Manual for Procurement of Consultancy & Other Services

(Updated June, 2022)

Government of India
Ministry of Finance
Department of Expenditure

FOREWORD

(for updated version of Manual issued in 2022)

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

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

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

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

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

(Dr. T. V. Somanathan)
Finance Secretary

FOREWORD

1. Government organizations procure a wide variety of goods and services and undertake execution of works in pursuance of their duties and responsibilities. With a view to improving transparency in decision making in public procurement and reducing the scope for subjectivity, Department of Expenditure in 2006 had prepared a set of three Manuals on Policies and Procedures for Procurement of Goods, Works and hiring of Consultants, in conformity with the General Financial Rules (GFR), 2005. Over the years, these Manuals have served as a guide book for procurement.

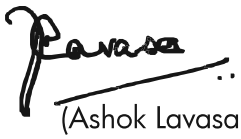
2. In the last few years, the Government of India has issued new instructions in the domain of public procurement. Some of these important changes include introduction of Central Public Procurement Portal (CPPP), Government e-Marketplace (GeM), preferential market access for micro and small enterprises, inclusion of integrity pact, etc. The GFR has been revised comprehensively in March 2017 covering inter-alia these set of new instructions. Consequently the Manual of Procurement too has been revised after a decade and within a month of the release of GFR 2017.

3. The new Manual on Procurement of Consultancy & other Services has been extensively revised in keeping with GFR 2017 and in consonance with the fundamental principles of transparency, fairness, competition, economy, efficiency and accountability. Efforts have been made to cover all major aspects of procurement in this Manual in a user-friendly manner. The manual is the outcome of extensive consultations in two stages with Ministries/Departments/PSUs and other organizations over a period of six months.

4. Manuals issued by this Department are to be taken as generic guidelines, which have to be necessarily broad in nature. Ministries/Departments are advised to supplement this manual to suit their local/specialized needs, by issuing their own detailed manuals (including customized formats); Standard Bidding Documents and Schedule of Procurement Powers to serve as detailed instructions for their own procuring officers.

5. I would like to acknowledge the lead taken by Dr. Vivek Joshi, Joint Secretary, DoE and dedicated efforts of Shri Sanjay Aggarwal, Director (PPD), Shri Vinayak T. Likhar, Under Secretary (PPD) and Shri Girish Bhatnagar, Consultant (Public Procurement) in revision of this Manual. I would also like to thank Ministries, Departments, other organisations and individuals who reviewed the drafts of the Manual and provided their valuable inputs.

6. I hope that this Manual would be useful to procuring officials working in various Ministries/ Departments as operating instructions and will bring about greater transparency and predictability in Government procedures and help in improving the ease of doing Business with Government.



(Ashok Lavasa)
Finance Secretary

Date : 18.04.2017

Disclaimer

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

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Abbreviations and Acronyms

AAEC Appreciable Adverse Effect on Competition

BC (selling) Bill for Collection Selling (Foreign Exchange) Rate

BDS Bid Data Sheet

C&AG Comptroller and Auditor General (of India)

C (F) A Competent (Financial) Authority

CAPEX Capital Expenditure (model of acquisition/ procurement)

CBI Central Bureau of Investigation

CCI Competition Commission of India

CEC Consultancy Evaluation Committee

CIPP Code of Integrity for Public Procurement

CMC Contract Management Committee

CPO Central Purchasing Organizations

CPPP Central Public Procurement Portal

CRAC Consignee Receipt and Acceptance Certificate

CV Curriculum Vitae

CVC Central Vigilance Commission

CVO Chief Vigilance Officer

DFPR Delegation of Financial Power

DG Director General

DGS&D Directorate General of Supplies and Disposals

DPIIT Department for Promotion of Industry and Internal Trade

DSC Digital Signature Certificate

EC Evaluated Cost

ECS Electronic Clearing System

EMD Earnest Money Deposit

EoI Expression of Interest (Tender)

EPF Employee Provident Fund

ESI Employee State Insurance

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

FEMA Foreign Exchange Management Act

FM Force Majeure

FTP Full Technical Proposal

GCC General Conditions of Contract

GeM Government Electronic Market

GeMAR&PTS GeM Availability Report and Past Transaction Summary

GFR General and Financial Rules, 2017

GoI Government of India

GTE Global Tender Enquiry

HOD Head of the Department

HUF Hindu Undivided Family

ICT Information & Communications Technology

IEM Independent External Monitor

IP Integrity Pact

ISO International Organization for Standardization

IT Information Technology

ITB Instructions to Bidders (may in some instance be called Instructions to Tenderers - ITT)

ITC Instructions to consultants

JV Joint Venture (Consortium)

L-1 Lowest Bidder

LCC Life Cycle Costing

LCS Least Cost System

LD Liquidated Damages

LEC Lowest Evaluated Cost

LoI Letter of Invitation

LTE Limited Tender Enquiry

MSME (Ministry of) Micro Small and Medium Enterprises

MSMED Micro, Small and Medium Enterprises Development Act, 2006

NGO Non Government Organisation

NIC National Informatics Centre

NIT Notice Inviting Tender

OPEX Operating Expense (model of acquisition/ procurement)

PA Procurement Agent(s)

PAN Personal Account Number

PPD Procurement Policy Division

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

PQB Prequalification Bidding

PSARA Private Security Agencies Regulation Act, 2005

(C)PSU/ PSE (Central) Public Sector Undertaking/ Enterprise

QCBS Quality and Cost Based Selection

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

REoI Request for Expression of Interest

RTI Right to Information (Act)

SBD Standard Bidding Document

SCC Special Conditions of Contract

SHG Self Help Group

SLA Service Level Agreement

SoPP Schedule of Procurement Powers

SoR Schedule of Rates

SSS/ STE Single Source Selection/ Single Tender Enquiry

STP Simplified Technical proposal

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

TCO Total Cost of Ownership

ToR Terms of Reference

UAM Udyam Aadhaar Memorandum

URC Udyan Registration Certificate

VfM (Best) Value for Money

WOL Whole of Life (Cost) or Total Cost of Ownership TCO

Procurement Glossary

In this Manual and in the 'Procurement Guidelines', unless the context otherwise requires[1]:

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

ii) "Bidder" (including the term 'tenderer', 'consultant' or 'service provider' in certain contexts) means any eligible person or firm or company, including a consortium (that is an association of several persons, or firms or companies), participating in a procurement process with a Procuring Entity;

iii) "(Standard) Bid(ding) documents" (including the term 'tender (enquiry) documents' or 'Request for Proposal Documents' – RfP documents in certain contexts) means a document issued by the Procuring Entity, including any amendment thereto, that sets out the terms and conditions of the given procurement and includes the invitation to bid. A Standard (Model) Bidding Document is the standardised template to be used for preparing Bidding Documents after making suitable changes for specific procurement;

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

v) "Bid security" (including the term 'Earnest Money Deposit'(EMD), in certain contexts) means a security from a bidder securing obligations resulting from a prospective contract award with the intention to avoid: the withdrawal or modification of an offer within the validity of the bid, after the

[1] *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.*

deadline for submission of such documents; failure to sign the contract or failure to provide the required security for the performance of the contract after an offer has been accepted; or failure to comply with any other condition precedent to signing the contract specified in the solicitation documents.;

vi) "Central Public sector enterprise" means a body incorporated under the Companies Act or established under any other Act and in which the Central Government or a Central enterprise owns more than 50 (fifty) per cent of the issued share capital;

vii) "Central Purchase Organisation" means a Procuring Entity which is authorised by the Government of India by an order, made in this behalf, to make procurement for one or more procuring entities;

viii) "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[2];

ix) "Class-II local supplier" means a supplier or service provider, whose goods, services or works offered for procurement, meets the minimum local content as prescribed for 'Class-II local supplier' but less than that prescribed for 'Class-I local supplier' under the Public Procurement (Preference to Make in India), Order 2017[3];

x) "Competent authority" means the officer(s) who finally approves the decision.

xi) "Consultancy services" covers a range of services that are of an advisory or professional nature and are provided by consultants. These Services typically involve providing expert or strategic advice e.g., management consultants, policy consultants or communications consultants. Advisory and project related Consultancy Services which include, for example: feasibility studies, project management, engineering services, Architectural Services, finance accounting and taxation services, training and

