funds. This results in huge financial losses to the government. Hence, in aggregate, it is in public interest to take the risk of paying a substantial part of the award amount subject to the result of the litigation, even if in some rare cases of insolvency etc. recovery of the amount in case of success may become difficult. Instructions have been issued in this matter in the past but have not been fully complied with.

7. The only circumstances in which such payment need not be made is where the contractor declines, or is unable, to provide the requisite bank guarantee and/or fails to open an escrow account as required. Persons responsible for not adhering to are liable to be held personally accountable for the additional interest arising, in the event of the final court order going against the procuring entity[92].

10.7.12 Mechanism for Resolution of Commercial Disputes between CPSEs and Government Agencies

1. **Introduction**: To streamline and ensure the effective resolution of commercial disputes between Central Public Sector Enterprises (CPSEs) and Government Departments/Organizations, the Government of India has established the Administrative Mechanism for Resolution of CPSEs Disputes (AMRCD). This mechanism, effective from May 22, 2018, supersedes the earlier Permanent Machinery of Arbitration (PMA), and applies to all commercial disputes concerning the interpretation and application of provisions in contracts between:

   a) CPSEs inter se, and
   b) CPSEs and Government Departments/Organizations, excluding disputes related to Railways, Income Tax, Customs, and Excise Departments.

2. **Structure of AMRCD**: The AMRCD operates on a two-tier structure:

   a) First Level (Tier 1): Disputes are initially referred to a Committee comprising the Secretaries of the respective Administrative Ministries/Departments involved and the Secretary of the Department of Legal Affairs. The Financial Advisors (FAs) of the concerned Ministries/Departments represent the issues before this Committee.
   b) Second Level (Tier 2): If the dispute remains unresolved at the first level, it is escalated to the Cabinet Secretary, whose decision is final and binding.

3. **Procedure**: The claiming party must approach the Financial Advisor of its Administrative Ministry/Department to initiate the dispute resolution process. Meetings are held to examine and resolve the dispute on its merits. The Committee is expected to finalize its decision within three months of receiving the dispute notice. An aggrieved party can appeal the first-level decision to the Cabinet Secretary within 15 days.

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

4. **Inclusion in Contracts**: All CPSEs must include a specific clause in relevant contracts to ensure that disputes are resolved through the AMRCD as stipulated in the DPE[93] O.M. Ongoing contracts should also be amended to incorporate this clause.

10.8 Terminating Services Prior to End of Contract

10.8.1 Breach of Contract

1. In case the contractor undergoes insolvency or receivership; neglects or defaults or expresses inability or disinclination to honour his obligations relating to the performance of the contract or ethical standards or any other obligation that substantively affects the Procuring Entity's rights and benefits under the contract, it shall be treated as a breach of Contract. Such defaults could include inter-alia:

a) **Default in Performance and Obligations:** if the contractor fails to deliver any or all the services or fails to perform any other contractual obligations (including Code of Integrity or obligation to maintain eligibility and Qualifications based on which contract was awarded) within the period stipulated in the contract or within any extension thereof granted by the Procuring Entity.

b) **Insolvency:** If the contractor being an individual or if a firm, any partner thereof, shall at any time, be adjudged insolvent or shall have a receiving order or order for the administration of his estate made against him or shall take any proceeding for composition under any Insolvency Act for the time being in force or make any conveyance or assignment of his effects or enter into any assignment or composition with his creditors or suspend payment or if the firm be dissolved under the Partnership Act, or

c) **Liquidation:** if the contractor is a company being wound up voluntarily or by order of a Court or a Receiver, Liquidator or Manager on behalf of the Debenture-holders is appointed, or circumstances shall have arisen which entitle the Court or Debenture-holders to appoint a Receiver, Liquidator or Manager

2. As soon as a breach of contract is noticed, a show-cause 'Notice of Default' shall be issued to the contractor, giving two weeks' notice, reserving the right to invoke contractual remedies. After such a show-cause notice, all payments to the contractor would be temporarily withheld to safeguard needed recoveries that may become due on invoking contractual remedies. If there is an unsatisfactory resolution, remedial action may be taken immediately.

10.8.2 Termination of Contract

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

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

[93] No. 4(1)/2013-DPE(GM)/FTS-1835 dated May 22, 2018, with latest amendment issued by Department of Public Enterprises vide OM No. 05/0003/2019-FTS-10937 dated 14.12.2022.

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

10.8.3 Termination of Contract for Default

1. In the event of unsatisfactory resolution of 'Notice of Default' within two weeks of its issue as per para above, the Procuring Entity, if so decided, shall by written 'Notice of Termination for Default' sent to the contractor, terminate the contract in whole or in part, without compensation to the contractor. Before cancelling the contract and taking further action, it may be desirable to obtain legal advice. Such termination shall not:

a) prejudice or affect the rights and remedies, which have accrued and/ or shall accrue to the Procuring Entity after that.
b) affect the performance of the contract to the extent not terminated, unless otherwise instructed by the Procuring Entity,
c) extinguish liability of the contractor, for the services already supplied, if any.

2. If the contract is terminated in whole or in part, additionally, recourse may be taken to any one or more of the following actions:

a) Temporarily withhold payments due to the contractor till recoveries due to invocation of other contractual remedies are complete.
b) Call back any loaned property or advances of payment, if any, with the levy of interest rate (e.g., the interest rate of the General Provident Fund-GPF) prevailing on the date of release of advance payment, plus 2% to be compounded quarterly.
c) Recover liquidated damages and invoke denial clause for delays.
d) Prefer claims against insurances, if any.
e) Encash and/ or Forfeit performance security or
f) Invoke any other contractual securities, including Termination of Contract for Default
g) Initiate proceedings in a court of law for the transgression of the law, tort, and loss, not addressable by the above means.

10.8.4 Determination of Contract for Default/ Convenience of Procuring Entity or for Frustration of Contract

1. After placement of the contract, there may be an unforeseen situation compelling Procuring Entity to terminate the contract, in whole or in part for its (the Procuring Entity's) convenience, by serving written 'Notice for Determination of Contract' on the contractor at any time during the currency of the contract. The notice shall indicate inter-alia, that the termination is for the convenience of the Procuring Entity or the frustration of the contract and also the extent to which the contractor's performance under the contract is terminated, and the date with effect from which such termination shall become effective.

2. Such termination shall not prejudice or affect the rights and remedies accrued and/ or shall accrue after that to the Parties.

3. Unless otherwise instructed by the Procuring Entity, the contractor shall continue to perform the contract to the extent not terminated.

4. All warranty obligations, if any, shall continue to survive despite the termination.

5. Determining the contract by Procuring Entity for its convenience is not its legal right – and the contractor must be persuaded to acquiesce. Depending on the merits of the case, the contractor may have to be suitably compensated on mutually agreed terms for terminating the

contract. Suitable provisions to this effect should be to be incorporated in the tender document as well as in the resultant contract.

6. The Services and incidental Goods/ Works that are complete and ready in terms of the contract for delivery and performance within thirty days after the contractor's receipt of the notice of termination shall be accepted by the Procuring Entity as per the contract terms. For the remaining Services and incidental Goods/ Works, the Procuring Entity may decide:

a) To get any portion of the balance completed and delivered at the contract terms, conditions, and prices; and/ or
b) To cancel the remaining portion of the Services and incidental Goods/ Works and compensate the contractor by paying an agreed amount for the cost incurred by the contractor, if any, towards the remaining portion of the Services and incidental Goods/ Works.

10.8.5 Frustration of Contract

Upon a supervening cause occurring after the effective date of the contract, including a change in law, beyond the control of either party whether because of the Force Majeure clause or within the scope of section 56 of the Indian Contract Act, 1872, that makes it impossible to perform the contract within a reasonable timeframe, the affected party shall give a 'Notice of Frustration Event' to the other party giving justification. The parties shall use reasonable efforts to agree to amend the contract, as may be necessary to complete its performance. However, if the parties cannot reach a mutual agreement within 60 days of the initial notice, the Procuring Entity shall issue a 'Notice for Determining the contract' and terminate the contract as per para 10.8.4 above, due to its frustration, without repercussions on either side.

10.8.6 Limitation of Liabilities

Except in cases of criminal negligence or willful misconduct:

1. neither Party shall be liable to the other Party, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, which may be suffered by the other Party in connection with the Contract, provided that this exclusion shall not apply to any obligation of the Contractor to pay liquidated damages to the Employer and
2. the aggregate liability of the Contractor to the Procuring Entity, whether under the Contract, in tort or otherwise, shall not exceed the total Contract Price, provided that this limitation shall not apply to any obligation of the Contractor to indemnify the Employer with respect to patent infringement.
3. the aggregate liability of the Employer to the Contractor except for patent infringement, whether under the Contract, in tort or otherwise, at any point of time during the execution/performance of the Contract, shall not exceed the 'total Contract Price less payments already released to the Contractor'.

109. Monitoring of Consultancy Contracts – Risks and Mitigation

Risks	Mitigation
1. ***Substitution of key experts in implementation*:** When the contract progresses, over a period of time, the request for substitution of key staff is	The Procuring Entity needs to deal with such requests strictly in terms of contract provisions which permit substitution of key experts in exceptional circumstances such as "death or medical incapacity". Substitution of a person

Risks	Mitigation
made by the firm citing reasons of non-availability, health, and so on.	"of equivalent or better qualification and experience" should receive utmost scrutiny and compliance, as diluting such a provision leads to loss of quality of work and a serious integrity issue. Such substitution should not give any undue financial benefit to the contractor.
2. ***Cost overruns in time-based contracts:*** Time and Cost over-run is a major risk in Time-based contracts, as the payment is based on time and delay may result in unanticipated benefit to the consultant and the assignment may get delayed.	This type of contract should include an upper limit of total payments to be made to the consultants for the assignment to safeguard against excessive prolonging of time and payments. After this limit is reached, or the period of completion is exceeded, CA should review justification for extension of the contract. One of the ways to prevent cost overruns in time-based contract is that Procuring Entities should acquire contract management capacity to manage consultants contract before contract is signed. It is Procuring Entity's mandate to monitor consultant's contracts and also to request consultants to keep producing progress reports and highlighting the status of their contract as it reaches milestones such as 50% and 80% progress. Procuring Entity must carefully authorise mobilisation and demobilisation of key experts and examine the time sheets and other reimbursable expenditures.
3. **Advance payments:** This is an area of risk in public procurement with undue and unintended benefits to the contractor, which vitiates the original selection criteria.	Any mobilisation or other advance payments should be interest bearing and should be only for justifiable cases. Terms of such advances should be expressly stated in the NIT/tender documents. The advance payment may be released in not less than two stages depending upon the progress of the contract. Advance should be progressively adjusted against bills cleared for payment. Interest should be charged on delayed recoveries irrespective of the reason stated.
4. **Contract changes and renegotiations**: This is also a risk area, where the procuring entity may not get what it contracted and paid for or may pay for what it has not received. On the other hand, the contractor may not get timely or	Contract modifications and renegotiations should not substantially alter the nature of the contract. It should not vitiate the basis of the selection of the contractor. It should not give undue or unintended benefits to the contractor. However, for any changes caused by the procuring entity, the contractor should be

Risks	Mitigation
proper amendments due to changes asked by the procuring entities.	adequately and timely compensated within the contractual terms.
5. **Supervising** agencies/individuals are unduly influenced to alter the contents of their reports so changes in quality, performance, equipment, and characteristics go unnoticed.	A contract management manual or operating procedure should be prepared for large value contracts. There should be inbuilt systems of checks and balances. All large contracts should be formally reconciled for closure to ensure that the scope of the work is completed. This should include the dispute resolution forum for resolving disputes in a fixed timeframe with provision of escalation level. All payments/recoveries should also be reconciled. It should also be ensured that material/assets loaned to him including security passes are accounted for.
6. **Contractor's claims** are false or inaccurate and are protected by that in-charge of revising them.	
7. **Payment to the contractor** is delayed intentionally or otherwise.	
8. **Contractor gets final payment**, but contract closure has not been formally done. As a result, material/assets loaned to him are not accounted for.	
9. **Every dispute** lands up in arbitration or court cases since the procuring entity is reluctant to grant compensation for its own lapses to the contractor.	
10. **Agents/ Sub-contractors and partners, chosen in a non-transparent way**, are unaccountable or are used to channel bribes.	Normally Procuring Entity should deal with the contractor directly and not though agents. If foreign contractors in GTE contracts use agents, then the relationship between contractor and Agent should be as per the contract (and Integrity Pact Annexure 18, if applicable) in conformity with paras 3.3.3-b) and 3.9. Sub-contracting should be regulated as per the contract and paras 3.2.3-1, 5.2.2-3-c), and 9.2.5-7.

ANNEXURES

Annexure 1: Financial Powers to Sanction Expenditure for Purchases and Execution of Contracts

(Refer Para 1.5-1, 4.3-2, 8.2.1-5, 8.7.4-3)

1. DFPR, 2024, Rule 11, Sub-Rule (1): Subject to the provisions of DFPR 2024 and the provisions of the General Financial Rules, governing the procurement of goods and services, a Department of the Government of India shall have full powers to sanction expenditure for purchases and for execution of contracts.

a) DFPR 2024, Annexure II (General Conditions for incurring expenditure), para 11: In order to derive the benefit of these delegations optimally, the Departments of the Government of India should not only make full use of the delegated powers but also further re-delegate powers to their subordinate organisations to match the latter's requirements. A complete review of such re-delegations may be undertaken at least once in three years.

2. Powers to sanction expenditure for purchases or execution of contracts to be exercised by Secretary of the Department, shall be as follows:

Sub-rule (2)	For open or limited tender contracts	Rs. 100 crores
Sub-rule (3)	For negotiated or single tender or proprietary contracts and agreements	Rs. 25 crores

3. Sub-Rule (4): Contracts or purchases, the amount of which exceeds the value stated in sub-rules (2) and (3) above, in the categories stated, shall require the approval of the Minister in charge of the Department.