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

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

development. It may include small works or supply of goods or other services which are incidental or consequential to such services;

xii) "e-Procurement" means the use of information and communication technology (specially the internet) by the Procuring Entity in conducting its procurement processes with bidders for the acquisition of goods (supplies), works and services with the aim of open, non-discriminatory and efficient procurement through transparent procedures;

xiii) "Goods" includes all articles, material, commodity, livestock, medicines, furniture, fixtures, raw material, consumables, spare parts, instruments, machinery, equipment, industrial plant, vehicles, aircrafts, ships, railway rolling stock assemblies, sub-assemblies, accessories, a group of machines comprising an integrated production process or such other categories of goods or intangible, products like technology transfer, licenses, patents or other intellectual properties (but excludes books, publications, periodicals, etc., for a library), procured or otherwise acquired by a Procuring Entity. Procurement of goods may include certain small work or some services, which are incidental or consequential to the supply of such goods, such as transportation, insurance, installation, commissioning, training and maintenance;

xiv) "Indenter" (or the term 'User (Department)' in certain contexts) means the entity and its officials initiating a procurement indent, that is, a request to the Procuring Entity to procure goods, works or services specified therein;

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

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

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

xviii) "Local Content" means the amount of value added in India which shall, unless otherwise prescribed by the Nodal Ministry, be the total value of the item procured (excluding net domestic indirect taxes) minus the value of

imported content in the item (including all customs duties) as a proportion of the total value, in percent.

xix) "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[4];

xx) "Non-Local supplier" means a supplier or service provider, whose goods, services or works offered for procurement, has local content less than that prescribed for 'Class-II local supplier' under the Public Procurement (Preference to Make in India), Order 2017[5];

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

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

xxiii) "Outsourcing of Services" means deployment of outside agencies on a sustained long-term (for one year or more) for performance of other services which were traditionally being done in-house by the employees of Ministries/ departments (e.g. Security Services, Horticultural Services,

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

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

Janitor/ Cooking/ Catering/ Management Services for Hostels and Guest Houses, Cleaning/ Housekeeping Services, .Errand/ Messenger Services, and so forth). Besides outsourcing, other services also include procurement of short-term stand-alone services.

xxiv) "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;

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

xxvi) "Procurement" or "public procurement" (or 'Purchase', or 'Government Procurement/ Purchase' in certain contacts) means acquisition by way of purchase, lease, license or otherwise, either using public funds or any other source of funds (e.g. grant, loans, gifts, private investment etc.) of goods, works or services or any combination thereof, including award of Public Private Partnership projects, by a Procuring Entity, whether directly or through an agency with which a contract for procurement services is entered into, but does not include any acquisition of goods, works or services without consideration, and the term "procure" or "procured" shall be construed accordingly;

xxvii) "Procurement contract" (including the terms 'Purchase Order' or 'Supply Order' or 'Withdrawal Order' or 'Work Order' or 'Consultancy Contract' or 'Contract for other services' under certain contexts), means a formal legal agreement in writing relating to the subject matter of procurement, entered into between the Procuring Entity and the supplier, service provider or contractor on mutually acceptable terms and conditions and which are in compliance with all the relevant provisions of the laws of the country. The term "contract" will also include "rate contract' and "framework contract";

xxviii) "(Public) Procurement Guidelines" means guidelines applicable to Public Procurement, consisting of under relevant context a set of – i) Statutory Provisions (The Constitution of India; Indian Contract Act, 1872; Sales of Goods Act, 1930; and other laws as relevant to the context); ii) Rules &

Regulations (General Financial Rules, 2017; Delegation of Financial Power Rules and any other regulation so declared by the Government); iii) Manuals of Policies and Procedures for Procurement (of Goods; Works; Consultancy/ other services or any for other category) promulgated by the Ministry of Finance and iv) Procuring Entity's Documents relevant to the context (Codes, Manuals and Standard/ Model Bidding Documents);

xxix) "Procurement process" means the process of procurement extending from the assessment of need; issue of invitation to pre-qualify or to register or to bid, as the case may be; the award of the procurement contract; execution of contract till closure of the contract;

xxx) "Procuring authority" means any Ministry or Department of the Central Government or a unit thereof or its attached or subordinate office to which powers of procurement have been delegated;

xxxi) "Procuring Entity" (including the term Procuring Entity and including Associated/ integrated Finance, technical departments, besides any other) means all the entities involved in one way or another, in various stages of the process, starting from need assessment to the closure of contract;

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

xxxiii) "Public Private Partnership" means an arrangement between the central, a statutory entity or any other government-owned entity, on one side, and a private sector entity, on the other, for the provision of public assets or public services or both, or a combination thereof, through investments being made or management being undertaken by the private sector entity, for a specified period of time, where there is predefined allocation of risk between the private sector and the public entity and the private entity receives performance-linked payments that conform (or are benchmarked) to specified and predetermined performance standards, deliverables or Service Level agreements measurable by the public entity or its representative;

xxxiv) "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;

xxxv) “Registering authority” means an authority which registers bidders for different categories of procurement.

xxxvi) "Registered Supplier" means any supplier who is on a list of registered suppliers of the Procuring Entity or a Central Purchase Organisation;

xxxvii) "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;

xxxviii) "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’;

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

xl) "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.

Chapter 1: Introduction to Procurement of Consultancy/ Other Services

1.1 Procurement Rules and Regulations; and this Manual

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

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

To ensure that these procurements are made by following a uniform, systematic, efficient and cost-effective procedure and also to ensure fair and equitable treatment of service providers, there are statutory provisions; rules; financial, vigilance, security, safety, counter- trade and other regulations; orders and guidelines of the Government on the subject of public procurement (hereinafter referred as 'Procurement Guidelines') which provide framework for the public procurement system.

At the apex of the Statutory framework governing public procurement is Article 299 of the Constitution of India, which stipulates that contracts legally binding on the Government have to be executed in writing by officers specifically authorized to do so. The Constitution also enshrines Fundamental Rights (In particular Article 19 (1)

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

(g) – Right to carry on a Profession) which have implications for Public Procurement. Further, the Indian Contract Act, 1872, Arbitration and Conciliation Act, 1996; Competition Act, 2002; Information Technology Act, 2000 etc (and amendments thereto) are major legislations governing contracts for procurement (both private and public) in general. There is no law exclusively governing public procurement.

However, comprehensive Rules and Regulations in this regard are available in the General Financial Rules (GFR), 2017, especially chapter 6; Delegation of Financial Powers Rules (DFPR); Government orders regarding purchase preference like Public Procurement (Preference to Make in India), Order 2017 or other facilities to Micro and Small Enterprises etc. and the guidelines issued by the Central Vigilance Commission to increase transparency and objectivity in public procurement.

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

1.2 Clarification, Amendments and Revision of this Manual

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

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

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

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

1.3.2 "Consultancy services" (Rule 177 of GFR 2017) means any subject matter of procurement (which as distinguished from 'Non- Consultancy Services' involves primarily non-physical project-specific, intellectual and procedural processes where outcomes/deliverables would vary from one consultant to another), other than goods or works, except those incidental or consequential to the service, and includes professional, intellectual, training and advisory services or any other service classified or declared as such by a Procuring Entity but does not include direct engagement of a retired Government servant. These Services typically involve providing expert or strategic advice e.g., management consultants, policy consultants, communications consultants, Advisory and project related Consulting Services which include, feasibility studies, project management, engineering services, finance, accounting and taxation services, training and development etc.

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

i) bespoke software development;

ii) cloud based services and

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

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

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

1.3.5 If the other services involve construction, fabrication, repair, maintenance, overhaul, renovation, decoration, installation, erection, excavation, dredging, and so on, of Civil assets, then it should be handled as procurement of Works. In case of fabrication, repair, maintenance, overhaul, renovation, decoration, installation, erection and so on, of mechanical, electrical or ICT assets – e.g. Annual Maintenance Contracts or installation/ commissioning of Machinery and Plant and so on, it may be handled as Procurement of Goods rather than procurement of services.

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

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

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

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

1.3.10 This Manual is to be taken as generic guidelines, which have to be necessarily broad in nature. Subject to the observance of these generic guidelines, the initiation, authorization, procurement and execution of Services Contracts undertaken by a particular Ministry or Department shall be regulated by detailed rules and orders contained in the respective departmental regulations and by other special orders applicable to them. Ministries/ Departments are advised to supplement these manuals to suit local/specialized needs, by issuing their own detailed Manuals (including customized formats); Standard Bidding Documents; Schedule of Procurement Powers and Checklists to serve as practical instructions for their officers and to ensure completeness of examination of cases. Major Consultancy/ Services procuring Ministries/Departments may be having their own detailed guidelines tailored to unique individual requirements, e.g. Manuals or Procedure Orders. Many other Ministries/ Departments as well as CPSEs also have their own Procurement Manuals. For these Procuring Entities, this Manual would serve as a generic reference.

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

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

An authority which is competent to incur expenditure may sanction the procurement of Consultancy and other services required for use in public service in accordance with the Delegation of Financial Rules, (DFPR – extracted in Annexure 2A) by following the 'Procurement Guidelines' described in this Manual. No separate sanction would be required for such services which are distinctly and explicitly named and included in a sanctioned and approved work/ project. 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 2B. (Rule 145 of GFR 2017)

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

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

i) Right quality;
ii) Right quantity;
iii) Right price;
iv) Right time and place; and

v) Right source.

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

1.6 Principles of Public Procurement

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

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

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

1.7 Standards (Canons) of Financial Propriety

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

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

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

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

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

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

a) a claim for the amount could be enforced in a Court of Law, or

b) the expenditure is in pursuance of a recognized policy or custom.

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

vi) While discharging the duties of financial concurrence of any public expenditure, such authorities subsequent to such decision, shall not be involved in any future financial/audit/payment responsibilities which may create conflict of interest.

1.8 Public Procurement Infrastructure at the Centre

1.8.1 Procurement Policy Division

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

1.8.2 Central Public Procurement Portal

Central Public Procurement Portal (CPPP) has been designed, developed and hosted by National Informatics Centre (NIC, Ministry of Electronics & Information Technology) in association with Dept. of Expenditure to ensure transparency in the public procurement process. The primary objective of the Central Public Procurement portal is to provide a single point access to the information on procurements made across various Ministries and the Departments. The CPPP has

e-publishing and e-procurement modules. It is mandatory for all Ministries/ Departments of the Central Government, Central Public Sector Enterprises (CPSEs) and Autonomous and Statutory Bodies to publish on the CPPP all their tender enquiries and information about the resulting contracts. CPPP provides access to information such as documents relating to pre-qualification, Bidders' registration, Bidding documents; details of bidders, their pre-qualification, registration, exclusions/ debarments; decisions taken regarding prequalification and selection of successful bid *(Rule 159 of GFR 2017)*. It is also now mandatory to implement end-to-end e-Procurement for all procurements either through CPPP portal or any other suitable portal.

1.9 Preferential/Mandatory Purchase from certain sources

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

Note: Before considering any Purchase Preference mentioned below, the Procuring 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 (ITB).

1.9.1 Public Procurement Policy for Micro and Small Enterprises (MSEs)-Rule 153 (ii) of GFR 2017

i) From time to time, the Government of India (Procuring Entity) lays down procurement policies to help inclusive national economic growth by providing long-term support to small and medium 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 and 2021 are available on the MSME website[7].

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

iii) The Policy is applicable to all the Central Government Ministries / Departments / CPSUs, irrespective of the volume and nature of procurement. However, the policy is not applicable to State Government Ministries/ Departments/ PSUs.

iv) To reduce transaction cost of doing business, MSEs are facilitated by providing them tender documents free of cost, exempting from payment of earnest money deposit, adopting e-procurement to bring transparency in tendering process. However, exemption from paying Performance Bank Guarantee is not covered under the policy. MSEs may also be given relaxation in prior turnover and prior experience criteria during the tender process, subject to meeting of quality and technical specifications. However, there may be 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[8].

v) Chapter V of the MSMED Act, 2006 also has provision for ensuring timely payments to the MSE suppliers. The period agreed upon for payment must not exceed forty-five days after the supplies. For delays in payment the buyer shall be liable to pay compound interest to the supplier on the delayed amount at three times of the bank rate notified by the Reserve Bank. For arbitration and conciliation regarding recovery of such payments and interests, Micro and Small Enterprises Facilitation Council has been setup in states.

vi) In tender, participating Micro and Small Enterprises (MSE) quoting price within price band of L1+15 (fifteen) per cent shall also be allowed to supply a portion of requirement by bringing down their price to L1 price in a situation

[7] http://dcmsme.gov.in/pppm.htm.aspx

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

where L1 price is from someone other than a MSE and such MSE shall be allowed to supply up to 25 (twenty five) per cent of total tendered value. The 25 (twenty five) per cent quantity is to be distributed proportionately among these bidders, in case there are more than one MSMEs within such price band.

vii) Within this 25% (Twenty Five Percent) quantity, a purchase preference of four (4) per cent [that is, 16 (sixteen) per cent out of 25 (twenty five) per cent] is reserved for MSEs owned by Scheduled Caste (SC)/ Scheduled Tribe (ST) entrepreneurs (if they participate in the tender process and match the L1 price).However, in event of failure of such MSEs to participate in tender process or meet tender requirements and L1 price, four percent sub-target for procurement earmarked for MSEs owned by SC/ST entrepreneurs and three percent earmarked to women entrepreneur will be met from other MSEs.. MSEs would be treated as owned by SC/ ST entrepreneurs:

a) In case of proprietary MSE, proprietor(s) shall be SC/ ST;
b) In case of partnership MSE, the SC/ ST partners shall be holding at least 51% (fifty-one percent) shares in the unit;
c) In case of Private Limited Companies, at least 51% (fifty-one percent) share shall be held by SC/ ST promoters.

viii) 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

ix) To develop MSE vendors so as to achieve their targets for MSEs procurement, Central Government Ministries /Departments /PSUs shall take necessary steps to develop appropriate vendors by organizing Vendor Development Programmes (VDPs) or Buyer-Seller Meets focused on developing MSEs for procurement through the Government e-Marketplace (GeM) portal. In order to develop vendors belonging to MSEs for Public Procurement Policy, the Ministry of MSME is regularly organizing State Level VDPs and National Level VDPs under the Procurement and Marketing Support Scheme. For enhancing participation of MSEs owned by SCs /STs/ Women in Government procurement, Central Government Ministries/ Departments/ CPSUs have to take the following steps:

a) Special Vendor Development Programmes/ Buyer-Seller Meets would be conducted by Departments/ CPSUs for SC/STs and Women.

b) Outreach programmes will be conducted by National Small Industries Corporation (NSIC) to cover more and more MSEs from SC/STs under its schemes of consortia formation; and

c) NSIC would open a special window for SCs/ STs under its Single Point Registration Scheme (SPRS).

d) A National SC/ST hub scheme was launched in October, 2016, for providing handholding support to SC/ST entrepreneur which is being coordinated / implemented by the NSIC under this Ministry.

x) The condition of prior turnover and prior experience may be relaxed for Startups *(Rule 173 (i) of GFR 2017)* (as defined by Department of Industrial Policy and Promotion) subject to meeting of quality & technical specifications and making suitable provisions in the bidding document. The quality and technical parameters are not to be diluted. As defined by Department of Policy & Promotion (DIPP) an entity shall be considered as a 'start-up'-

a) Up to ten years from the date of its incorporation/ registration.

b) If its turnover for any of the financial years has not exceeded Rs 100 (Rupees Hundred) crore

c) It is working towards innovation, development or improvement of products or processes or services, or if it is a scalable business model with a high potential of employment generation or wealth creation

d) 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[9].

As per Department of Expenditure's OM No.F.20/2/2014-PPD dated 20.09.2016, relaxation regarding the prior turnover and prior experience is applicable **only to all startups** recognized by Department of Industry &

[9] Notified vide OM No. F.1/7/2021-PPD-2 issued by Department of Expenditure dated 02.08.2021

Internal Trade (DPIIT) subject to meeting of quality and technical specifications. Startups may be MSMEs or otherwise.

xi) Where any Aggregator has been appointed by the Ministry of MSME, themselves quote on behalf of some MSE units, such offers will be considered as offers from MSE units and all such facilities would be extended to these also.

xii) This 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 the policy.

xiii) Exemptions from the policy: Given their unique nature, defence armament imports shall not be included in computing 20 (twenty) per cent goal for Ministry of Defence. In addition, defence equipments like weapon systems, missiles, etc. shall remain out of purview of such Policy of reservation. Monitoring of goals set under the policy will be done, in so far as they related to Defense sector, by Ministry of Defense itself in accordance with suitable procedures to be established by them.

xiv) 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.

xv) To monitor the progress of procurement by Central Government Ministries/ Departments and CPSUs from MSEs, Ministry of MSME has launched the MSME 'Sambandh'[10] Portal on 8th December, 2017 for uploading procurement details by all CPSUs on a monthly and an annual basis which is regularly monitored by the Ministry.