4. Sub-Rule (5): Subject to the provisions of DFPR 2024, Secretaries of the Departments of Government of India may, by general or special order, confer powers not exceeding those vested in them as specified in Sub-rule (2) and (3) of Rule 11 ….. upon an Administrator or Head of the Department or any other authority subordinate to him in consultation with the Financial Advisor of the Department or Ministry.

a) **Redelegation of Powers:** Rule 12, sub-rule (3): The Administrator or Head of the Department ……. by an order in writing, authorise a Gazetted Officer serving under him to exercise to such extent, as may be specified in that order, all or any of the powers conferred on such Administrator or Head of the Department …. The Administrator or Head of the Department shall, however, continue to be responsible for the correctness, regularity and propriety of the decisions taken by the Gazetted Officer so authorised.

b) Charter for FA, 2023, Para 20: Under Rule 12 of the Delegation of Financial Powers Rules (DFPR), and orders of DoE, certain powers have been given to Departments and to Heads of Department to decide the financial limits up to which they wish to further delegate powers for incurring certain types of expenditure. Such cases of re-delegation of powers may be either with a requirement to consult with Financial Adviser in individual cases while exercising the re-delegated power or without a requirement to consult the Financial Adviser in individual cases while exercising the re-delegated power. All orders of re-delegation of powers require consultation of the Financial Adviser on both these points, viz. the extent of re-delegation and whether or not consultation of the Financial Adviser in individual cases will be required.

5. Sub-Rule (6): Notwithstanding anything contained in sub-rules (1), (2), (3) and (4),in cases where powers to award contract or purchase or consultancy in a Project or Scheme has been considered and allowed by Public Investment Board (PIB) or Expenditure Finance Committee (EFC) or Cabinet, as the case may be, such cases will be processed as per the financial limits laid down for sanction of such Schemes or Projects by that Authority.

> *Clarification w.r.t Rule 11 (6) It is clarified that where the award of contract, purchase or engagement of consultancy services forms part of a Project or Scheme, which has been appraised by the PIB or EFC, and approved by the Competent Financial Authority (including the Cabinet), and where financial limits for such powers have been specifically prescribed in such approval, the limits allowed by the Competent Financial Authority shall be followed.*

6. **Explanation:** If a contract extends over a period of time, the total value over the entire period of currency shall be taken for the purpose of applying the limit.

7. These rules shall not apply to –

a) the Ministry of Railways and authorities subordinate to that Ministry;
b) the Ministry of Defence and authorities subordinate to that Ministry in relation to expenditure debitable to Defence Services Estimates.
c) the Departments of Atomic Energy and Space;
d) the Department of Telecommunications;
e) the Government of India's representatives abroad whose powers shall be determined in accordance with the rules or orders issued separately in consultation with the Finance Ministry.

Annexure 2: Suggested Structure of Schedule of Procurement Powers (SoPP)

(Refer Para 1.5-1, 4.3-3, 8.2.1-5, 8.2.7-3, 9.1-4)

A suggested structure of SoPP [94] is given below. However individual threshold values (wherever not given in GFR/ DFPR) would depend on the respective circumstances of various Organisations.

Sanction Item	**Threshold Value in Rupees (Lakh)**				
Five columns for level of officers are just indicative, there would be more levels as per competent Financial Authorities (CFAs, including Minister or Board of Directors in CPSEs) in organisations.					
Competent Financial Authority > Level 1 is lowest and Level - n is highest	**Level -1**	**Level-2**	**Level 3**	**Level-4**	**Level-n**
Procurement Proposal initiation, approvals and Signing: Including formulation of ToR/ Activity Schedules and Cost Estimates					
In Principle Approval, initiation, and approval of Procurement Proposals for Services					
Initiation, Approval of Terms of ToR/ Activity Schedules, and Cost estimates for Services					
Final Administrative, Budgetary Approval for Starting Procurement					
Approval for Floating of Tenders of Various Types including					
Approval Selection of System of Selection of consultants – other than LCS					
Approval for Selection by nomination of Services					
Preparation and Approval of Bidding Documents and floating of Tenders – EoI/ RfP for services					
Approval of Retendering of a discharged tender after second attempt					

[94] The procuring entities will indicate the stages and the value threshold above which consultations with/ concurrence/ vetting from IFD would be required.

Annexure 2: Suggested Structure of Schedule of Procurement Powers (SoPP)

Competent Authority (CA) for Evaluation and Acceptance of Tenders						
Procurement without calling Quotation						
Procurement Through a Purchase Committee						
Direct Approval of Tenders Without Tender committee						
Tender Committee/ CEC Composition and CA for Acceptance – EoI/ RfP for Services. Slabs below are suggestive but would depend on the frequency of cases in various slabs of procurements in an organisation.						
Slab 1 (e.g., Rs 10 to 50 Lakhs)	Levels of TC/ Member Secy					
	Acceptance Level					
Slab 2 (e.g., Rs 50 lakhs to 5 Crores)	Levels of TC/ Member Secy					
	Acceptance Level					
Slab 3 (e.g., Rs 5 to 20 Crores)	Levels of TC/ Member Secy					
	Acceptance Level					
Slab 4 (e.g., Rs 20 to 100 Crores)	Levels of TC/ Member Secy					
	Acceptance Level					
Slab 5 (e.g., Rs 100 Crores and above)	Levels of TC/ Member Secy					
	Acceptance Level					
Formulation and Placement of Contracts						
Contracts after following Tendering Process						
Acceptance of Special Conditions with concurrence of Finance before Award of Contract as per recommendation of TC/ CA						
Acceptance of Advance Payments						
Other Variations demanded by Bidders in special circumstances.						
Post Contract Powers, including Bill Passing and Payments, Handing over assets/ equipments/ material/ utilities to Contractor; Extensions with or without LD, or approvals of Variations, Contract Closure, Terminations, Arbitrator appointment, Accepting and sanctioning Court and Arbitration award						
Waiver of Liquidated Damages						
Allowing release of Time-barred claims						
	Enlistment and Debarment of consultants/ service providers					
	Initiation and Approval of Enlistment of service providers					

	Initiation and Approval of Removal from Enlistment of service providers due to misdemeanours					
	Initiation and Approval of Holiday Listing/ Suspension of service providers due to misdemeanours					
	Initiation and Approval of Banning of service providers within the Ministry or recommendation to Ministry of Commerce for Country-wide					

Annexure 3: Format of Procurement Proposal

Procurement Proposal (Concept Paper) for Procurement of Consultancy/ Non-consultancy services

(Refer Para 2.2.1)

NO.		Date	
Category of Assignment		Consultancy Services/ Non-consultancy services	
Name of Officer/ Office proposing the Assignment			
Brief Description of Consultancy/ Non-consultancy services Proposed:			
Proposed Period of Engagement:			
Place and Nodal Officer for execution			
Total Estimated Cost:			
Estimate Name/ number:			
Allocation No		Allocation Code No	

1. Purpose/ Objective Statement of Services

a) Description of service:

b) Background of the Organisation and the Project:

c) Purpose/ Objectives of the Assignment: (Highlight how the proposed procurement of services would fit in with short-term and strategic goals of Procuring Entity)

2. Service Outcome Statement - Outcomes expected from the Procurement of Services:

a) Broad List of Activities/ Steps involved in achieving objectives:

b) Expected Time-frame of assignment/ Duration of Engagement:

c) Rough estimate of cost of Procurement of services: (including related costs to be incurred by the organization)

3. Justification for the procurement of Services - Capabilities required for carrying out the assignments:

4. Rough assessment of available in-house capabilities as compared to required capabilities:

5. Precedence and similar assignments carried out earlier in our organisation/ similar organisations

6. The eligibility and pre-qualification criteria to be met by the consultants:

7. Justification: Based on assessment of required and in-house capabilities;

a) In case of Consultancy Services: It is certified that; the hiring of consultants is justified for following reasons (Tick points applicable). Please also add a narrative justification:

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

ii) There is internal capacity/ capability to do the job but there are consideration of economy, Speed, and efficiency in relation to additional requirement/ commitment/ usage of;

1) Staff/ Management/ Organization;

2) Technological and Material Resources;

3) Money, and

4) Time/ Speed of execution; and

iii) Also tick one or more of following:

1) The need to have qualified consultant for providing a specialized high-quality service; or/ and

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

2) The need for Transfer of Knowledge/ Training/ Capacity and capability building as a by-product of such engagement

3) Need to acquire information about/ Identifying and implementing new methods and systems

4) Need for planning and implementing organizational change

b) In case of Other (Non-consultancy) Services:

It is certified that, the procurement (outsourcing) of these services is justified for following reasons (Tick one main point below). Please also add a narrative justification:

i) An administrative policy decided by the Ministry/ Department to outsource specific (class of) services; or

ii) Economy, Speed and efficiency and more effective delivery of public services relating to additional requirement/ commitment/ usage of (tick one or more below):

1) Staff/ Management/ Organization;

2) Technological and Material Resources;

3) Money, and

4) Time/ Speed of execution.

8. In principle approval

In principle approval may kindly be accorded, for further processing. Final administrative and budgetary approvals would be taken after development of Terms of Reference/ Activity Schedule and detailed estimates.

Proposing Officer

Signatures/ Name/ Designation/ Department

Comments and Instructions:

Approving Officer

Signatures/ Name/ Designation/ Department

Annexure 4: Terms of Reference (ToR) Format

(Refer Para 2.3-3)

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
7. Tasks, Activities, dependencies, bar chart and Gantt Chart, Milestones
8. Place of Assignment and Touring Requirements if any
9. Length and Duration of assignments
10. 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)
11. Capacity Building, Training and Transfer of Knowledge, if any
12. 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;
13. 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)
14. 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)
15. Institutional and organisational arrangement
    a) Counterpart Project Manager and Team
    b) Contract Monitoring Committee
    c) Chain of Command for reporting
16. Procedure for review of the work of consultant after award of contract

Annexure 5: Bid Opening Attendance Sheet cum Report

(Refer Para 5.6-3-a) and h), 8.5.1-1)

[Name of Procuring Entity]

Bid Opening Attendance Sheet cum Report

Type of Opening	EoI/ Technical/ Financial	**No**		**Date and Time of Opening**	
Title of Tender					

Attendance Record						
Sr No	**Bidder's Name**	**Bidder's Address**	**Bidder's Authorisation and Date**	**Represented by**	**Contact No.**	**Signature of Representative**

Bid Opening Report							
Offer No.	**Bidder's Name**	**Bidder's Ref and Date**	**Submission of Requisite EMD (Y/N)**	**Submission of other Mandatory Documents (Y/N)**	**No of Cuttings/ Overwritings**	**Rate Quoted and Taxes/ Duties (Financial Bid)**	**Other Special Features Announced**
--/---							
--/--							
--/--							

Total no. of regular tenders taken out from the tender box to be opened as mentioned above..... (In figures and in words)

Signature, Date and Time Name and Designation of Tender Opening Officer	Signature, Date and Time Name and Designation of Tender Opening Officer

Received total regular tenders..... (In figures/words) as above

Signature, Date and Time Name and Designation of Procuring Entity Officer	Signature, Date and Time Name and Designation of Procuring Entity Officer

Annexure 6: CEC Committee Minutes Format for Consultancy Services

(For EoI/ Techno-Commercial/Financial Bids)
(Refer Para 7.3.4-4, 8.2.8-1 and 8.4.7)

Organisation:_____

Minutes of Tender Committee Meeting
(EoI/ Techno-commercial/Financial Bids)

Stage of Evaluation: EoI/ Technical/ Financial

Section I: Top Sheet

File No:		Date:	
Procuring Entity/ Client		Method of Selection	LCS/ QCBS/ SSS
Type of Contract	Lump-sum/ Time Based/ Percentage/ Retainer cum Success Fee/ Indefinite Delivery		
Name of Assignment		Estimated Cost:-	
Tender Stage Published In		Date of Publication	
Bid Validity and Extensions taken		Bid Opening Date	

Past Precedents/ Procurements

Sr. No.	service provider	Order Reference & Date	Description of Service	Cost Details	Remarks

Members of the Tender Committee

Sr. No.	Name	Designation	Sr. No.	Name	Designation
1			2		
3			4		

Section II: Background of the Assignment

Include a brief description, context, scope, and objectives of the services. Mention technical and financial approvals; estimated cost; budgetary provisions; urgency of requirement; special technical requirements and other connected procurements which are part of same package/project.

Review special conditions, restriction if any, on participation of bidders; purchase preferences, requirements prescribed in bid documents (EMD, document submission, etc.)

Describe briefly the selection process that has been completed before this stage: mode of bidding; bidding document contents; bid publication; Pre-proposal Conferences, Amendment/ Clarifications sought and given, withdrawals of firms before proposal submissions, level of competition obtained; issues if any noticed during bid-opening (bids not opened due to lack/ unsatisfactory EMD, etc.), the establishment of the shortlist, EoI, and. Describe major events that may have affected the timing (delays, complaints from consultants, reference of RfP document (attach with the Evaluation Report or make it

available for review/approving authority), extension of proposal submission date, and so on).

Names/nationality of firms/associations (mark domestic firms and firms that had expressed interest) of Firms who participated and Shortlisted Bidders prior to this stage – EoI/ Technical Evaluation:

i) Participated/ Expressed Interest:
ii) Shortlisted in EoI/ Technical Evaluation prior to this

Section III: Preliminary Evaluation of Responsiveness (Refer to Annexure 8)

Review handling of any complaints received

Discuss preliminary evaluation for determining substantially responsive bids and for minor corrections and clarifications

Section IV: Evaluation of Responsive Bids: Technical Evaluation

i) Briefly describe the meetings and actions taken by the evaluation committee: formation of a technical evaluation team, outside assistance, evaluation guidelines, justification of sub-criteria and associated weightings as indicated in the standard RfP and compliance of evaluation with RfP.
ii) Summary of Evaluation Criteria and Weights assigned
iii) Grading and Rating Scheme in the Bid documents or decided before the Evaluation
iv) Present results of the technical evaluation: scores and the award recommendation (based on Rating System agreed among evaluators prior to receipt of proposals).
v) Highlight strengths and weaknesses of each proposal (most important part of the report).
    a) Strengths: Experience in very similar projects in the country; quality of the methodology, proving a clear understanding of the scope of the assignment; strengths of the local partner; and experience of proposed staff in similar assignments.
    b) Weaknesses: Of a particular component of the proposal; of a lack of experience in the country; of a low level of participation by the local partner; of a lack of practical experience (experience in studies rather than in implementation); of staff experience compared to the firm's experience; of a key staffer (e.g., the team leader); of a lack of responsiveness; and of disqualifications (conflict of interest).
vi) Comment on individual evaluators' scores (discrepancies). Items requiring further negotiations.