[10] https://sambandh.msme.gov.in/PPP_Index.aspx

xvi) To redress the grievances of MSEs related to non-compliance of the Policy a Grievance cell named "CHAMPION Portal" has been set up in the Ministry of MSME.

1.9.2 Procurement Preference to Make in India-Rule 153 (iii) of GFR, 2017

To encourage 'Make in India' and promote manufacturing and production of goods and services in India with a view to enhancing income and employment, Department of Promotion of Industry and Internal Trade (DPIIT), Ministry of Commerce and Industry, Government of India, issued Public Procurement (Preference to Make in India), Order 2017[11]. The order is issued pursuant to Rule 153 (iii) of GFR, 2017. The Order is applicable on the procurement of Goods, Works and Services. For the purpose of this Order:-

a) *'L1'* means the lowest tender or lowest bid or the lowest quotation received in a tender, bidding process or other procurement solicitation as adjudged in the evaluation process as per the tender or other procurement solicitation.
b) *'Margin of purchase preference'* means the maximum extent to which the price quoted by a "Class-I local supplier" may be above the L1 for the purpose of purchase preference. It has been fixed as 20 (twenty) percent.
c) *'Nodal Ministry'* means the Ministry or Department identified pursuant to this order in respect of a particular item of goods or services or works.
d) *'Procuring entity'* means a Ministry or department or attached or subordinate office of, or autonomous body controlled by, the Government of India and includes Government companies as defined in the Companies Act.
e) *'Works'* means all works as per Rule 130 of GFR- 2017, and will also include *'turnkey works'.*

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

a) In procurement of all goods, services or works in respect of which the Nodal Ministry / Department has communicated that there is sufficient local capacity

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

and local competition, only 'Class-I local supplier', shall be eligible to bid irrespective of purchase value.

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

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

ii) Purchase Preference

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

b) In the procurements of goods or works, which are covered by para (i)(b) above and which are divisible in nature, the 'Class-I local supplier' shall get purchase preference over 'Class-II local supplier' as well as 'Non-local supplier', as per following procedure:

1. Among all qualified bids, the lowest bid will be termed as L1. If L1 is 'Class-I local supplier', the contract for full quantity will be awarded to L1.

2. If L1 bid is not a 'Class-I local supplier', 50 (fifty) percent of the order quantity shall be awarded to L1. Thereafter, the lowest bidder among the 'Class-I local supplier' will be invited to match the L1 price for the remaining 50 (fifty) percent quantity subject to the Class-I local supplier's quoted price falling within the margin of purchase

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

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

1. Among all qualified bids, the lowest bid will be termed as L1. If L1 is 'Class-I local supplier', the contract will be awarded to L1.
2. If L1 is not 'Class-I local supplier', the lowest bidder among the 'Class-I local supplier', will be invited to match the L1 price subject to Class-I local supplier's quoted price falling within the margin of purchase preference, and the contract shall be awarded to such 'Class-I local supplier' subject to matching the L1 price.
3. In case such lowest eligible 'Class-I local supplier' fails to match the L1 price, the 'Class-I local supplier' with the next higher bid within the margin of purchase preference shall be invited to match the L1 price and so on and contract shall be awarded accordingly. In case none of the 'Class-I local supplier' within the margin of purchase preference matches the L1 price, the contract may be awarded to the L1 bidder.
4. "Class-II local supplier" will not get purchase preference in any procurement, undertaken by procuring entities.

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

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

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

local supplier' within the broad policy guidelines stipulated in sub-paras above.

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

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

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

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

viii) **Verification of local content**:

a) The 'Class-I local supplier'/ 'Class-II local supplier' at the time of tender, bidding or solicitation shall be required to indicate percentage of local content and provide self-certification that the item offered meets the local content requirement for 'Class-I local supplier'/ 'Class-II local supplier', as

the case may be. They shall also give details of the location(s) at which the local value addition is made.

b) In cases of procurement for a value in excess of Rs. 10 crores, the 'Class-I local supplier'/ 'Class-II local supplier' shall be required to provide a certificate from the statutory auditor or cost auditor of the company (in the case of companies) or from a practicing cost accountant or practicing chartered accountant (in respect of suppliers other than companies) giving the percentage of local content.

c) Decisions on complaints relating to implementation of this Order shall be taken by the competent authority which is empowered to look into procurement-related complaints relating to the procuring entity.

d) Nodal Ministries may constitute committees with internal and external experts for independent verification of self-declarations and auditor's/ accountant's certificates on random basis and in the case of complaints.

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

f) False declarations will be in breach of the Code of Integrity under Rule 175(1)(i)(h) of the General Financial Rules for which a bidder or its successors can be debarred for up to two years as per Rule 151 (iii) of the General Financial Rules along with such other actions as may be permissible under law.

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

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

   1. The fact and duration of debarment for violation of the Order by any procuring entity are promptly brought to the notice of the Member-Convenor of the Standing Committee and the Department of

Expenditure through the concerned Ministry /Department or in some other manner;

2. on a periodical basis such cases are consolidated and a centralized list or decentralized lists of such suppliers with the period of debarment is maintained and displayed on website(s);
3. in respect of procuring entities other than the one which has carried out the debarment, the debarment takes effect prospectively from the date of uploading on the website(s) in the such a manner that ongoing procurements are not disrupted.

ix) **Specifications in Tenders and other procurement solicitations**:

a) Every procuring entity shall ensure that the eligibility conditions in respect of previous experience fixed in any tender or solicitation do not require proof of supply in other countries or proof of exports.

b) Procuring entities shall endeavour to see that eligibility conditions, including on matters like turnover, production capability and financial strength do not result in unreasonable exclusion of 'Class-I local supplier'/ 'Class-II local supplier' who would otherwise be eligible, beyond what is essential for ensuring quality or creditworthiness of the supplier.

c) Procuring entities shall review all existing eligibility norms and conditions with reference to sub-paragraphs (viii) (a) and (b) above.

d) **Reciprocity Clause**

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

2. Entities of countries which have been identified by the nodal Ministry/Department as not allowing Indian companies to participate in their Government procurement for any item related to that nodal Ministry shall not be allowed to participate in Government procurement in India for all items related to that nodal Ministry/ Department, except for the list of items published by the Ministry/ Department permitting their participation.
3. The stipulation in (2) above shall be part of all tenders invited by the Central Government procuring entities stated in (1) above. All purchases on GeM shall also necessarily have the above provisions for items identified by nodal Ministry/ Department.
4. State Governments should be encouraged to incorporate similar provisions in their respective tenders.
5. The term 'entity' of a country shall have the same meaning as under the FDI Policy of DPIIT as amended from time to time.

e) Specifying foreign certifications/ unreasonable technical specifications/ brands/ models in the bid document is restrictive and discriminatory practice against local suppliers. If foreign certification is required to be stipulated because of non-availability of Indian Standards and/or for any other reason, the same shall be done only after written approval of Secretary of the Department concerned or any other Authority having been designated such power by the Secretary of the Department concerned.

f) "All administrative Ministries/Departments ***whose procurement exceeds Rs. 1000 Crore per annum*** shall notify/ update their procurement projections every year, including those of the PSEs/PSUs, for the next 5 years on their respective website."

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

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

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

xiii) **Manufacture under license/ technology collaboration agreements with phased indigenization**

a) While notifying the minimum local content, Nodal Ministries may make special provisions for exempting suppliers from meeting the stipulated local content if the product is being manufactured in India under a license from a foreign manufacturer who holds intellectual property rights and where there is a technology collaboration agreement / transfer of technology agreement for indigenous manufacture of a product developed abroad with clear phasing of increase in local content.

b) In procurement of all goods, services or works in respect of which there is substantial quantity of public procurement and for which the nodal ministry has not notified that there is sufficient local capacity and local competition, the concerned nodal ministry shall notify an upper threshold value of procurement beyond which foreign companies shall enter into a joint venture with an Indian company to participate in the tender. Procuring entities, while procuring such items beyond the notified threshold value, shall prescribe in their respective tenders that foreign companies may enter into a joint venture with an Indian company to participate in the tender. The procuring Ministries/Departments shall also make special provisions for exempting such joint ventures from meeting the stipulated minimum local content requirement, which shall be increased in a phased manner.

xiv) **Powers to grant exemption and to reduce minimum local content**: The administrative Department undertaking the procurement (including procurement by

any entity under its administrative control), with the approval of their Minister-in-charge, may by written order, for reasons to be recorded in writing,

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

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

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

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

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

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

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

xviii) **Ministries having existing policies**: Where any Ministry or Department has its own policy for preference to local content approved by the Cabinet after 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.

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

1.10 When is Procurement of Services justified

1.10.1 **Consultancy Services**: *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:-

i) The inadequacy of Capability or Capacity of required expertise in-house;
ii) The need to have qualified consultant for providing a specialized high quality service;
iii) Need for impartial advice from a consultant (acting independently from any affiliation, economic or otherwise) to avoid conflicts of interest;
iv) The need in some cases for Transfer of Knowledge/ Training/ Capacity and capability building as a by-product of such engagement;
v) Need to acquire information about/ identifying and implementing new methods and systems;
vi) Need for planning and implementing organizational change
vii) There may be internal capacity/ capability to do the job but there are considerations of economy, speed and efficiency in relation to additional requirement/ commitment/ usage of;
    a) Staff/ Management/ Organization;
    b) Technological and Material Resources;
    c) Money, and
    d) Time/ Speed of execution.

1.10.2 **Other (Non-consultancy) Services**: In the interest of economy, efficiency and to provide more effective delivery of public services, GFR, 2017 permits Ministries/ Departments to procure/ outsource auxiliary and support services. Approval of the competent authority should be obtained before engaging service providers. We may justify need for Procurement of other services on consideration of:-

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

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

1.11 Principles for Public Procurement of Services

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

i) Services to be procured should be justifiable in accordance with Para 1.10 above;
ii) In case of Consultancy Services - well-defined scope of work/ Terms of Reference (ToR – description of services) and the time frame, for which services are to be availed of, should be determined consistent with the overall objectives of Procuring Entity. In other (non-consultancy services) Activity Schedule (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;
iii) Equal opportunity to all qualified service providers/ consultants to compete should be ensured;
iv) Engagements should be economical and efficient. (*Rule 182 of GFR 2017);*

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

vi) Additionally, in procurement of consultancy services, consultants should be of high quality, in line with justification as per para 1.10.1 above

1.11.2 In Procurement of Consultancy, these considerations can be best addressed through unrestricted competition among qualified shortlisted firms or individuals in which selection is based on the quality of the 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.

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

(Rule 179 of GFR 2017)

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

Laws which are applicable to Public Procurement of goods equally apply to Procurement of Consultancy and other services. These are detailed in Appendix 2. Legally speaking consultants/ service provider would be an Agent of the Principal/ Client/ Procuring Entity – Procuring Entity, to carry out the service/ assignment on its behalf. Such a relationship is covered by The Law of Agency (Section 182 to section 238, of the Indian Contract Act, 1872) and hence there exists a Principal/ Procuring Entity and Agent relationship between Procuring Entity and such consultant/ service provider. As per this law, the Procuring Entity is vicariously legally and financially liable for actions of its Agents. For example, a violation of certain labour laws in deputing staff for Procuring Entity's contract by the agents may render the Procuring Entity legally and financially answerable for such violations, under certain circumstances. There is a need to be aware of such eventualities. Standard Bidding Documents should take care of this aspect.

1.13 Proactive Information Disclosures

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.[12]. 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[13] (and 05th March 2012[14]) on Mandatory Publication of Tender Enquiries on the Central Public Procurement Portal and O.M. No. 10/3/2012- PPC dated 09th January 2014 on implementation of comprehensive end-to-end e-procurement should be disclosed under Section 4 of the Right to Information Act.

1.14 Public Procurement Cycle

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

i) Preparation of Concept Paper/ Procurement Proposal and obtaining in principle approvals;
ii) Preparation of the ToR (in case of consultancy services)/ Activity Schedule(in case of other/ non-consultancy services), cost estimate and seeking administrative and budgetary approval;

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

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

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

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

iv) Preparation and issuance of the RfP; Receipt of proposals; Evaluation of technical proposals: consideration of quality; Evaluation of financial proposals; Selection of winning proposal; Negotiations and award of the contract to the selected firm; and

v) Monitoring of Assignments.

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

1.15 Procurement Proposal (Concept Paper) for Consultancy and other services

1.15.1 A critical part of the procurement of *Services* process is preparing an appropriately staffed and budgeted Procurement Proposal/ Concept Paper (which serve the role that an Indent serves in procurement of Goods).

1.15.2 **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 assignment based on analysis of in-house available capacity/ capability. The eligibility and pre-qualification criteria to be met by the consultants/ service providers should also be clearly identified at this stage. Justifications for procurement of Consultancies/ Services as given in Para 1.10 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 (in case of consultancy services)/ Activity Schedule (in case of other/ non-consultancy services) is drawn up. A procurement proposal should contain:

i) **Purpose/ Objective Statement of Services**

"Purpose/ Objective Statement of Services" should be prepared by the user. One of the important content 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.

ii) **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 service provider 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.

iii) **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 1.10.1.

1.15.3 **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 181 of GFR 2017)

Chapter 2: Consultants, service providers and Governance Issues

2.1 Types of consultants/ service providers

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

2.1.1 Consortium of consultants/ service providers

In large and complex assignments consultants/ service providers may associate with each other to form a consortium to complement their respective areas of expertise, to increase the technical responsiveness of their proposal, and make larger pools of experts available or for other reasons. Such an association may be for the long term (independent of any particular assignment) or for a specific assignment. The consortium may take the form of a Joint Venture (JV) or a sub consultancy. In case of a JV, all members of the JV shall sign the contract and shall be jointly and severally liable for the entire assignment. After the short list is finalised, and the Request for Proposal (RfP) is issued, any association in the form of a 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/ service providers must become the lead member of the consortium. The Procuring Entity only deals with the lead member of consortiums for all the purposes. Bid documents should clearly specify whether 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 JV shall be limited (say – three). In case JVs are permitted to bid, it should be clarified what qualifications are to be collectively (clubbed together) met by the JV partners (say experience of particular consultancy, Financial Turnover etc) and what each partner has to individually and separately

meet (financial soundness). In this case 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 in case of experience of particular consultancy and financial turnover, if any.

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

2.1.2 Consultancy or Service Providing Firms

The main source of consultants and service providers is Consultancy or Service providing firms of diverse specializations that provide teams to Clients. These firms provide project preparation services, project implementation supervision services, training, advisory services, and policy guidance. Such firms are normally classified as either international – firms that have international experience and are capable of undertaking work at international level at international rates; or national – firms that may not have international exposure and normally undertake assignments only within that country, usually at significantly lower rates.

2.1.3 Individual consultants/ service providers

Individual consultants or service providers are recruited for similar activities as Consultancy/ Service providing firms when a full team is not considered necessary. They may be independent experts not permanently associated with any particular firm, or they may be employees of a firm recruited on an individual basis. They may also be employees of an agency, institution, or university. They are normally recruited for project implementation supervision, training, provision of specific expert advice on a highly technical subject, policy guidance, special studies, compliance supervision, or implementation monitoring. Individual consultants/ service providers are not normally recruited for project preparation unless the proposed project is simple and, generally, a repeat of an already established and successful project. If more than three experts are required, then the assignment should normally be undertaken by a team from a firm. As with firms, individual consultants/ service

providers are classed as either international or national, depending on their level of expertise and their international experience and exposure.

2.1.4 Specialized Agencies and Institutions

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

2.1.5 Non-governmental Organizations (NGO)

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

2.1.6 Retired Government Servant

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

2.2 Code of Integrity for Public Procurement (CIPP)

2.2.1 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 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.