Technical Evaluation Report should also contain

a) Technical Evaluation Summary (simplified in case of LCS or EoI, otherwise detailed, if so chosen in RfP, Formats given in Annexure 7, 8 and 9)
b) Evaluation of Consultancy Firm's Experience (In case of Detailed Technical Evaluation specified, Formats given in Annexure 10)
c) Evaluation of Methodology & Work Schedule (In case of Detailed Technical Evaluation specified, Formats given in Annexure 11)
d) Evaluation of the Key Professionals (In case of Detailed Technical Evaluation specified, Formats given in Annexure 12)

Section V: Evaluation of Technically Successful Bids: Financial Evaluation

i) Start with review of techno-commercial evaluation and shortlisted Firms and approval and directions by CA
ii) Briefly describe the meetings and actions taken by the evaluation committee: formation of a financial evaluation team, outside assistance, evaluation guidelines, justification of associated weightings as indicated in the standard RfP and compliance of evaluation with RfP.

iii) Insert a summary table of evaluated financial scores/ combined weighted scores
iv) Deliberations should be in the sequence of financial/ combined scores etc. Indicate: any issues faced during the evaluation, such as difficulty in obtaining the exchange rates to convert the prices into the common currency used for evaluation purposes; adjustments made to the prices of the proposal(s) (mainly to ensure consistency with the technical proposal) and determination of the evaluated price (does not apply to Quality-based (Quality-based), Selection- based on Qualifications (Qualifications), and Single-source Selection (Single-Source));arithmetical correction in case of Time-based Contract, tax-related problems; award recommendation; and any other important information.
v) Attach Minutes of Public Opening of Financial Proposals

Section VI: Summary of Recommendations

Bid-wise recommendation should be recorded

In case of evaluation of financial bids,

1. Give a summary of recommended bids, award value, bid expiry date and special conditions, if any;
2. Also mention that the rates recommended are considered reasonable (and basis for such determination);
3. Total value of the recommendations for determining level of acceptance authority;
4. Mention that none of the TC members have any conflict of interest with the parties recommended for award;
5. Request acceptance of recommendations by competent authority and that it's within his powers of acceptance as per SoPP/ DFPR.

Signature Name and Designation of the Members

1		2	
	Date:		Date:
	(Name & Designation)		(Name & Designation)
3		4	
	Date:		Date:
	(Name & Designation)		(Name & Designation)

Remarks by the Accepting Authority: _____

Signature:_____ Date:_____

Name & Designation of Accepting Authority_____

Annexure 7: Format for Evaluation of Responsiveness

(Refer to Annexure 6)

Name of the consultancy firm:

Sr. No.	Item	Required response
1	Has the consultant paid the RfP document fees?	Yes
2	Has the consultant submitted the requisite bid processing fee and bid security?	Yes
3	Have all the pages required to be signed by the authorized representative of the consultant been signed?	Yes
4	Has the power of attorney been submitted in the name of authorized representative?	Yes
5	In the case of JV/consortium, whether the MoU has been submitted?	Yes
6	Has the consultant submitted all the required forms of the technical proposal?	Yes
7	Technical proposal does not contain any financial information?	Yes
8	Is financial proposal submitted separately in a sealed cover?	Yes

Annexure 8: Format for Simplified Evaluation of Quality (LCS/ EoI)

(Refer to Annexure 6)

(If so, specified in Bid Documents)

Sr. No.	Item	Required response
1	Does the consultancy firm have the required experience?	Yes
2	Does the proposed methodology of work fulfil the objectives of the assignment/ job till the last detail of the ToR?	Yes
3	Do the methodology, work plan and staffing schedule provide coverage of the entire scope of work as described in ToR?	Yes
4	Does the team leader fulfil the minimum educational qualification and experience criteria?	Yes
5	Has the consultant provided for all the professionals for requisite expertise?	Yes
6	Does the key professional (indicate the position) fulfil the minimum educational qualification and experience criteria? [Evaluate for all the proposed key personnel]	Yes
7	Does the staffing schedule including the key professionals proposed, the responsibility assigned to them and the support staff together is adequate for performing the entire scope of work indicated in the ToR?	Yes

Note: If the answer is yes, in all the cases, the consultancy firm is considered technically qualified for the assignment.

Annexure 9: Format for Detailed Technical Evaluation - Summary Sheet

(If so specified in RfP)

(Refer to Annexure 6)

(To be compiled from Annexures 11 to 13)

S.No.	Name of the consultant	Firm's Experience Marks Awarded	Methodology & Work schedule Marks Awarded	Qualifications of Key Professionals Marks Awarded	Total Marks. Awarded	Ranking of Technical Marks
		Max. Marks =	Max. Marks =	Max. Marks =	Max. Marks 100	

Annexure 10: Evaluation of Consultancy Firm's Experience

(Refer to Annexure 6 and 9)

(Averaged from individual worksheets of CEC members)

Sr.No.	Name of the Consultancy	Firm Number of Projects of similar nature	Marks Awarded Max. Marks =

Annexure 11: Evaluation of Methodology & Work Schedule

(Refer to Annexure 6 and 9)

(Averaged from individual worksheets of CEC members)

S.No.	Name of the Consultancy	Firm's Understanding of ToR – Marks Awarded	Work Plan & Methodology – Marks Awarded	Organization and Staffing for the proposed assignment – Marks Awarded	Total – Marks Awarded
		Max. Marks =	Max. Marks =	Max. Marks =	Max Marks =

Annexure 12: Evaluation of the Key Professionals

(Refer to Annexure 6 and 9)

(Averaged from individual worksheets of CEC members)

Name of the Consultancy Firm:								
Sr. No.	**Name of the Key Professionals**	**Educational Qualification**	**Marks Awarded** **Max. Marks =**	**No. of Projects of similar nature**	**Marks Awarded** **Max. Marks =**	**Experience of the region (No. of Projects in the region)**	**Marks Awarded** **Max. Marks =**	**Total Marks (4+6+8)** **Max. Marks=**
1	**2**	**3**	**4**	**5**	**6**	**7**	**8**	**9**
							Grand Total for the consultant:	
Name of the Consultancy Firm:								
							Grand Total for the consultant:	
Name of the Consultancy Firm:								
							Grand Total for the consultant:	
Name of the Consultancy Firm:								
							Grand Total for the consultant:	

Annexure 13: Certificate for Procurement of Consultancy Services without Quotation

(Refer Para 4.3-3-e-i)

Ref No: _____

Place: _____ Date: _____

"I, _____, am personally satisfied that the Non-consultancy services executed as described below are of the requisite scope and performance standards and have been got executed from a reliable service provider at a reasonable price."

Description of Service:	
Justification:	
Place and Nodal Officer for availing the Services	
Contract Basis	Lump-Sum/ Unit (Item) Rate/ Time-based
Scope/ Quantum/ Performance Standards	
Rate:	
Taxes/Duties:	
Other Charges:	
Total Contract Price:	
service provider	M/S
Vide Bill No.:	
Cheque may be drawn in favour of	
Name of Procuring Officer:	
Designation:	
Signature:	

Annexure 14: Purchase Committee Certificate for Procurement of Consultancy Services

(Refer Para 4.3-3-e-ii)

Ref No: _____

Place: _____ Date: _____

Description of Service:	
Justification:	
Place and Nodal Officer for availing the Services	
Contract Basis	Lump-Sum/ Unit (Item) Rate/ Time-based
Scope/ Quantum/ Performance Standards	

Details of Prices Ascertained						
service provider	Rate:	Taxes/Duties:	Other Charges:	Total Unit Price:	Total Price:	Recommendations & Comments

Selected service provider	
Unit Rate, Taxes/ Duties/ Other Charges	
Total Unit Rate	
Total Value of Purchase	
Cheque may be drawn in favour of	

Signature:	Signature:	Signature:
Name 1:	Name 2:	Name 3:
Designation:	Designation:	Designation:

"Certified that we the undersigned, members of the purchase committee are jointly and individually satisfied that the above-described Services are executed at a reasonable price and are of the requisite scope and performance standards and have been got executed from a reliable service provider, and it is not debarred by Department of Expenditure or Ministry/Department concerned." The details of recommended purchase are:

Annexure 15: Limited Tender Form

(Refer Para 4.3-3-c-i)

(For Techno-Commercial/Financial Bids)

Name of the Procuring Entity _____

<table>
<tr><td colspan="2">Firm's Reference</td><td></td><td>Date</td><td></td></tr>
<tr><td colspan="2">Firm Registration No. (if any)</td><td></td><td>PAN (attach photocopy)</td><td></td></tr>
<tr><td>TIN/ GST#</td><td></td><td rowspan="4">LIMITED TENDER FORM</td><td colspan="2" rowspan="4">Address:</td></tr>
<tr><td>Phone</td><td></td></tr>
<tr><td>Fax</td><td></td></tr>
<tr><td>Email</td><td></td></tr>
<tr><td colspan="2" rowspan="3">M/s:</td><td>Enquiry No. and Date</td><td colspan="2"></td></tr>
<tr><td>Date of Tender Opening</td><td colspan="2"></td></tr>
<tr><td colspan="3">The tender would be opened at three pm on the date of tender opening above, at the address mentioned above.</td></tr>
<tr><td colspan="5">Please submit on or before 3:00 pm on the date of tender opening, your quotation for the following services, in accordance with the terms and conditions printed overleaf, in a sealed cover, marked on top with – Enquiry No; Date of Tender Opening.
Yours Sincerely
Procuring Officer</td></tr>
<tr><td colspan="5">Services and Activities Schedule: All Rates in Figures and in Words in Rupees</td></tr>
</table>

Sr No:	Description of Services/ Activities	Qty	Unit	Delivery Terms	Rate per Unit	Taxes & Duties	Total Rate per Unit	Total Value

Delivery Schedule:
Enclosed Performance Standards /Special Conditions of Contract:
I/ we engage to delivery of Service(s) to your office and comply the following: 1. Services and Activities schedule and Performance indicated. 2. Special conditions of Contract for this tender. 3. Terms and conditions printed overleaf. 4. General conditions of contract (signed at the time of supplier registration).

5. I/we confirm that set off for the GST, etc. Paid on the inputs have been taken into consideration in the above quoted price and further agree to pass on such additional duties as sets offs as may become available in future under GST, etc. 6. This offer is valid for 90 (ninety) days from the date of opening of the tender. 7. An undertaking that we have not been debarred by the Procuring Entity (Government/ Department/ CPSE) that has issued this Limited Tender Enquiry. An undertaking that we have not been debarred by Department of Expenditure (DoE), Ministry of Finance, Government of India. 8. That the bid submitted by us is properly sealed and prepared so as to prevent any subsequent alteration and replacement.

Signature & Seal Place & Date:		Name of Authorised Signatory:	
Address:		Tel. No./ Fax. No./ Mobile No. Email Id:	

TERMS AND CONDITIONS OF LIMITED TENDER

1. The quotation must be in the form furnished by procuring entity and should be free from corrections/erasures. In case there is any unavoidable correction it should be properly attested. If not, the quotation will not be considered. Quotation written in pencil will not be considered.

2. Quotation will be opened on due date at 3.00 pm at the indicated venue in presence of the bidders or their representatives who may wish to be present.

3. The Procuring Entity reserves the right to accept the offer in full or in part, to reject any or all proposals without assigning any reason thereof, and does not bind itself to accept lowest quotations.

4. Participation in this tender is by invitation only and is limited to the selected procuring entity's registered consultants/ service providers. Unsolicited offers are liable to be ignored. However, consultants/ service providers who desire to participate in such tenders in future may bring it to the notice of procuring entity and apply for registration as per procedure. Note: to get registered as an approved consultant/ service provider with the procuring entity, please download consultant/ service provider approval form from _____ and submit.

5. Consultant's name and country of origin of services offered must be clearly specified. Please quote whether your organisation is large scale industry or small-scale industry. If you have NSIC/ MSE/ MSI Certificate, please attach it to the quotation. Mention your registration details. Purchase Preference and restriction policies of the Government of India shall be applicable in this Tender.

6. Complete details and performance standards if any must accompany the quotation. If you have got any counter offer as suitable to the Services required by us, the same may be shown separately.

7. All Services/ Deliverables submitted under the consultancy contract shall be subject to review and acceptance by the Procuring Entity.

8. The Procuring Entity reserves the right to modify the quantity specified in this enquiry.

9. The prices quoted should be firm till the services are completed. Please quote the rates in words and figures. Price quoted should be net and valid for a minimum period of three months from the date of opening of the quotation.

10. Payment of GST is primarily the responsibility of the consultant/ service provider and will not be paid unless the percentage value is clearly mentioned in the quotations. If no indication regarding GST is recorded in the quotation, the GST will be considered as included.

11. Delivery period required for delivering the services should be invariably specified in the quotation.

12. In case your quotation is accepted, and order is placed on you, the services against the order should be completed within the period stipulated in the order. The Procuring Entity reserves the right to recover any loss sustained due to delayed delivery of services by way of penalty. Failure to perform Services within the stipulated period shall entitle Procuring Entity for the imposition of penalty without assigning any reasons @ 0.5% (half percent) of the total value of the services covered in order as penalty per day subject to a maximum of 5% (five percent) unless extension is obtained in writing from the office on valid ground before expiry of delivery period.

13. If the consultant/ service provider fails to deliver the agreed outputs within the specified timelines, and due to that account Procuring Entity is forced to obtain services at your risk and cost from elsewhere, the loss or damage that may be sustained there by will be recovered from the defaulting consultant/ service provider.

14. Dispute clause: Any dispute relating to the enquiry shall be subject to the jurisdiction of the court at [indicate Place] only.

15. Our normal payment terms are 100% (hundred percent) within 30 (thirty) days on receipt and acceptance of services at our site.

Annexure 16: Example of Formula for Price Variation Clause

[Refer Para 6.5-2)d)x)]

(The formula for price variation should ordinarily include a fixed element, a material element, and a labour element. The figures representing the material element, and the labour element should reflect the corresponding proportion of input costs, while the fixed element may range from 10 to 25% (ten to twenty-five percent). That portion of the price represented by the fixed element and profits and is not subject to variation. The portions of the price represented by the material element and labour element along will attract price variation.)