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

i) **"Corrupt practice":** making offers, solicitation or acceptance of bribe, rewards or gifts or any material benefit, in exchange for an unfair advantage in the procurement process or to otherwise influence the procurement process or contract execution;

ii) **"Fraudulent practice":** any omission or misrepresentation that may mislead or attempt to mislead so that financial or other benefits may be obtained or an obligation avoided. This includes making false declaration or providing false information for participation in a tender process or to secure a contract or in execution of the contract;

iii) **"Anti-competitive practice":** any collusion, bid rigging or anti-competitive arrangement, or any other practice coming under the purview of The Competition Act, 2002, between two or more bidders, with or without the knowledge of the 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"**: participation by a bidding firm or any of its affiliates that are either involved in the consultancy contract to which this procurement is linked; or if they are part of more than one bid in the procurement; or 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; or improper use of information obtained by the (prospective) bidder from the Procuring Entity with an intent to gain unfair advantage in the procurement process or for personal gain; and

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

2.2.3 **Conflict of Interest in case of consultants**

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

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

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

a) **Conflicting activities:** a firm that has been engaged by the client to provide goods, works, or non-consultancy services for a project, or any of its affiliates, shall be disqualified from providing Consultancy service resulting from or directly related to those goods, works, or non-Consultancy services. Conversely, a firm hired to provide consultancy services for the preparation or implementation of a project, or any of its

affiliates, shall be disqualified from subsequently providing goods or works or no consultancy services resulting from or directly related to the consultancy services for such preparation or implementation;

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

c) **Conflicting relationships:** A consultant (including its/his experts and sub-consultants) that has a close business or family relationship with a professional staff of the Procuring Entity who are directly or indirectly involved in any part of: (i) the preparation of ToR for the assignment; (ii) selection process for the contract; or (iii) supervision of the contract, may not be awarded a contract, unless the conflict stemming from this relationship has been resolved in a manner acceptable to the client throughout the selection process and execution of the contract.

2.2.4 Unfair Competitive Advantage in case of consultants

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

2.2.5 Obligations for Proactive Disclosures

i) Procuring authorities 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) Any bidder must declare, whether asked or not in a bid document, any previous transgressions of such a code of integrity with any entity in any country during the last three years or of being debarred by any other Procuring Entity. Failure to do so would amount to violation of this code of integrity;

iii) To encourage voluntary disclosures, such declarations would not mean automatic disqualification for the bidder making such declarations. The declared conflict of interest may be evaluated and mitigation steps, if possible, may be taken by the Procuring Entity. Similarly, voluntary reporting of previous transgressions of Code of Integrity elsewhere may be evaluated and barring cases of various grades of debarment, an alert watch may be kept on the bidders' actions in the tender and subsequent contract.

2.2.6 **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 comes to a conclusion 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:

i) if his bids are under consideration in any procurement

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

ii) if a contract has already been awarded

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

iii) Provisions in addition to above:

a) Removal from the list of registered suppliers and banning/debarment of the bidder from participation in future procurements of the Procuring Entity for a period not less than one year;
b) In case of anti-competitive practices, information for further processing may be filed under a signature of the Joint Secretary level officer, with the Competition Commission of India;
c) Initiation of suitable disciplinary or criminal proceedings against any individual or staff found responsible.

2.2.7 **Conduct of Public Servants in Public Procurement - Risks and Mitigations**

Risk	***Mitigation***
Hospitality: Hospitality (including facilitation of travel, lodging, boarding and entertainment during official or unofficial programs) from suppliers/ contractors/ consultants/ service providers may tend to cross the limits of ethical/ occasional/ routine/ modest/ normal business practice. Officials sent to firm's premises for inspections/ meetings may mistakenly presume entitlement to hospitality from the firm, even if other arrangements are available at the location.	Hospitality must never be solicited, directly or indirectly. The frequency, scale and number of officials availing hospitality should not be allowed to identify the recipient in a public way with any particular supplier/ contractor/ consultant/ service provider or raise doubts about its neutrality. It should not involve significant travel, overnight accommodation or trips abroad. Particular care should be taken in relation to offers of hospitality from firms (say participating in current or imminent tenders or its execution) who stand to derive a personal or commercial benefit from their relationship with the recipient.
Gifts: Gifts from suppliers/ contractors/ consultants/ service providers may tend to cross the limits of ethical/ occasional/ routine/ modest/ normal business practice, especially on festive season. Since the value of the gift may not be known to the recipient, it may cause inadvertent violation of Conduct rules.	Gifts must never be solicited, directly or indirectly. An official should not accept and retain gifts more valuable than the limit as laid down in the conduct rules. Particular care should be taken in relation to gifts from firms (say participating in current or imminent tenders or its execution) who stand to derive a personal or commercial benefit from their relationship with the recipient. Cash, gift cheques or any vouchers that may be exchanged for cash may not be accepted regardless of the amount. Any gift received inadvertently in violation of above, must immediately either be returned or else reported and deposited in Toshakhana/ Treasury.

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

2.3 Integrity Pact (IP)

2.3.1 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.

2.3.2 Ministry of Finance, Department of Expenditure have mandated[15] Ministries/ Departments and their attached/ subordinate offices (including autonomous bodies) to incorporate Integrity Pact by, depending on the nature of procurements/ contracts above a threshold value. The nature of procurement and threshold of value is to be decided by the Ministries/ Departments with approval of the Minister in charge. As guidance, the threshold should be such as to cover bulk (80-90%) of its procurement expenditure.

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

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

i) Promise on the part of the Procuring Entity to treat all bidders with equity and reason and not to seek or accept any benefit, which is not legally available;
ii) Promise on the part of bidders not to offer any benefit to the employees of the Procuring Entity not available legally and also not to commit any offence under Prevention of Corruption Act, 1988 or Indian Penal Code 1860;
iii) Promise on the part of Bidders not to enter into any undisclosed agreement or understanding with other bidders with respect to prices, specifications, certifications, subsidiary contracts, etc.
iv) Undertaking (as part of Fall Clause) by the Bidders that they have not and will not sell the same material/ equipment at prices lower than the bid price;
v) Foreign bidders to disclose the name and address of agents and representatives in India and Indian Bidders to disclose their foreign principals or associates;
vi) Bidders to disclose the payments to be made by them to agents/ brokers or any other intermediary;
vii) Bidders to disclose any past transgressions committed over the specified period with any other company in India or abroad that may impinge on the anti-corruption principle;
viii) Integrity Pact lays down the punitive actions for any violation;
ix) IP would be implemented through a panel of Independent External Monitors (IEMs), appointed by the organization in consultation with Central Vigilance Commission. The IEM would review independently and objectively, whether and to what extent parties have complied with their obligations under the Pact. Government of India organizations and Public Sector Undertakings desirous of implementing Integrity Pact are required to select at most three persons (below the age of 70 (seventy) years) of high integrity and reputation as Independent

External Monitors (IEM) after due diligence and forward to the CVC for its approval. Only those officers of Government of India departments or Public Sector Undertakings, who have retired from top management positions, would be considered for appointment as IEM, provided they are neither serving or retired from the same organization. Eminent persons, retired judges of High/ Supreme Courts, executives of private sector of considerable eminence could also be considered for functioning as Independent External Monitors. The appointment of Independent External Monitors would be for an initial period of three years and could be extended for another term of two years (maximum tenure of five years). Names and contact details of the Independent External Monitor(s) should be listed in Notice Inviting Tender (NIT);

x) In tenders meeting the criteria of threshold value/ nature of procurement - Integrity Pact clause and format should be included in the Bid Documents. Each page of such Integrity pact proforma would be duly signed by Purchaser's competent signatory. All pages of the Integrity Pact are to be returned by the bidder (along with the technical bid) duly signed by the same signatory who signed the bid, i.e. who is duly authorized to sign the bid and to make binding commitments on behalf of his company. Any bid not accompanied by Integrity Pact duly signed by the bidder shall be considered to be a non-responsive bid and shall be rejected straightway;