The formula for price variation will thus be:-

$$Pa = Po\left[\frac{\left(F + a\left(\frac{M1}{Mo}\right) + b\left(\frac{L1}{Lo}\right)\right)}{100}\right] - Po$$

Where: -

P_a is then adjustment amount payable to the supplier (a minus figure will indicate a reduction in the contract price) on the date of supply.

P_o is the contract price on the base date (which is taken as the date on which tender is due to open).

F is the fixed element (as the percentage of the total price) not subject to price variation.

a is the assigned percentage to the material element in the contract price.

b is the assigned percentage to the labour element in the contract price.

(F, a, and b being percentages should total 100)

L_o and L_1 are the average wage indices for the quarter before the quarter in which base month falls and for the quarter before the quarter in which date of supply falls; respectively. For example, for a tender opening on March 17, 2016 (base date), L_o would be average wage index for the quarter of Oct-Dec 2015.

M_o and M_1 are the material prices/indices as average of the month, two months prior to the month in which base month falls and average of the month, two months prior to the month in which date of supply falls, respectively. For example, for a tender opening on March 17, 2016 (base date), M_o would be prices/index as average of the month of January 2016. All material prices/indices will be basic prices without excise duty and without any other central, state, local taxes, and duties and Octroi.

If more than one major item of material is involved, the material element can be broken up into two or three components such as M_x, M_y, M_z.

The following conditions would be applicable to price adjustment:

1. There is a Time-lag period between the date of supply/ base date respectively and the dates on which indices/ prices are to be considered as per above formula. This time lag can be a few months/ weeks prior to such base date/ date of supply, depending on the frequency of publishing/ availability of indices/ prices and the supply chain process of manufacturing. This must be specified in the definitions of L_0/ L_1 and M_0/M_1 indices in the formula in the tender document as above.
2. Base date shall be assumed to be the date of last bid submission deadline.
3. No price increase is allowed beyond original delivery period.

4. No price adjustment shall be payable on the portion of contract price paid to the seller as an advance/interim payment after the date of such payment.
5. No price adjustment shall be payable if this is less than or equal to 2% (two percent) of Po.
6. Total adjustment will be subject to maximum ceiling of ____% (to be specified in tender document), beyond which the price variation would be capped at this level. As soon as it comes to light that price variations are likely to go beyond this ceiling, and if the Supplier is not agreeable to the price variation being capped at that level, he may notify the Purchaser under 'Frustration of Contract' provisions in the Tender Document/ Clause, for termination of contract.
7. Payments for each supply would initially be made as per the base price mentioned in the contract. Price adjustment bill should be submitted only quarterly for the supplies made during the quarter.
8. In GTE tenders extra care should be taken in selecting the price indices. Preferably the price indices should be from the same country and of same currency as the country and currency of the bidder. In case price is in a currency of a country where inflation is low and the indices are from country with much higher inflation rates, $\left(\frac{M1}{Mo}\right)$ and $\left(\frac{L1}{Lo}\right)$ should be multiplied by a correction factor of exchange rates$\left(\frac{Eo}{E1}\right)$, where E_0 is the exchange rate of country of M and L indices with reference to currency of price P. For example, if M&L are from India and P is in $, then E_o is Number of Rs. in a $ on base date and E_1 is the exchange rate on determination date.
9. Even if there is no price adjustment claim, supplier must submit all relevant data to prove that there is no downward variation. In any case he must submit a declaration as follows;

   "It is certified that there has been no decrease in the price because of decrease in price variation indices in the price variation formula. In the event of any decrease of such indices that come to light later regarding the payment claimed by us, we shall promptly notify this to the purchaser, and we undertake to refund and agree to the purchaser deducting any excess payment made to us in this regard, from our future payment due."

Annexure 17: Model Clauses to be inserted in Tenders etc. w.r.t Order (Public Procurement No.4)

(including tenders issued manually or any electronic portal including GeM)

[Refer para 1.10.3-7]

(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. The conditions relating to specified ToT (as shown in italics) should be incorporated only in the tenders which attract the restrictions due to specified ToT.)

A. Model Clauses for Tenders (including tenders issued manually or any electronic portal, including GeM):

I. Any bidder from a country that 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. *Further, any bidder (including bidder from India) having specified Transfer of Technology (ToT) arrangement with an entity from* a *country which shares* a *land border with India, shall also require to be registered with the same 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;

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.

VII. The registration shall be valid at the time of submission of bid and at the time of acceptance of bid.

VIII. If the bidder was validly registered at the time of acceptance/ placement of order,

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 fulfils 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 fulfils 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 additional certificate by Bidders in the cases of specified To T:

"I have read the clause regarding restrictions on procurement from a bidder having a Transfer of Technology (ToT) arrangement. I certify that this bidder does not have any To T arrangement requiring registration with the competent authority. "

OR

"I have read the clause regarding restrictions on procurement from a bidder having a Transfer of Technology (ToT) arrangement. I certify that this bidder has valid registration to participate in this procurement."

B. Model Certificate for GeM (to be taken by the GeM from the seller during registration on GeM. GeM should also obtain this certificate from all existing bidders as soon as possible):

"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, is not from such a country, has been registered with the Competent Authority. I hereby certify that this vendor/ bidder fulfils 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.]"

Annexure 18: Integrity Pact Format

(Refer para 3.4-2)

INTEGRITY PACT

Between

[the Procuring Organisation] hereinafter referred to as **"The Principal,"** and _____ hereinafter referred to as **"The Bidder/ Contractor."**

Preamble

The Principal intends to award contract/s for_____, under laid down organisational procedures, The Principal values full compliance with all relevant laws of the land, rules, regulations, economical use of resources, and fairness / transparency in its relations with its Bidder(s) and / or Contractor(s).

To achieve these goals, the Principal shall appoint Independent External Monitors (IEMs) who shall monitor the tender process and the execution of the contract for compliance with the abovementioned principles.

Section 1 – Commitments of the Principal

1) The Principal commits itself to take all measures necessary to prevent corruption and to observe the following principles: -
   a. No employee of the Principal, personally or through family members, shall in connection with the tender for, or the execution of a contract, demand, take a promise for or accept, for self or third person, any material or immaterial benefit which the person is not legally entitled to.
   b. The Principal shall treat all Bidder(s) with equity and reason during the tender process. The Principal shall, in particular, before and during the tender process, provide to all Bidder(s) the same information and shall not provide to any Bidder(s) confidential / additional information through which the Bidder(s) could obtain an advantage in the tender process or the contract execution.
   c. The Principal shall exclude from the process all known persons having conflict of interest.
2) If the Principal obtains information on the conduct of any of its employees which is a criminal offence under the BNS/ PC Act, or if there be a substantive suspicion in this regard, the Principal shall inform the Chief Vigilance Officer and in addition shall initiate disciplinary proceedings.

Section 2 – Commitments of the Bidder(s)/ Contractor(s)

1) The Bidder(s)/ Contractor(s) commits themselves to take all measures necessary to prevent corruption. The Bidder(s)/ Contractor(s) commits themselves to observe the following principles during participation in the tender process and the contract execution.
   a. The Bidder(s)/ Contractor(s) shall not, directly or through any other person or firm, offer, promise, or give to any of the Principal's employees involved in the tender process or the execution of the contract or to any third person any material or other benefit which they are not legally entitled to, in order to obtain in exchange any advantage of any kind whatsoever during the tender process or the execution of the contract.
   b. The Bidder(s)/ Contractor(s) shall not enter with other Bidders into any undisclosed agreement or understanding, whether formal or informal, in violation of the Competition Act, 2002 (as amended from time to time). This applies in particular to

prices, specifications, certifications, subsidiary contracts, submission or non-submission of bids or any other actions to restrict competitiveness or to introduce cartelisation in the tender process.

c. The Bidder(s)/ Contractor(s) shall not commit any offence under the relevant BNS/ PC Act; further, the Bidder(s)/ Contractor(s) shall not use improperly, for purposes of competition or personal gain, or pass on to others, any information or document provided by the Principal as part of the business relationship, regarding plans, technical proposals, and business details, including information contained or transmitted electronically.
d. The Bidder(s)/Contractors(s) of foreign origin shall disclose the name and address of the Agents/representatives in India, if any. Similarly, the Bidder(s)/Contractors(s) of Indian Nationality shall furnish the name and address of the foreign principals, if any. Further details, as mentioned in the "Guidelines on Indian Agents of Foreign Suppliers," shall be disclosed by the Bidder(s)/Contractor(s). Further, as mentioned in the Guidelines, all the payments made to the Indian agent/representative must be in Indian Rupees only. Copy of the "Guidelines on Indian Agents of Foreign Suppliers" is placed on Annex hereto.
e. The Bidder(s)/ Contractor(s) shall, when presenting their bid, disclose any and all payments made, is committed to, or intends to make to agents, brokers, or any other intermediaries in connection with the award of the contract.
f. Bidder(s) /Contractor(s) who have signed the Integrity Pact shall not approach the Courts while representing the matter to IEMs and shall wait for their decision.

2) The Bidder(s)/ Contractor(s) shall not instigate third persons to commit offences outlined above or be an accessory to such offences.

Section 3 - Disqualification from the tender process and exclusion from future contracts

If the Bidder(s)/Contractor(s), before award or during execution, has committed a transgression through a violation of Section 2, above or in any other form such as to put their reliability or credibility in question, the Principal is entitled to disqualify the Bidder(s)/Contractor(s) from the tender process or take action as per laid down procedure to debar the Bidder(s)/Contractor(s) from participating in the future procurement processes of the Government of India.

Section 4 – Compensation for Damages

1) If the Principal has disqualified the Bidder(s) from the tender process before the award according to Section 3, the Principal is entitled to demand and recover the damages equivalent to Earnest Money Deposit/ Bid Security.
2) If the Principal has terminated the contract according to Section 3, or if the Principal is entitled to terminate the contract according to Section 3, the Principal shall be entitled to demand and recover from the Contractor liquidated damages of the Contract value or the amount equivalent to Performance Bank Guarantee.

Section 5 – Previous transgression

1) The Bidder declares that no previous transgressions occurred in the last three years with any other Company in any country conforming to the anti-corruption approach or with any Public Sector Enterprise in India that could justify his exclusion from the tender process.
2) If the Bidder makes an incorrect statement on this subject, the Principal shall act like para 2) of Section 4 above.

Section 6 – Equal treatment of all Bidders / Contractors / Subcontractors

In the case of Sub-contracting, the Principal Contractor shall take responsibility for adopting the Integrity Pact by the Sub-contractor.

a. The Principal shall enter into agreements with identical conditions as this one with all Bidders and Contractors.
b. The Principal shall disqualify from the tender process all bidders who do not sign this Pact or violate its provisions.

Section 7 – Criminal charges against violating Bidder(s) / Contractor(s) / Subcontractor(s)

If the Principal obtains knowledge of the conduct of a Bidder, Contractor, or Subcontractor, or of an employee or a representative or an allied firm of a Bidder, Contractor or Subcontractor which constitutes corruption, or if the Principal has substantive suspicion in this regard, the Principal shall inform the same to the Chief Vigilance Officer.

Section 8 – Independent External Monitor

1) The Principal shall appoint competent and credible Independent External Monitor(s) for this Pact after approval by the Central Vigilance Commission. The task of the Monitor is to review, independently and objectively, whether and to what extent the parties comply with the obligations under this agreement.
2) The Monitor is not subject to instructions by the parties' representatives and performs their functions neutrally and independently. The Monitor would have access to all Contract documents whenever required. It shall be obligatory for them to treat the information and documents of the Bidders/Contractors as confidential. They report to the Management of the Principal.
3) The Bidder(s)/Contractor(s) accepts that the Monitor has the right to access without restriction, all Project documentation of the Principal, including that provided by the Contractor. Upon their request and demonstration of a valid interest, the Contractor shall also grant the Monitor unrestricted and unconditional access to their project documentation. The same applies to Sub-contractors.
4) The Monitor is under contractual obligation to treat the information and documents of the Bidder(s)/ Contractor(s)/ Sub-contractor(s) with confidentiality. The Monitor has also signed declarations on ‘Non-Disclosure of Confidential Information’ and ‘Absence of Conflict of Interest.’ In case of any conflict of interest arising later, the IEM shall inform the Management of the Principal and recuse themselves from that case.
5) The Principal shall provide the Monitor with sufficient information about all meetings among the parties related to the Project, provided such meetings could impact the contractual relations between the Principal and the Contractor. The parties offer the Monitor the option to participate in such meetings.
6) As soon as the Monitor notices, or believes to notice, a violation of this agreement, they shall inform the Management of the Principal and request the Management to discontinue or take corrective action or other relevant action. The Monitor can, in this regard, submit non-binding recommendations. Beyond this, the Monitor has no right to demand from the parties that they act in a specific manner, refrain from action, or tolerate action.
7) The Monitor shall submit a written report to the Management of the Principal, within 8 to 10 weeks from the date of reference or intimation to him by the Principal and, should the occasion arise, submit proposals for correcting problematic situations.
8) If the Monitor has reported to the Management of the Principal a substantiated suspicion of an offence under the relevant BNS/ PC Act, and the Management of the Principal has not, within the reasonable time, taken visible action to proceed against such offence or

reported it to the Chief Vigilance Officer, the Monitor may also transmit this information directly to the Central Vigilance Commissioner.

9) The word **'Monitor'** would include both singular and plural.

Section 9 – Pact Duration

This Pact begins when both parties have legally signed it. It expires for the Contractor 12 months after the last payment under the contract, and for all other Bidders, 6 months after the contract has been awarded. Any violation of the same would entail disqualifying the bidders and exclusion from future business dealings.

If any claim is made / lodged during this time, the same shall be binding and continue to be valid despite the lapse of this Pact as specified above, unless it is discharged / determined by the Management of the Principal.

Section 10 – Other provisions

1) This agreement is subject to Indian Law. The place of performance and jurisdiction is the place from where the Tender/ Contract is issued.
2) Changes, supplements, and termination notices must be submitted in writing. Side agreements have not been made.
3) If the Contractor is a partnership or a consortium, this agreement must be signed by all partners or consortium members.
4) Should one or several provisions of this agreement turn out to be invalid, the remainder of this agreement remains valid. In this case, the parties shall strive to come to an agreement according to their original intentions.
5) Issues like Warranty / Guarantee, etc., shall be outside the purview of IEMs.
6) In the event of any contradiction between the Integrity Pact and its Annex, the Clause in the Integrity Pact shall prevail.

_____	_____
(For & On behalf of the Principal)	(For and on behalf of Bidder/ Contractor)
(Office Seal)	(Office Seal)
Place ---------- Date ----------	
Witness 1: _____	Witness 1: _____
(Name & Address	(Name & Address

Annex-1 to Integrity Pact - Guidelines for Indian Agents of Foreign Suppliers

(Refer Section 2-1-d) and 10-6 of Annexure 18)

1.1 There shall be compulsory registration of agents for all Global Tender Enquiries (GTE) and Limited Tender Enquiries (LTE). An agent not registered with the Procuring Entity shall apply for registration with them.

1.2 Registered agents shall file an authenticated Photostat copy duly attested by a Notary Public/Original certificate of the Principal confirming the agency agreement and giving the status being enjoyed by the agent and the commission/remuneration/salary/ retainer ship being paid by the Principal to the agent before the placement of an order by the Procuring Entity.

1.3 Wherever the Indian representatives have communicated on behalf of their principals and the foreign parties, have stated that they are not paying any commission to the Indian agents, and the Indian representative is working based on salary or as a retainer, a written declaration to this effect should be submitted by the party (i.e., Principal) before finalising the Contract.

2.0 Disclosure of Particulars of Agents/ Representatives in India, if any.

2.1 Bidders of Foreign nationality shall furnish the following details in their offer:

2.1.1 The name and address of the agents/representatives in India, if any and the extent of authorisation and authority given to commit the Principals. If the agent/representative is a foreign Company, it shall be confirmed whether it is a real functioning Company, and details of the same shall be furnished.

2.1.2 The amount of commission/remuneration included in the quoted price(s) for such agents/representatives in India.

2.1.3 Confirmation of the Bidder that the commission/ remuneration, if any, payable to his agents/representatives in India, may be paid by the Procuring Entity in Indian Rupees only.

2.2 Bidders of Indian Nationality shall furnish the following details in their offers:

2.2.1 The name and address of the foreign principals indicating their nationality as well as their status, i.e., whether manufacturer or agents of manufacturer holding the Letter of Authority of the Principal specifically authorising the agent to make an offer in India in response to tender either directly or through the agents/representatives.

2.2.2 The amount of commission/remuneration included in the price (s) quoted by the Bidder for himself.

2.2.3 Confirmation of the foreign principals of the Bidder that the commission/remuneration, if any, reserved for the Bidder in the quoted price (s) may be paid by the Procuring Entity in India in equivalent Indian Rupees on satisfactory completion of the Project or supplies of Stores and Spares in case of operation items.

2.3 In either case, in the event of the contract materialising, the payment terms shall provide for payment of the commission /remuneration, if any, payable to the agents/representatives in India in Indian Rupees on expiry of 90 days after the discharge of the obligations under the contract.

2.4 Failure to furnish correct and detailed information as called for in paragraph - 2.0 above shall render the concerned bid liable to rejection or, in the event of a contract materialising, the same liable to termination by the Procuring Entity. Besides this, there would be a penalty of banning business dealings with the Procuring Entity or damage or payment of a named sum.

Annex-2 to Integrity Pact – Appointment and Role of IEMs

(Refer to para 3.4-3, 10.7.4-4-d)

1. Appointment of IEMs
    i). Integrity Pact would be implemented through a panel of Independent External Monitors (IEMs) nominated by CVC at an organisation's request from its list of empanelled IEMs. Three IEMs shall be appointed for Maharatna and Navratna PSUs, and two IEMs shall be nominated in all other organisations.
    ii). The IEMs appointed should be eminent persons of high integrity and reputation. A periodical notice inviting applications from eligible persons shall be published on the CVC's website. After due scrutiny and verification of the applications and accompanying documents, as may be deemed appropriate, the name(s) would be included in the panel for nomination as IEM.
    iii). The zone of consideration of eminent persons for empanelment as IEMs would consist of:
        a) Officers who have held the post of Additional Secretary to Govt of India or were in the equivalent or higher pay scale at the time of retirement (whether serving with Govt of India or any State Govt.).
        b) Persons who held the CMD post of Schedule 'A' Public Sector Enterprise and were equivalent to Additional Secretary to Govt of India at retirement.
        c) Persons who have held the post of CMD/MD and CEO of Public Sector Banks, Insurance Companies, and other Financial Institutions at retirement.
        d) Chief Executive Officer of an organisation (other than listed above and were equivalent or higher to Additional Secretary to Govt, of India, at the time of retirement).
        e) Armed Forces Officers in the pay scale equivalent or higher to Additional Secretaries to Govt of India at retirement.
        f) The age of IEM should not be more than 70 years at the time of appointment.
        g) If a retired person has accepted a full-time assignment, post-retirement, either in the government sector, private sector, or elsewhere, he shall not be eligible to be on the panel of IEMs. All those empanelled persons who accept full-time assignments elsewhere would cease to remain on the panel from the date they have taken the assignment. In this regard, it would be incumbent upon the empanelled persons to immediately inform CVC about the acceptance of full-time assignment by them.
        h) All IEMs should sign non-disclosure agreements with the organisation in which they are appointed.
        i) A person acting as an IEM shall not be debarred from taking up other assignments, such as consultancy with other organisations or agencies, subject to his declaring that their additional assignment does not involve any conflict of interest and is not a full-time assignment. The IEMs must also sign a declaration of absence of conflict of interest with existing assignments. In case of any conflict of interest arising later from an entity wherein he is or has been a consultant, the IEM should inform the CEO and recuse themselves from that case.
        j) A person may be appointed as an IEM in a maximum of three organisations at a time. An empanelled person cannot be appointed in one organisation for over three years.
2. Role of IEMs in Integrity Pact
    i). Bidders or their authorised representative may address to the IEMs all the representations/grievances/complaints related to any discrimination on account of lack of

fair play in modes of procurement and tendering systems, tendering method, eligibility conditions, bid evaluation criteria, commercial terms & conditions, choice of technology/specifications etc.

ii). The entire panel of IEMs should examine the matter jointly, who would investigate the records, conduct an examination, and submit their joint recommendations to the Management of the Procuring Entity. If the entire panel is unavailable for unavoidable reasons, the available IEM(s) shall examine the complaints. Consent of the IEM(s), who may not be available, shall be taken on record. The IEMs would be provided access to all documents/records of the tender for which a complaint or issue is raised before them, as and when warranted.

iii). The role of IEM is advisory, and the advice of IEM is non-binding on the Organization; however, their advice would help properly implement the Integrity Pact.

iv). IEM should examine the process integrity; they are not expected to concern themselves with fixing the responsibility of officers. IEMs should not associate CVO and /or the officials of the vigilance wing during the examination of the complaints in any manner. A matter being examined by the IEMs can be separately investigated by the CVO if a complaint is received or directed to them by the CVC.

3. Systemic Improvements:

i). The Procurement wing of the organisation shall hold quarterly meetings with the IEMs. A summary of contracts awarded in the previous quarter, covered under the Integrity Pact, shall be shared with the IEMs during the quarterly meeting. Such a summary of contracts should include details like tender number, mode of tendering, the period allowed for publicity, number of bids received, number of bidders considered eligible, and name and address of the successful bidder.

ii). The above summary of contracts is to help the IEMs in analysing whether an appropriate mode of tendering is being adopted by the organisation, i.e., limited tender mode or nomination mode is not unduly used, the number of bidders is not too low, a large number of bidders are not excluded while judging the eligibility or during the technical bid evaluation stage, and whether particular firm or set of specific 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.

iii). 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 and review the information on tenders awarded during the preceding six-month period. Additional such meetings, however, can be held as per requirement. All such meetings with the Procurement wing or with the organisation's Chief Executive should be minuted.

4. Dispute Mediation:

In case of any dispute between the management and the contractor relating to those contracts where an Integrity Pact is applicable, in case both the parties are agreeable, they may try to settle the dispute through mediation before the panel of IEMs in a time-bound manner. If required, the organisations may adopt any mediation rules for this purpose. However, no more than five meetings shall be held for dispute resolution. Both parties shall equally share the fees/expenses on dispute resolution. If the dispute remains unresolved even after mediation by the panel of IEMs, the organisation may take further action as per the terms & conditions of the contract.

5. Entitlements of IEMs

i). IEMs shall be paid fees of ₹ 25,000/- per sitting subject to a maximum of ₹ 3,00,000/- in a calendar year for the sitting fees.

ii). The travel and stay arrangements for the IEMs for such meetings shall equal their entitlements at retirement. Booking travel tickets, as per the mode of travel indicated by the IEM in writing (including email), the organisation shall do local transport and stay. The organisation concerned shall provide a place for meetings and secretarial assistance to IEMs for rendering their job. No payment instead of secretarial aid shall be paid to the IEMs.

iii). As mentioned above, the travel/ stay arrangements and fees for meetings held by IEMs for mediation between the management and the contractor shall be the same but in addition to the fees for the regular meetings and would be over and above the ceiling of 3,00,000/- as per calendar year.

Annexure 19: FAQs in Respect of Public Procurement Policy for MSEs Order, 2012[95]

[Refer Para 1.10.1-7-d]

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/ CPSEs 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 CPSEs from MSEs, Ministry of MSME has launched the MSME Sambandh Portal on 8th

[95] https://www.dcmsme.gov.in/FAQs-PPP_25032022.pdf

December 2017 for uploading procurement details by all CPSEs 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/ CPSEs to develop MSE Vendors 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. 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/ CPSEs 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 / CPSEs must take the following steps:

i. Special Vendor Development Programmes/ Buyer-Seller Meets would be conducted by Departments/ CPSEs 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 tender 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, CPSEs 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, Defence armament imports will not be included in computing 25% goal for M/o Defence. In addition, Defence 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 Defence sector, by Ministry of Defence 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/ CPSEs 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 / CPSEs, 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 / CPSEs for exemption from the present 25% procurement targets on a case-to-case basis.

Q.No.25: Does laminated paper Gr. I, II and III fall under the paper conversion product (Sl.No.202) and is a reserved item for exclusive procurement from MSEs?

Ans. As per Policy Circular No. 21(6)/2016-MA dt. 26th May 2016, it is clarified that only paper bags, envelopes, ice-cream cups, paper cups and saucers and paper plates are covered under the head "Paper Conversion products" at 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 MSEs 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 / CPSEs 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 CPSEs. 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.20/2/2014PPD(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 CPSEs.

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 CPSEs been uploading their monthly and annual procurement details, on MSME SAMBANDH Portal?

Ans. Most of the CPSEs are uploading their procurement details on the portal.

Q.No.39: Is there any provision to take action against the procuring agency for noncompliance 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 CPSEs.

• Increased share of supplies of MSEs to Central Government Ministries/ Departments and CPSEs.

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 / CPSEs 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 CPSEs?

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 CPSEs 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.

Annexure 20: Letter (Notification) of Award (LoA) of Contract

(Refer Para 8.7.1-2)

Name of the procuring entity_____

Letter of Award of Contract

Confidential

Contract No: [Insert date]

Contract Title:

To,

M/s. [Insert name & address]

Sub: Award of contract for contract no: [insert contract number] and contract title: [insert contract title]

REF. Your offer no. [insert offer number] against our tender no. [insert tender no] opened on [insert date of opening of tender]

Dear Sir/ Madam

I am directed to inform you that after evaluating the bids submitted by you on ----[enter date] ---------[Enter Name of Procuring Entity] is pleased to inform you that you have been selected as the successful bidder for the performance of Services [enter description]. The total purchase price shall be [enter amount] as indicated in your financial bid submitted on [enter date], in accordance with the procedures intimated in the relevant tender documents.

You/your authorised representative(s) are requested to be personally present at [insert address] for the signing of the contract by [enter date].

In this respect, we also request you to submit the performance security of [insert amount of Rupees in words] by [insert date]. Security deposit being 10% (ten percent) of the total cost = Rs._____.

Please apply for refund of EMD deposited over and above the SD of if any.

You are requested to execute necessary agreement within seven days from the date of issue of this letter in the enclosed agreement form. Special adhesive stamp of Rs.10 (Rupees Ten) and revenue stamp of Rupee one shall be affixed on the enclosed agreement form. Treasury receipts of EMD and SD shall be deposited in office within the stipulated time limit as above.

This notification concludes the legally binding contract between you and the Government of India, till issue of a formal contract.

Yours truly,

[Authorised Officer]

Enclosure: Agreement Form along with the schedule of delivery

Annexure 21: Proposal for Extension of Delivery Period

(Refer Para 10.4.2-2, 10.4.2-3)

Proposal for Extension of Delivery Period

Department		Office	
Description		Contract value	
Contract No:		Date:	
Variations applicable	PVC/ ERV/ Statutory Variations	Type of contractor	Govt. Dept. / PSU/ MSE
Contractor & Regn. No.:		Quantity on order	
Deliverables completed		Deliverables pending	
Details of earlier extensions granted		Is it a contract:	Development/ Indigenisation
Reference and date of request for extension		Reasons cited for extension	
Original/extended delivery period/ date		Proposed extension of period/ date	
Signature of Procuring Officer		Date	

Remarks of Indentor:

Regarding the proposed extension of delivery period/date, the following remarks are given regarding loss and inconvenience due to delay:

Loss: (strike out options not applicable): No loss would be incurred/ loss is incurred but cannot be quantified/ loss to the extent of Rs. ---------- would be incurred

Inconvenience: (strike out what is not applicable): No inconvenience would be incurred/inconvenience would be incurred

Proposed extension in delivery is recommended with above remarks.

Signature of Indenting Officer and Date

Proposal by Procuring Entity

It is certified that:

a) That a higher rate in the original tender was not accepted against other lower quotations in consideration of the earlier delivery;

b) That there is no falling trend in prices for the services as evidenced from the fact that in the intervening period neither orders have been placed at rates lower than this contract nor any tender has been opened where such rates have been received even though tender is not yet decided.