xi) **Role/ Functions of IEMs**: The Monitors would not be subject to instructions by the representatives of the parties and should perform their functions neutrally and independently. They would review independently and objectively, whether and to what extent parties have complied with their obligations under the Integrity Pact. For this purpose, they would have access to all contract documents/ books of accounts of the bidders in case of any allegation of violation of any provisions of the Integrity Pact or payment of commission, whenever required. The IEMs will have the option to participate in such meetings among the parties related to the project provided such meetings could have an impact on the contractual relations between the parties. Ideally all IEMs of an organization should meet once every two months to take stock of ongoing tendering process. The IEMs would examine all complaints received by them and give their recommendations/ views to the designated officer of the Procuring Entity, at the earliest. The Monitors would also inform the Procuring Entity, if they notice or have reason to believe, a violation of

the Integrity Pact. They may also send their report directly to the Central Vigilance Commission, in case of suspicion of serious irregularities requiring legal/ administrative action. At least one IEM would be invariably cited in the NIT. However for ensuring the desired transparency and objectivity in dealing with the complaints arising out of any tendering process, the matter should be examined by the full panel of IEMs, who would look into the records, conduct an investigation, and submit their joint recommendations. The recommendations of IEMs would be in the nature of advice and would not be legally binding. IEMs may not be equated with consultants in the Procuring Entity. Their role is independent in nature and the advice once tendered would not be subject to review. The role of the Chief Vigilance Officer (CVO) of Procuring Entity shall remain unaffected by the presence of IEMs. A matter being examined by the IEMs can be separately investigated by the CVO, if a complaint is received by him or directed to him by the CVC. As per para 5.13 of CVC OM No. 05/01/22 issued vide letter No. 015/VGL/091 dated 25.01.2022, in the event of any dispute between the management and the contractor relating to those contracts where Integrity Pact is applicable, in case, both the parties are agreeable, they may try to settle dispute through mediation before the panel of IEMs in a time bound manner. If required, the organizations may adopt any mediation rules for this purpose. In case, the dispute remains unresolved even after mediation by the panel of IEMs, the organization may take further action as per the terms & conditions of the contract.

2.4 Debarment of Suppliers/ contractors/ consultants/ service providers

2.4.1 Registration of suppliers/ contractors/ 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 good performance in contracts. Rule 151 of General Financial Rules (GFR), 2017 states the following regarding the 'Debarment from Bidding':-

i. *A bidder shall be debarred if he has been convicted of an offence-*
   (a) under the Prevention of Corruption Act, 1988; or

(b) the Indian Penal Code 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.

ii. *A bidder debarred under sub-section (i) 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 commencing from the date of debarment. Department of Commerce (DGS&D) will maintain such list which will also be displayed on the website of DGS&D as well as Central Public Procurement Portal.*

iii. *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. The Ministry/Department will maintain such list which will also be displayed on their website.*

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

2.4.2 Since, DGS&D had been wind up on 31.10.2017, 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[16].

2.4.3 **Guidelines on Debarment of firms from Bidding**

1. The guidelines are classified under following two types:-

i. In cases where debarment is proposed to be limited to a single Ministry, the appropriate Orders can be issued by that Ministry itself, thereby banning all its business dealing with the debarred firm.

ii. Where it is proposed to extend the debarment beyond the jurisdiction of the particular Ministry i.e. covering to all central Ministries/ Departments, the requisite Orders shall be issued by Department of Expenditure (DoE), Ministry of Finance (MoF).

Definitions

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

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.

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 following factors may be taken into consideration:

   a) Whether the management is common;
   b) Majority interest in the management is held by the partners or directors of banned/ suspended firm;
   c) Substantial or majority shares are owned by the banned/ suspended firm and by virtue of this it has a controlling voice.
   d) Directly or indirectly controls, or is controlled by or is under common control with another bidder.
   e) All successor firms will also be considered as allied firms.

The terms “banning of firm”, ‘suspension’, ‘Black-Listing’ etc. convey the same meaning as of “Debarment".

2. **Debarment by a Single Ministry/ Department**

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

i. A bidder or any of its successors may be debarred from participating in any procurement process for a period not exceeding two years.

ii. Firms will be debarred if it is determined that the bidder has breached the code of integrity as per Rule 175 of GFRs 2017. (Refer to para 3.2 of this Manual for further reading on Code of Integrity).

iii. A bidder can also be debarred for any actions or omissions by the bidder other than violation of code of integrity, which in the opinion of the Ministry/Department, warrants debarment, for the reasons like supply of sub-standard material, non-supply of material, abandonment of works, sub-standard quality of works, failure to abide “Bid Securing Declaration” etc.

iv. It 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 (CPSUs) etc. of the Ministry/ Department issuing the debarment Order.

v. 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 personal hearing, if requested by firm).

vi. Secretary of Ministry/Department may nominate an officer at the rank of Joint Secretary/Additional Secretary as competent authority to debar the firms.

vii. Ministry/ Department that issued the order of debarment can also issue an Order for revocation of debarment before the period of debarment is over, if there is adequate justification for the same. Ordinarily, the revocation of the Order before expiry of debarred period should be done with the approval of Secretary concerned of Ministry/Department.

viii. The Ministry/Department will maintain list of debarred firms, which will also be displayed on its website.

ix. Debarment is an executive function and should not be allocated to Vigilance Department.

3. It is possible that the firm may be debarred concurrently by more than one Ministry/ Department. Ministries/ Departments at their option may also delegate powers to debar bidders to their CPSUs, Attached Offices/ Autonomous Bodies etc. In such cases, broad principles for debarment in para 2 as above are to be kept in mind. Debarment by such bodies like CPSUs etc. shall be applicable only for the procurements made by such bodies. Similarly, Government e-Marketplace (GeM) can also debar bidders up to two years on its portal. In case of debarments done by CPSUs, revocation of the debarment orders before expiry of debarred period should be done only with the approval of Chief Executive Officer of concerned CPSUs etc.

4. **Debarment across All Ministries/ Departments**

i. Where a Ministry/ Department is of the view that business dealings with a particular firm should be banned across all the Ministries/ Departments by debarring the firm from taking part in any bidding procedure floated by the Central Government Ministries/ Departments, 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. DoE will issue the necessary orders after satisfying itself that proposed debarment across all the Ministries/ Departments is in accordance with Rule 151 of GFRs, 2017. This scrutiny is intended to ensure uniformity of treatment in all cases.

ii. The firm will remain in suspension mode (i.e. debarred) during the interim period till the final decision taken by DoE, only in the Ministry/ Department forwarding such proposal.

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

iv. DoE can also give additional opportunity, at their option, to firm to represent against proposed debarment. DoE can also take suo-moto action to debar the firms in certain circumstances.

v. No contract of any kind whatsoever shall be placed on the debarred firm, including its allied firms by any Ministries/ Departments/ Attached/Subordinate offices of the Government of India including autonomous body, CPSUs etc. after the issue of a debarment order.

vi. DoE will maintain list of such debarred firms, which will be displayed on Central Public Procurement Portal.

5. **Revocation of Orders**

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

ii. A debarment order may be revoked before the expiry of the Order, by the competent authority, if it is of the opinion that the disability already suffered is adequate in the circumstances of the case or for any other reason.

6. **Other Provisions (common to both types of debarment)**

i. No contract of any kind whatsoever shall be placed to debarred firm including its allied firms after the issue of a debarment order by the Ministry/ Department. Bids from only such firms shall be considered for placement of contract, which are neither debarred on the date of opening of tender (first bid, normally called as technical bid, in case of two packet/two stage bidding) nor debarred on the date of contract. Even in the cases of risk purchase, no contract should be placed on such debarred firms.

ii. If case, any debar firms has submitted the bid, the same will be ignored. In case such firm is lowest (L-1), next lowest firm shall be considered as L-1. Bid security submitted by such debarred firms shall be returned to them.

iii. Contracts concluded before the issue of the debarment order shall, not be affected by the debarment Orders.

iv. The Debarment shall be automatically extended to all its allied firms. In case of joint venture/ consortium is debarred all partners will also stand debarred for the period specified in Debarment Order. The names of partners should be clearly specified in the "Debarment Order".

v. Debarment in any manner does not impact any other contractual or other legal rights of the procuring entities.

vi. The period of debarment shall start from the date of issue of debarment order.

vii. The Order of debarment will indicate the reason(s) in brief that lead to debarment of the firm.

viii. Ordinarily, the period of debarment should not be less than six months.

ix. In case of shortage of suppliers in a particular group, such debarments may also hurt the interest of procuring entities. In such cases, endeavour should be to pragmatically analyze the circumstances, try to reform the supplier and may get a written commitment from the supplier that its performance will improve.

x. All Ministries/ Departments must align their existing Debarment Guidelines in conformity with these Guidelines. Further, bidding documents must also be suitably amended, if required.