Annexure 21: Proposal for Extension of Delivery Period

It is proposed to grant extension of delivery period/date up to _____, (strike out options not applicable) with recovery of liquidated damages/ with recovery of token liquidated damages/ without any liquidated damages and with/without denial clause, in view of justifications recorded below:

In view of value of the contract and proposal regarding liquidated damages, this would require approval of ---------- (competent authority). This would/ would not require financial concurrence.

Signature of Procuring Officer and Date

Head of Office recommendations/approval

Signature of Superintending Engineer/date

Annexure 22: Format for Extension of Delivery Period/ Performance Notice

(Refer Para 10.4.2-7), 10.4.3 and 10.4.4)

Name of the Procuring Entity_____

Extension of Delivery Period/Performance Notice

To M/s (name and address of form)

Sub: Contract No ---------- dated ----------for the *[enter Consultancy Procurement title or detail]* ----------

Ref: Your letter no. ---------- dated: ----------

Dear Sir,

1. You have failed to deliver {the (fill in details of deliverables} within the contract delivery period [as last extended up to] (fill in date). In your letter under reply you have asked for [further] extension of time for delivery. In view of the circumstances stated in your said letter, the time for delivery is extended from (fill in date) to (fill in date)
2. Please note that notwithstanding the grant of this extension in terms of Clause (fill in clause number) of the subject contract an amount equivalent to.....% (.....per cent) of the delivered price of the delayed services for each week of delay or part thereof (subject to the ceiling as provided in the aforesaid clause) beyond the original contract delivery date/the last unconditionally re-fixed delivery date (as & if applicable), viz., (fill in date) will be recovered from you as liquidated damages. You may now submit the deliverables for review [balance of the deliverables] in terms of this letter. Deliverables if any already submitted by your for review and approval, but not reviewed will be now reviewed accordingly.
3. You are also required to extend the validity period of the performance guarantee for the subject contract from (fill in present validity date) to (fill in required extended date) within 15 (fifteen) days of issue of this amendment letter.
4. **Denial Cause**: The above extension of delivery date will also be subject to the following Denial Clause.

1) That no increases in price on account of any statutory increase in or fresh Imposition of customs duty, excise duty, GST or on account of any other taxes/duty, leviable in respect of the Deliverables specified in the said contract which takes place after (insert the original delivery date) shall be admissible on such of the said Deliverables, as are submitted after the said date; and.

2) That notwithstanding any stipulation in the contract for increase in price on any other ground including foreign exchange rate variation, no such increase which takes place after (insert the original delivery date) shall be admissible on such of the said Deliverables as are delivered after the said date.

3) But nevertheless, the purchaser shall be entitled to the benefit of any decrease in price on account of reduction in or remission of customs duty, excise duty, GST or on account of any other Tax or duty or on any other ground as stipulated in the price variation clause or foreign exchange rate variation which takes place after the expiry of the above mentioned date namely (insert the original delivery date)

5. All other terms and conditions of the contract remain unaltered. This is without any prejudice to purchasers' rights under the terms and conditions of the subject contract.
6. Please intimate your unconditional acceptance of this amendment letter within 10 (ten) days of the issue of this letter failing which the contract will be cancelled at your risk and expense without any further reference to you.

Yours faithfully,

(Authorised Officer)

Duly authorised, for and on behalf of

The President of India

Note: Select one option within { } brackets; delete portion within [ ] brackets, if not applicable; fill in ( ) brackets. Brackets and this note are not to be typed.

Substitute following first para instead of first para in format above, for issuing a performance notice.

1. You have failed to submit {enter details of the deliverables/ the entire deliverables as per the scope of Work/ Terms of Reference} within the contract delivery period [as last extended up to] (fill in date). In spite of the fact that the time of delivery of the services stipulated in the contract is deemed to be of the essence of the contract, it appears that (fill in the outstanding deliverables) are still outstanding even though the date of delivery has expired. Although not bound to do so, the time for delivery is extended from (fill in date) to (fill in date) and you are requested to note that in the event of your failure to deliver the services within the delivery period as hereby extended, the contract shall be cancelled for the outstanding services at your risk and cost.

Annexure 23: Model Format for Correspondence with Consultant after Expiry of Delivery Date

(Ref Para 10.4.2-6)

Registered Acknowledgement Due

To

M/s _____

_____

_____

Sub : Contract No…… dated ……..….. for supply of ……...

Dear Sirs,

The date of completion of the subject contract expired on _____. As the required deliverables under the contract have not yet been completed, this constitutes a breach of the contract on your part. As information is required regarding past deliverables against this contract, you are requested to send the particulars regarding the deliverables submitted so far under the contract along with, the list of deliverables submitted but pending review or formal acceptance and the deliverables that were ready for submission but were not submitted for review or acceptance prior to the expiry of the contract completion date.

The above information is required for the purpose of verification of our records and is not intended to keep the contract alive and does not waive the breach. This is without prejudice to the rights and remedies available to the purchaser in terms of the contract and law applicable in this behalf.

Yours faithfully,

(----------)

for……

Annexure 24: No Claim Certificate

(Refer Para 10.5.1-6 and 10.6-2)

(On company letterhead)

To,

(Contract Executing Officer)

Procuring Entity_____

NO CLAIM CERTIFICATE

Sub: Contract Agreement no. ---------- dated ----------for the *[Enter name of Consultancy Assignment]* ----------

We have received the sum of Rs. (Rupees _____only) in full and final settlement of all the payments due to us for the deliverables under the scope of work/ Terms of Refrence under the above mentioned contract agreement, between us and Government of India. We here by unconditionally and without any reservation whatsoever, certify that with this payment, we shall have no claim whatsoever, of any description, on any account, against Procuring Entity, against aforesaid contract agreement executed by us. We further declare unequivocally, that with this payment, we have received all the amounts payable to us, and have no dispute of any description whatsoever, regarding the amounts worked out as payable to us and received by us, and that we shall continue to be bound by the terms and conditions of the contract agreement, as regards performance of the contract.

Yours faithfully,

Signatures of contractor or

officer authorised to sign the contract documents.

on behalf of the contractor

(company stamp)

Date:__

Place:_

Annexure 25: Guidelines for Evaluation of Concurrent Application of the MSE and MII Preferences

(Refer Para 8.5.8)

1. The concurrent application of the two procurement orders i.e., MSE Procurement Order of 2012 and PPP-MII Order may create confusion to the procuring entities on how to evaluate the bidders falling within the purview of both policies. To bring predictability both to the procuring entities as well as bidders, DoE issued guidelines. These guidelines are explained below. Examples to illustrate the application of these guidelines are given in the Annex to this Annexure.
2. 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: If Supplier is:	Terminology: Supplier	Acronym for this Para
both MSE & Class-I local supplier	"MSE Class-I local"	M-C1
MSE but not Class-I local supplier	"MSE but non-Class-I local"	M-NC1
not MSE but is Class-I local supplier	"Non-MSE but Class-I local"	NM-C1
Supplier is neither MSE nor Class-I local	"Non-MSE non-Class-I local"	NM-NC1

3. 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) **Scenario-1:** Items for which Nodal Ministry has notified sufficient local capacity and competition *(para 1.10.2-3)a) of this manual)*: 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) **Scenario 2:** 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 “MSE Class-I local supplier” if any, 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:

i) **Scenario 3:** Items covered under (para 1.10.2-3)b) of this manual) which are divisible items and both MSEs as well as Class-I local suppliers are eligible for purchase preference. Possible scenarios can be as under:

1) L-1 is "MSE Class-I local supplier" - 100% of the tendered quantity is to be awarded to L-1.

2) L-1 is "Non-MSE but Class-I local supplier" - Purchase preference is to be given to “MSE Non-ClassI Local Supplier”, if any if eligible, as per PPP-MSE Order. Balance quantity is to be awarded to L-1 bidder.

3) L-1 is "MSE but non-Class-I local supplier" - Purchase preference is to be given to “Non-MSE Class-I local supplier”, if any if eligible, as per PPP-MII Order. Balance quantity is to be awarded to L-1 bidder.

4) 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 annex to this annexure).

ii) **Scenario 4:** Items covered under (para 1.10.2-3)b) of this manual) which 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:

1) L-1 is "MSE Class-I local supplier" - Contract is awarded to L-1.

2) 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 the 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.

3) If conditions mentioned in sub paras 1) and 2) 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) L-1 is "MSE but non-Class-I local supplier" or "Non-MSE but Class-I local supplier" — Contract is to be awarded to L-1.

b) L-2 is "Non-MSE non-Class-I local supplier" - First purchase preference to be given to MSE as per PPP-MSE Order. If MSE is not eligible/ does not accept - purchase preference to be given to Class- I

Local supplier as per PPP-Mll Order. If Class-I Local supplier also not eligible/ does not accept — contract to be awarded to L-1.

d) **Scenario 5:** 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) **Scenario 6:** Non-local suppliers, including MSEs falling in the category of Non-local suppliers, shall be eligible to bid only against Global Tender Enquiry..

Annex to Annexure 25: Examples of Evaluation of Concurrent Application of the MSE and MII Preferences

(Refer Annexure 25)

1. Given below are the examples to explain the different scenarios that may arise during the concurrent evaluation of MSE and Class-I local suppliers. The scenarios are further divided into the various sub-scenarios considered as 'Distribution (D)' to provide clarity on the quantity distribution, which shall take place among the MSE and Class-I local suppliers. Please note the following acronyms, in table in para 2 of Annexure 26 above.
2. Example explaining applicability in scenario explained in Scenario 3 in Annexure 25 (: Divisible items, both MSEs as well as Class-I local suppliers eligible for purchase preference.) Item — Desktop computer, Qty — 100 Nos.

i) **L-1 is 'Non-MSE but Class-I Local Supplier' (NM-C1)** [Scenario 3 -2) in Annexure 25] Details of bids received:

S.#	Bidder	Rates quoted (INR)	Rank	Status of bidder	D-1	D-2	D-3	D-4
1.	A	100	L1	NM-C1	74 (L1)	75 (L1)	75 (L1)	100 (L1)
2.	B	110	L2	M-NC1	Accepts 13 (MSE)	Accepts 25 (MSE)	Does not accept	Does not accept
3.	C	112	L3	NM-NC1	Not Eligible	Not Eligible	Not Eligible	Not Eligible
4.	D	115	L4	M-NC1	Accepts 13 (MSE)	Does not accept	Accepts 25 (MSE)	Does not accept
5.	E	118	L5	NM-C1	Not Eligible	Not Eligible	Not Eligible	Not Eligible
6.	F	120	L6	MC1	Not Eligible	Not Eligible	Not Eligible	Not Eligible

a) First purchase preference is to be given to MSEs as per PPP-MSE Order.
b) MSE bidders to be invited for placement of 25% of tendered quantity of 100 Nos. i.e., 25 Nos.
c) Those MSE bidders are to be invited whose quoted rates falls within 15% margin of purchase preference, to match the L1 price.
d) Accordingly, the following distributions may happen:

A. Distribution-1 (D-1)

1) MSE bidders B (L2) and D (L4) are invited to match L1 price i.e., INR 100/-.
2) Both bidders B and D agree to match the L1 price.
3) The quantity of 25 nos. is distributed equally among bidders B and D i.e., 25/2=12.5 nos. (say 13 nos.)

4) Bidders B and D are awarded the quantity of 13 nos. of computers each (i.e., a total of 26 nos. of computers placed on MSE bidders)
5) The remaining quantity of 74 nos. of computers [100-26] is placed on the L1 bidder.

B. Distribution-2 (D-2)/ Distribution-3 (D-3)

1) Either bidder B or bidder D agrees to match the L1 price.
2) 25 nos. quantity (25% of 100 nos.) is placed on the bidder (B or D).
3) The balance quantity of 75 nos. computers (100-25) is placed on the L1 bidder.

C. Distribution-4 (D-4)

1) None of the MSE bidders agree to match the L1 price. No MSE preference given.
2) Entire quantity of 100 nos. computers is placed on the L1 bidder i.e., Bidder "A", being a Class I bidder.

ii) **L-1 is "MSE but non-Class-I Local Supplier (M-NC1)** [Scenario 3 -3) in Annexure 25]. Details of bids received:

S.#	Bidder	Rates quoted (INR)	Rank	Status of bidder	D-1	D-2	D-3	D-4
1.	A	100	L1	M-NC1	50 (L1)	50 (L1)	50 (L1)	100 (L1)
2.	B	110	L2	NM-NC1	Not Eligible	Not Eligible	Not Eligible	Not Eligible
3.	C	112	L3	NM-C1	Accepts 50 (MII)	Does not accept	Does not accept	Does not accept
4.	D	115	L4	M-NC1	Not Eligible	Not Eligible	Not Eligible	Not Eligible
5.	E	118	L5	NM-C1	Not Eligible	Accepts 50 (MII)	Does not accept	Does not accept
6.	F	120	L6	MC1	Not Eligible	Not Eligible	Accepts 50 (MII)	Does not accept

a) First purchase preference is to be given to Class-I local supplier as per PPP-MII Order, for placement of 50% of tendered quantity of 100 Nos. i.e., 50 Nos.
b) The Class-I local supplier is to be invited whose quoted rates falls within 20% margin of purchase preference, to match the L1 price.
c) Accordingly, the following distributions may happen:

A. Distribution-1 (D-1)

1) Class-I bidder C (L3) is invited to match L1 price i.e., INR 100/-.
2) Bidders C agrees to match the L1 price.
3) Bidder C is awarded the quantity of 50 nos.
4) The balance quantity of 50 nos. of computers [100-50] is placed on the L1 bidder.

B. Distribution-2 (D-2)/ Distribution-3 (D-3)

1) The bidder C does not agree to match the L1 price, then the next Class-I bidder i.e., Bidder E is invited to match the L1 price.
2) Bidder E agrees to match the L1 price, and the 50 nos. quantity is awarded on Bidder E.
3) The balance quantity of 50 nos. computers (100-50) is placed on the L1 bidder 'A'.
4) In case, Bidder E does not agree to match the L1 price, the next Class-I bidder is invited which is Bidder 'F'.
5) Bidder F agrees to match the L1 price, then the 50 nos. of quantity are awarded to Bidder F, while the balance quantity of 50 nos. computers is placed on the L1 bidder 'A'.

C. Distribution-4 (D-4)

1) None of the Class-I local suppliers agree to match the L1 price. No MII preference given.
2) Entire quantity of 100 nos. computers is placed on the L1 bidder i.e., Bidder 'A'.

iii) L-1 is "Non-MSE non-Class-I local supplier" (NM-NC1) [Scenario 3 -4) in Annexure 25]**. Details of bids received:**

S.#	Bidder	Rates quoted (INR)	Rank	Bidder Status	D-1	D-2	D-3	D-4	D-5	D-6	D-7
1.	A	100	L1	NM-NC1	37 (L1)	37 (L1)	37 (L1)	37 (L1)	37 (L1)	50 (L1)	75 (L1)
2.	B	110	L2	NM-C1	Accepts 37 (MII)	Accepts 38 (MII)	Does not accept	Does not accept	Does not accept	Accepts 50 (MII)	Does not accept
3.	C	112	L3	M-NC1	Accepts 13 (MSE)	Accepts 25 (MSE)	Does not accept	Accepts 13 (MSE)	Accepts 25 (MSE)	Does not accept	Accepts 25 (MSE)
4.	D	115	L4	MC1	Accepts 13 (MSE)	Does not accept	Accepts 25 (MSE) + 38 (MII)	Accepts 13 (MSE) + 37 (MII)	Does not accept	Does not accept	Does not accept
5.	E	118	L5	NM-C1	Not Eligible	Not Eligible	Not Eligible	Not Eligible	Does not accept	Not Eligible	Does not accept

6.	F	120	L6	MC1	Not Eligible	Not Eligible	Not Eligible	Not Eligible	Accepts 38 (MII)	Not Eligible	Does not accept
7	G	120	L7	M-NC1	Not Eligible	Not Eligible	Not Eligible	Not Eligible	Not Eligible	Not Eligible	Not Eligible

a) First purchase preference is to be given to MSEs as per PPP-MSE Order.
b) MSE bidders having their quoted rates within 15% margin of purchase preference to be invited for placement of 25% of tendered quantity, subject to matching the L1 price.
c) The next purchase preference is to be given to Class-I local supplier as per PPP-MII Order, whose quoted rates falls within 20% margin of purchase preference, to match the L1 price.
d) Post these purchase preferences, the balance quantity is placed on the L1 bidder who is Non-MSE non-Class-I local supplier.
e) Accordingly, the following distributions may happen:

A. Distribution-1 (D-1)

1) MSE bidders C and D are invited to match L1 price i.e., INR 100/-. Bidder F and G, being the MSE bidders are not invited since their quoted prices falls beyond the margin of preference of 15%.
2) Both bidders C and D agree to match the L1 price.
3) The quantity of 25 nos. is distributed equally among bidders B and D i.e., 25/2=12.5 nos. (say 13 nos.)
4) Bidders C and D are awarded the quantity of 13 nos. of computers each (i.e., a total of 26 nos. of computers placed on MSE bidders)
5) The balance quantity remaining is 74 nos. (100-26). Next, purchase preference shall be given as per MII Order for the placement of 50% of the balance quantity, i.e., for 37 nos. of computers (50% of 74).
6) Bidder B, being a Class-I local supplier, is invited to match the L1 price, since its quoted rate falls within margin of purchase preference of 20%.
7) Bidder B agrees to match the L1 price. The quantity of 37 nos. of computers is awarded to bidder ‘B’.
8) The balance quantity of 37 nos. of computers [100-26-37], is placed on the L1 bidder ‘A’.

B. Distribution-2 (D-2)

1) MSE bidder C and D are invited to match L1 price i.e., INR 100/-.
2) MSE bidders C agrees to match the L1 price, but MSE bidder D does not agree to match the L1 price.
3) The quantity of 25 nos. (25% of 100 nos.) is placed on the MSE bidder C.
4) The balance quantity remaining is 75 nos. (100-25). Next, purchase preference shall be given as per MII Order for the placement of 50% of the balance quantity, i.e., for 37.5 or say, 38 nos. of computers.
5) Bidder B, being the Class-I local supplier, is invited to match the L1 price, since its quoted rate falls within margin of purchase preference of 20%.
6) Bidder B agrees to match the L1 price. The quantity of 38 nos. of computers is awarded to bidder ‘B’.

7) The balance quantity of 37 nos. of computers [100-25-38], is placed on the L1 bidder 'A'.

C. Distribution-3 (D-3)

1) MSE bidder C and D are invited to match L1 price i.e., INR 100/-.
2) MSE bidders C does not agrees to match the L1 price, but MSE bidder D agrees.
3) The quantity of 25 nos. (25% of 100 nos.) is placed on the MSE bidder D.
4) The balance quantity remaining is 75 nos. (100-25). Next, purchase preference shall be given as per MII Order for the placement of 50% of the balance quantity, i.e., for 37.5 or say, 38 nos. of computers.
5) Bidder B, being the Class-I local supplier is invited to match the L1 price, since its quoted rate falls within margin of purchase preference of 20%.
6) Bidder B does not agree to match the L1 price. Hence, the next Class-I local supplier, bidder 'D' is invited to match the L1 price. Bidder D agrees and the quantity of 38 nos. of computers is awarded to bidder 'D'.
7) The balance quantity of 37 nos. of computers [100-25-38], is placed on the L1 bidder 'A'.

D. Distribution-4 (D-4)

1) MSE bidder C and D are invited to match L1 price i.e., INR 100/-.
2) MSE bidders C and D agree to match the L1 price. The quantity of 25 nos. is distributed equally among bidders B and D i.e., 25/2=12.5 nos. (say 13 nos.) each.
3) The balance quantity remaining is 74 nos. (100-26). Next, purchase preference shall be given as per MII Order for the placement of 50% of the balance quantity, i.e., for 37 nos. of computers.
4) Bidder B, being the Class-I local supplier is invited to match the L1 price, since its quoted rate falls within margin of purchase preference of 20%.
5) Bidder B does not agree to match the L1 price. Hence, the next Class-I local supplier, bidder 'D' is invited to match the L1 price. Bidder D agrees and the quantity of 37 nos. of computers is awarded to bidder 'D'.
6) The balance quantity of 37 nos. of computers [100-26-37], is placed on the L1 bidder 'A'.

E. Distribution-5 (D-5)

1) MSE bidder C and D are invited to match L1 price i.e., INR 100/-.
2) MSE bidders C agrees to match the L1 price, however, bidder D does not agree. Hence, the 25% of 100 nos. of computers i.e., 25 nos. are awarded to MSE bidder C.
3) The balance quantity remaining is 75 nos. (100-25). Next, purchase preference shall be given as per MII Order for the placement of 50% of the balance quantity, i.e., for 37.5, say 38 nos. of computers.
4) Bidder B, being the Class-I local supplier is invited to match the L1 price, since its quoted rate falls within margin of purchase preference of 20%.
5) Bidder B does not agree to match the L1 price. Hence, the next Class-I local supplier, bidder 'D' is invited to match the L1 price. Bidder D also does not agree to match the L1 price. The next class-I local supplier 'E' is invited that does not agree either. The next class-I local supplier 'F' is invited (who happens to be a MSE bidder as well, however, since the quoted price of bidder 'F' in case of MSE preference was beyond 15% margin of preference, hence it was

not invited to match the L1 price while going for MSE preference). For MII preference, the price quoted is within the margin of 20%. The bidder 'F' agrees to match the L1 price. The quantity of 38 nos. of computers is placed on bidder 'F'.

6) The balance quantity of 37 nos. of computers [100-25-38], is placed on the L1 bidder 'A'.

F. Distribution-6 (D-6)

1) MSE bidder C and D are invited to match L1 price i.e., INR 100/-.
2) Neither of the MSE bidders (C and D) agrees to match the L1 price. Hence, no MSE purchase preference is given.
3) The next purchase preference is given to Class-I local supplier as per the MII Order for the 50% of the tendered quantity i.e., for 50 nos. of computers. Bidder 'B' being the lowest quoting Class-I local supplier with its quoted price falling within the margin of purchase preference of 20% is invited to match the L1 price.
4) Bidder 'B' agrees to match the L1 price. The quantity of 50 nos. of computers is awarded on bidder 'B'.
5) The balance quantity of 50 nos. of computers [100-50] is placed on the L1 bidder 'A'.

G. Distribution-7 (D-7)

1) MSE bidder C and D are invited to match L1 price i.e., INR 100/-.
2) MSE bidder 'C' agrees to match the L1 price only. Hence, 25% of the total tendered quantity i.e., 25 nos. of computers are awarded on the MSE bidder 'C'.
3) The next purchase preference is to be given to Class-I local supplier as per the MII Order for the 50% of the balance quantity of 75 nos. i.e., for 37.5 or say 38 nos. of computers. First Class-I bidder invited is bidder 'B' to match the L1 price. Bidder 'B' does not agree to match the price. Subsequently, bidders 'D,' 'E' and 'F' are invited one by one, after each of the bidder does not agree to match the L1 price.
4) None of the Class-I local suppliers agree to match the L1 price. Hence, no purchase preference under MII order is given.
5) The balance quantity obtained, after the placement of 25 nos. quantity of computers on MSE bidders, is placed on bidder 'A' the L1 bidder for 75 nos. computers.

3. Example explaining applicability in Scenario 4 in Annexure 26 (Non-Divisible items, both MSEs as well as Class-I local suppliers eligible for purchase preference.). Item — Software License, Unit — 100 Nos..

i) **L-1 is "Non-MSE but Class-I Local Supplier"** [Scenario 4 -2) in Annexure 25]. Details of bids received:

Sr. No.	Name of bidder	Rates quoted	Price Ranking	Status of bidder
1.	A	100	L1	"Non-MSE but Class-I local supplier"
2.	B	110	L2	"MSE but non- Class-I local supplier"

3.	C	112	L3	"MSE Class-I local supplier"
4.	D	115	L4	"MSE Class-I local supplier"
5.	E	118	L5	"Non MSE non-Class-I local supplier"
6.	F	120	L6	"MSE Class-I local supplier"

a) Here, purchase preference is to be given to the lowest quoting 'MSE Class-I local supplier,' provided its rate falls within the purchase preference of 15%.
b) Bidder 'C' is MSE Class-I local supplier with price within the 15% margin of preference. Bidder C is invited to match the price of L1. If agreed, the entire order (100 nos. of software licenses) is to be placed on Bidder C.
c) If lowest quoting 'MSE Class-I local supplier' (Bidder 'C') does not agree to match the L1 price, the next higher 'MSE Class-I local supplier' i.e., bidder 'D' is invited to match the L1 price. If agreed, the entire order is to be placed on bidder 'D.'
d) Bidder 'F' though MSE Class-I local supplier, cannot be considered since its price falls beyond the 15% margin of preference.

ii) L-1 is "MSE but non-Class-I Local Supplier" [Scenario 4 -1) in Annexure 26]: The approach explained in example 2. (i) above to be followed.

iii) **L-1 is neither "MSE Class-I Local Supplier" nor "MSE Class-I Local Supplier" is eligible** [Scenario 4 -3) in Annexure 25], then:

1) L-1 is MSE but non-Class-I local supplier: Entire quantity [100 nos. of software license] is to be placed on the L-1; or
2) L-1 is Non-MSE but Class-I local supplier: Entire quantity [100 nos. of software license] to be placed on the L-1.

iv) L-1 is "Non-MSE non-Class-I Local Supplier". 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	"MSE but non- Class-I local supplier"
3.	C	112	L3	"Non MSE but Class-I local supplier"
4.	D	115	L4	"MSE but non- Class-I local supplier"
5.	E	118	L5	"Non MSE but Class-I local supplier "
6.	F	120	L6	"MSE but non- Class-I local supplier"
7.	G	125	L7	"MSE Class-I local supplier"

1) First, MSE preference shall be exercised. Hence, lowest quoting MSE but non-Class-I local supplier is invited to match the price of L-1. Bidder 'B' has quoted the price that

falls within the purchase preference of 15%. If Bidder ‘B’ agrees, the entire order is to be placed on bidder ‘B.’

2) If bidder ‘B’ does not agree, bidder ‘D’ shall be invited (price falling within the purchase preference of 15%), to match the L-1 price. If agreed, entire order to be placed on bidder ‘D.’
3) If bidder ‘D’ also does not agree, now, purchase preference to Class-I local supplier shall be provided. Bidder ‘F’ cannot be considered since the quoted price is beyond the margin of preference of 15%.
4) Bidder ‘C’ is invited to match the L-1 price [quoted price within the purchase preference of 20%, as per the PPP-MII Order]. If bidder ‘C’ agrees, the entire order is to be placed on ‘C.’
5) If bidder ‘C’ does not agree, bidder ‘E’ to be invited, as the quoted price is within the purchase preference of 20%. If bidder ‘E’ agrees, the entire order is to be placed on bidder ‘E.’

If the non MSE but Class-I local supplier, bidder ‘E’ also does not agree to match the L-1 price, then the entire order is to be placed on the L-1 i.e., bidder ‘A’.

Annexure 26: FAQs About PPP-MII Order, 2017

(Refer para 1.10.2-20)

Question 1. How to calculate Local Content?

Answer: *Para 2 of the* PPP-MII Order, 2017 (as amended on 16.09.2020) defines local content as

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.

Mathematically,

Local content = (Sale price - Value of imported content) * 100/ Sale price

Where, "Sale price" means price excluding net domestic indirect taxes and "Value of imported content" means price of imported content inclusive of all customs duties

Question 2. How to calculate Local Content in bids involving supply of multiple items from single bidder?

Answer: In case of bids requiring supply of multiple items (say "X_1", "X_2" and "X_3") by a single bidder, the local content in the bid shall be

Local content = ((Sale price of "X_1" - Value of imported content in "X_1") + (Sale price of "X_2" - Value of imported content in "X_2") + (Sale price of "X_3" - Value of imported content in "X_3")) * 100/ (Sale price of "X_1" + Sale price of "X_2" + Sale price of "X_3")

Question 3. How to obtain Make in India "MII" certificate?

Answer: No such certificate issued by Government of India. As per para 9 (a) of PPP-MII Order, 2017 (as amended on 16.09.2020), the bidders are required to self-certify the local content in their product for purchase value less than Rs.10 crore. For purchases more than Rs.10 crore, as per para 9 (b) of PPP-MII Order, 2017, 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) is required to be submitted.

Question 4. What is the meaning of class-I local supplier, class-II local supplier and non-local supplier?

Answer: PPP-MII Order, 2017 (as amended on 16.09.2020) classifies the suppliers into following 3 categories:

a. 'Class-I local supplier' – Suppliers offering items with equal to or more than 50% local content
b. 'Class-II local supplier' - Suppliers offering items with equal to or more than 20% but less than 50% local content
c. 'Non-local supplier' - Suppliers offering items with Less than 20% local content

Nodal Ministries/ Departments are authorized to notify a higher minimum local content requirement for any item, i.e., higher than 50/20%, if they deem fit

Question 5. Details of product categories for which nodal Ministry have been notified by DPIIT for PPP-MII, Order 2017 may be provided?

Answer: DPIIT has notified 20 nodal Ministries for different product categories. The details of such product categories and associated Ministry/ Department are available on DPIIT website. Refer link: https://dpiit.gov.in/sites/default/files/Approved%20product%20category%20list%20as%20per%2012th%20SCM.pdf

Question 6. Can an item be procured from non-local suppliers, if there are no Class-I/ Class-II local suppliers in the country.

Answer: Non-local suppliers can only participate in global tender enquiry. Against domestic/ national tenders, only Class-I and Class-II local suppliers can participate in the bidding process. Hence, in case item is not available locally from Class-I/ Class-II local suppliers,

global tender enquiry may be floated for procuring item after taking approval of competent authority, as notified by Department of Expenditure under Rule 161(iv) of GFR.

Question 7. Are provisions of PPP-MII Order applicable only in procurement of the items for which nodal Ministries have been notified and the items for which nodal ministries have issued local content notification?

Answer: No. The provisions of PPP-MII Order are applicable on procurement of all the items by Central Government procurement entities. For the items, for which nodal ministries have not been designated and the items for which nodal ministries have not issued minimum local content notification, the default provision of PPP- MII Order shall apply.

Question 8. Will the cost of transportation, insurance, installation, commissioning, training and after sales service support like AMC/CMC etc. will be considered as a part of local content?

Answer: The cost of transportation, insurance, installation, commissioning, training and after sales service support like AMC/CMC etc. will not be taken into account for calculating local content in any item. DPIIT OM No.P-45021/102/2019-BE-II- Part(1) (E-50310) dated 04.03.2021 refers, available on DPIIT Website. Refer link https://dpiit.gov.in/sites/default/files/Letter%20to%20All%20Ministries030420 21_clarification.pdf

Question 9. Can administrative Ministries grant exemption/ relaxation for procurement of imported items with the approval of Hon'ble Minister In-charge under Para 14 of PPP-MII Order?

Answer: Procurement of imported item is governed by Rule 161 (iv) of GFR. Hon'ble Minister In-charge of administrative Ministry is not the appropriate authority for any exemption/waiver in GFR. As such, procuring entities are advised to follow the procedures as prescribed in GFR Rule 161 (iv) for procurement of imported items. In this regard, minutes of 14th Standing Committee Meeting held on 20.09.2022 issued by DPIIT, refers. (Agenda point Number 5.)

Question 10. Can administrative Ministry/Departments give exemption for wide range of product categories for an extended period of time under Para 14 of PPP- MII Order with the approval of Hon'ble Minister In- charge?

Answer: The administrative Ministries/ Departments shall grant only tender specific exemptions under Para 14 of the Order. Exemptions granted shall remain valid for a period of maximum 01 year only. If the same items are procured again within the aforesaid period of 01year, fresh approval of Minister-in-charge is not required. If any administrative Ministry/ Department intends to grant exemption beyond a period of 01 year, it shall do so only with prior written concurrence of concerned nodal Ministry. In this regard, minutes of 14th Standing Committee Meeting held on 20.09.2022 issued by DPIIT, refers. (Agenda point Number 5.)

Question 11. How do I apply for DPIIT registration under Rule 144 (xi) GFR for entities having beneficial ownership in land border sharing countries?

Answer: The application format for registration of bidders under Rule 144 (xi) GFR is available on DPIIT website. Refer link: https://dpiit.gov.in/sites/default/files/Revised-Format-Bidders-31March2021.pdf. Applicants are required to submit one hard copy in the prescribed format along with soft copy (pdf), as detailed in the covering letter of the format. The applicant shall be asked to submit additional hard copies, if required at the later stage.

Question 12. What will be the category of the local suppliers having exactly 20% and 50% local content?

Answer: Vide its para 5, the Public Procurement (Preference to Make in India) Order, 2017 dated 16.09.2020 stipulates the minimum local content requirement as under:

> *"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 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."

Accordingly, the local suppliers having exactly 20% and 50% local content will be categorized as "Class-II Local Supplier" and 'Class-I Local Supplier' respectively.

Question 13. Whether a Central Government/CPSE Buyer can take cognizance of open undertakings/ futuristic declarations and treat bidder as Class I/ Class II local supplier through the present level of local content of the bidder happens to be below 50%/ 20% respectively?

Answer*:* Detailed Procedure for Verification of local content declared by suppliers /vendors is elaborated on clause 9 of PPP-MII Order, 2017 dated 16.09.2020 and as per the Order, futuristic declarations regarding local content is not allowed.

Annexure 27: Format for Show-cause Notice for Debarment

(Refer para 3.8.2-3-c)

[On Department Letterhead]

File No: [….]

[Date]

[DoE/ Ministry/ Department/ CPSE/ Organisation]

[Address]

To,

The [Company Name]

[Company Address]

Subject: Show Cause Notice for debarment of your Company from participation in Tenders of [Govt. of India/ Ministry/ Department/ CPSE/ Organisation] for the following misdemeanour

References: Relevant Tenders/ Contracts: […….]

Dear Sir/Madam,

1. As a supplier participating in government tenders/ contracts, you must maintain the highest standards of ethical conduct and transparency, as laid down in the Code of Integrity in Public Procurement and other provisions in the relevant Tender Documents/Contracts.
2. Due to your misdemeanour mentioned below relating to the Tender Document/ Contract referred to above, you are proposed to be debarred from participation in all tenders/ contracts of [Govt. of India/ Ministry/ Department/ CPSE/ Organisation] for a period not exceeding two years.
3. **Articles of Misdemeanours**: As per the imputations detailed in Annexure-1 attached herewith, it is determined that you have committed the following serious misdemeanours relating to the tender/ contract referred to above:
   a) [You breached the Code of Integrity in Public Procurement as specified in [clause …..] in the Tender Document/ Contract referred to above (please also see Rule 175 of GFR 2017).
   b) [You made a false declaration of local content as Class I/ Class II local suppliers under Public Procurement (Preference to Make in India, Order 2017, Dtd 16/09/2020 or later, i.e., the Make in India Order), which is also be treated as a breach of code of integrity.]
   c) [any other actions or omissions[96] by the firm that, in the opinion of the Ministry/ Department, warrants debarment].
4. **Opportunity to Explain**:

[96] [Supply of substandard material; non-supply of material; abandonment of works; substandard quality of works; failure to abide by "Bid Securing Declaration"; conviction under the Prevention of Corruption Act, 1988; conviction under any law for causing any loss of life or property or causing a threat to public health as part of executing a public procurement contract; employs a government servant who has been dismissed or removed on account of corruption; employs a non-official convicted for an offence involving corruption or abetment of such an offence in a position where he could corrupt government servants, or employs a government officer within one year of his retirement who has had business dealings with him in an official capacity before retirement.]

a) In light of the above misdemeanours, we hereby grant you a fair opportunity to explain in writing why you should not be debarred, as mentioned in para 2 above.
b) Your response should include Specific Reasons, Mitigating Factors, and Corrective Measures that you intend to take to rectify the situation and prevent recurrence.
c) Please also mention if you desire to avail of additional opportunities for an oral hearing in addition to the written submissions.
d) Please address your response to the undersigned using the contact details mentioned below.
e) **Response Deadline**: Please submit your response within 15 days of receiving this notice. Failure to do so will result in further action, including an order for debarment.

5. You are required to give details of all 'allied' firms that come within the sphere of effective influence based on the following criteria:
    a) You, being a proprietary firm, own it,
    b) You, being a partnership firm, have common (all or majority of) partners, or any one of partners having a profit share of 20% or more in it.
    c) You have common Management (say the majority of the directors) with it.
    d) Your partners or directors have a majority interest in its management;
    e) You have a controlling voice by owning substantial or majority (20% or more) shares in it.
    f) You directly or indirectly control it, are controlled by it, or are under common control through any agreement/ MoU or otherwise.
    g) You are a successor/ subsidiary to it or vice-a-versa;
    h) You have common offices/ manufacturing facilities with it.
6. Annexure-1 details the imputation based on which these misdemeanours have been determined.
7. Annexure 2 lists the documents relied upon for establishing such imputation.

Sincerely,

[Name]

[Designation]

[Contact Information]

Annexure 1: [Details of actions/ omissions committed by the firm]

Annexure-2: [List of relied upon documents]

DA: [Copies of documents attached]

Annexure 28: Format for Debarment Order

(Refer para 3.8.2-3-b)

[On Department Letterhead]

File No: [….]

Date: [….]

[DoE/ Ministry/ Department/ CPSE/ Organisation]

[Address]

To,

The [Company Name]

[Company Address]

Subject: Your company has been debarred from participating in Tenders of [Govt. of India/ Ministry/ Department/ CPSE/ Organisation].

References:

a) Relevant Tender/ Contract: [….]
b) This office Show-Cause notice No. [….], dated [….]
c) Your Written reply(ies) to the show-cause notice No [….], dated [….] and
d) [Oral Hearing grant to you on [….] with [….]]

Dear Sir/Madam,

1. After thoroughly evaluating the evidence and your submission mentioned above, it has been established that your company committed the serious misdemeanour mentioned below. As a result, this [Govt. of India/ Ministry/ Department/ CPSE/ Organisation] has decided to debar your company from participating in any of our tenders of all entities covered under the jurisdiction mentioned below for a period mentioned below.
   a) The Debarment shall automatically extend to all your allied firms, listed in Annexure-2, attached herewith. In the case of a joint venture/ consortium, all partners shall also stand debarred.
   b) Debarment does not impact the procuring entities' other contractual or legal rights.
   c) Contracts concluded before the issue of the debarment order shall not be affected by the debarment Orders.
2. **Reasons for Debarment**:

2.3.1 It is determined that you have committed the following serious misdemeanours relating to the tender/ contract referred to above. Details of these misdemeanours are given in Annexure-1, attached herewith:

2.3.2 [Please see the format of show-cause notice for possible misdemeanours]

3. Other Consequences of Debarment:

a) During the validity of the debarment order, no contract of any kind whatsoever shall be placed on your firm, including your allied firms, by any Ministries/ Departments/ Attached/Subordinate offices, including autonomous bodies and CPSEs, covered under the jurisdiction mentioned above.
b) If your firm, including your allied firms, submitted the bid before this debarment, it shall be ignored.
c) Your firm, including your allied firms, stands removed from the list of registered/ approved contractors maintained, if any, by all entities covered by the jurisdiction mentioned above.

d) Your firm's Bid Security/ Performance Security for the subject tender/ contract shall be forfeited.

4. Jurisdiction of Debarment:

[This debarment applies to this Ministry and all its departments, attached and subordinate offices, Public Sector Enterprises, and autonomous bodies.

OR

This debarment applies to this Ministry and all its departments, attached and subordinate offices, Public Sector Enterprises, and autonomous bodies as an interim measure. However, the Government of India reserves its right to extend this debarment to all its Ministries, Departments, and their attached and subordinate offices, Public Sector Enterprises, and autonomous bodies after following due process.]

OR

This debarment applies to the Government of India and all its Ministries and departments, their attached and subordinate offices, Public Sector Enterprises, and autonomous bodies.]

5. Debarment Duration:

Effective immediately, your company is debarred from participating in any procurement process of the entities covered by the jurisdiction mentioned above for a period of [six to two years].

6. Appeal Process:

If your company wishes to appeal against this decision, you may submit an appeal within 15 days of receiving this letter. The appeal, supported by relevant evidence and addressed to the appellate authority [….], should be sent to the undersigned using the contact details below.

7. Revocation of Debarment:

Upon completion of the debarment period, this debarment shall automatically stand revoked, and your company may apply for registration again as per procedure.

We trust that your company shall rectify its conduct after the debarment period.

Sincerely,

[Name]

[Designation]

[Contact Information]

Annexure 1: [Details of actions/ omissions committed by the firm]

Annexure-2: [List of Allied Firms that also stand debarred]

Copy To:

1. All Allied Firms as per Annexure-2 – Your firm also stands debarred as above.
2. Ministry/ Department (or GeM-CPPP in case of debarment by DoE) for publication on the Website
3. Circulation to Procuring Entities

Annexure 29: Format of Declaration by the Appointed Arbitrator

(Refer para 10.7.9-3-d)-i),ii))

(On Letterhead of Arbitrator)

1. Name

2. Contact Details:

3. I hereby certify that I have retired from (*Organisation/ Unit)* w.e.f. _____in_____grade.

Or

I hereby certify that I am serving Officer and am presently posted as_____ in grade.

Or

I hereby certify that I am currently empanelled as arbitrator by Indian Council for Arbitration (ICA) in the category of _____.

4. I have no past or present relationship in relation to the subject matter in dispute, whether financial, business, professional or other kind.

Or

I have past or present relationship in relation to the subject matter in dispute, whether financial, business, professional or other kind. The list of such interests is as under:

---

5. I have no past or present relationship with or interest in any of the parties whether financial, business, professional or other kind, which is likely to give rise to justifiable doubts as to my independence or impartiality in terms of the Arbitration and Conciliation Act 1996.

Or

I have past or present relationship with or interest in any of the parties whether financial, business, professional or other kind, which is likely to give rise to justifiable doubts as to my independence or impartiality in terms of the Arbitration and Conciliation Act 1996. The details of such relationship or interest are as under:

---

6. There are no concurrent circumstances which are likely to affect my ability to devote sufficient time to the arbitration and in particular to finish the entire arbitration within twelve months.

Or

There are circumstances which are likely to affect my ability to devote sufficient time to the arbitration and in particular to finish the entire arbitration within twelve months. The list of such circumstances is as under:

Signature

(Name ----------)

Government of India
Ministry of Finance
Department of Expenditure