2.4.4 **Safeguarding Procuring Entity's Interests during debarment of supplier/ contractor/ consultant/ service provider:**

Suppliers/ contractors/ consultants/ service providers are important assets for the procuring entities and punishing delinquent suppliers/ contractors/ consultants/ service providers should be the last resort. It takes lot of time and effort to develop, register and mature a new supplier. In case of shortage of suppliers/ contractors/ consultants/ service providers in a particular group of materials/equipment, such punishment may also hurt the interest of Procuring Entity. Therefore, views of the concerned department may always be sought about the repercussions of such punitive action on the continuity of procurements. Past records of performance of the supplier may also be given due weightage. In case of shortage of suppliers/ contractors/ consultants/ service providers and in cases of less serious misdemeanours, the endeavour should be to pragmatically analyse the circumstances, reform the supplier and get a written commitment from the supplier that his performance will improve. If this fails, efforts should be to see if a temporary debarment can serve the purpose.

(Rule 151 of GFR 2017)

Chapter 3: Types of Contracts and Systems of Selection of consultants/ service providers

3.1 Types of Contracts

There are different basis for linking payments to the performance of services (called types of contracts) – each having different risks and mitigation measures. Bids are called and evaluated based on the type of contract. The choice of the type of contract should be based on Value-for-Money (VfM) with due regard to the nature of assignment. Adoption of an inappropriate type of contract could lead to a situation of lack of competition, contractual disputes and non-performance/failure of the contract.

Each type of contract is described briefly in subsequent paras, and criteria are suggested for their adoption along with risks and mitigation measures. Mostly used types of contracts are:

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

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

3.2 Lump Sum (Firm Fixed Price) Contract

3.2.1 The lump sum (firm fixed price) contract is the preferred form of contract and under normal circumstances; the Procuring Entity shall use this form of contract. Consultant's proposal is deemed to include all prices - no arithmetical correction

or price adjustments are allowed during evaluation. Lump sum consultancy contracts are easy to administer because there is fixed price for a fixed scope and payments are linked to clearly specified outputs/ milestones/ deliverables such as reports, documents, drawings, bills of quantities, software programs and so on. In view of Risks mentioned below this type of contracts are widely used for simple planning and feasibility studies, environmental studies, detailed design of standard or common structures, preparation of data processing systems, and so forth.

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

3.3 Time-Based (Retainer-ship) Contract

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

objectives of the assignment is difficult to assess or because the services are tied up to activities by others for which the completion period may vary.

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

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

3.4 Percentage (Success/ contingency Fee) Contract

3.4.1 Percentage (Success/ Contingency Fee) contracts directly relate the fees paid

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

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

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

3.5 Retainer and Success (Contingency) Fee Contract

3.5.1 In Retainer and Success (Contingency) fee contracts the remuneration of the consultant includes a retainer (time based, monthly payment) and a success fee (Percentage based), the latter being normally expressed as a percentage of the estimated or actual Project cost. Thus, this type of contract is a combination of Time Based and Percentage Contracts.

Due to risks and mitigations discussed below, Retainer and contingency fee contracts are widely used when consultants (banks or financial firms) are preparing

companies for sales or mergers of firms, notably in privatization operations. It can also be used for assignments related to organisational restructuring/ change.

3.5.2 **Retainer-ship and Contingency Fee Contracts - Risks and Mitigations**	
Risk	***Mitigation***
All Risks as applicable to both Percentage Contracts and Time Based contracts are encountered in this case	Same mitigation strategies as in both Percentage and Time Based contracts may be adopted in this case.

3.6 Indefinite Delivery Contract (Price Agreement)

3.6.1 These contracts are used when Procuring Entity need to have "on call" specialized services, the extent and timing of which cannot be defined in advance. This is akin to the system of 'Rate Contracts' or framework contracts in the procurement of Goods. There is no commitment from Procuring Entity for the quantum of work that may be assigned to the consultant/ service provider. The Procuring Entity and the firm agree on the unit rates to be paid, and payments are made on the basis of the time/ quantum of service actually used. The consultant/ service provider shall be selected based on the unit rate quoted by them for providing the services.

These are commonly used to retain "advisers" or avail services 'on-call' - for example; expert adjudicators for dispute resolution panels, institutional reforms, procurement advice, technical troubleshooting, Document Management, Taxi Services, Temporary Manpower Deployment and so forth – normally over a period of a year or more.

3.6.2 **Indefinite Delivery Contracts - Risks and Mitigations**	
Risk	***Mitigation***
Risk of over-utilization: Indefinite Delivery Contracts are at risk of being over-utilized in excess of actual need since the scrutiny of service need may not be as intense as in case of other types of contracts.	The need assessment of utilized services should be subject to some scrutiny, to ensure that there is no abnormal unexplainable trend in utilization. Such contracts need to be closely monitored and administered by the 'Procuring Entity' to ensure that the there is no indiscriminate or unwarranted usage and a maximum contract value may be laid down to keep control over usage and approval of CA may be obtained to extend it beyond such limit. A system of monthly reporting of payouts and quantum of work achieved by the consultant/

3.6.2 **Indefinite Delivery Contracts - Risks and Mitigations**	
Risk	***Mitigation***
	service provider to CA should be instituted to enable supervision. In the report a monthly payout benchmark may be kept, above which the report may be required to be sent to a level above CA.
The quality and Scope of the Output/ deliverables as in Lump-sum Contracts, is not linked to the payment. There may be tendency for the consultant/ service provider to cut corners on quality, scope and timing of the output/ deliverables by saving on resources employed.	The contract should include provision for evaluation of quality and scope of deliverables and certificate for its acceptability may be recorded. Payments should be released only against such certificates.
Performance in each time period is not linked to the payment. There may be tendency for the consultant/ service provider to 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/ service provider to CA should be instituted to enable supervision.
Time and Cost over-run is a major risk in such contracts, as the output may not be achieved in the estimated time.	This type of contract should include an upper limit of total payments to be made to the consultants/ service providers to safeguard against excessive prolonging of time and payments. After this limit is reached, or the period of completion is exceeded, CA should review justification for extension of the contract.

3.7 Systems of Selection of service providers

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

likely capable sources are shortlisted, if need be through an 'Expression of Interest' (EoI) through advertisement. On the basis of responses received, consultants meeting the relevant qualification and experience requirements for the given assignment are shortlisted for further consideration. The shortlist should include a sufficient number, not fewer than three (3) and not more than eight (8) eligible firms. 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.

3.7.2 The relative importance of Quality and Price aspects may vary from assignment to assignment depending on complexities/ criticality of quality requirements, internal capability of Procuring Entity to engage and supervise the assignment, as well as the value of procurements. Hence different systems of selection of consultants/ service providers 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 take into account the likely field of Bidders.

3.7.3 The nomenclature of various selection methods below is in line with generally prevalent nomenclature and Therefore, varies slightly from the terms used in the 2006 version of Finance Ministry's 'Manual of Policies and Procedure of Employment of consultants'.

i) Price based System - Least Cost Selection (LCS);
ii) Quality and Cost Based Selection (QCBS);
iii) Direct Selection: Single Source Selection (SSS)

3.7.4 Unlike Procurement of Consultancy Services, procurement of other services is done by a simpler process akin to those of procurement of Goods and Works. In procurement of other (non-consultancy) services normally system of selection used is lowest price (L-1) basis as in procurement of Goods/ works for technically responsive offers. Under very special circumstances Single Source Selection may also be used. However, in highly technical and complex services, where quality is

important (say in studies like seismic surveys, airborne data acquisition etc) where use of QCBS system appears to be called for, it may be better handled as a consultancy contract.

3.7.5 It has become a practice among some procuring entities to routinely assume that open tenders which result in single bids are not acceptable, and to go for re-tender as a 'safe' course of action. This is not correct. Re-bidding has costs: firstly the actual costs of 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[17]. Even when only one Bid is submitted, the process may be considered valid provided following conditions are satisfied:

1) The procurement was satisfactorily advertised and sufficient time was given for submission of bids.
2) The qualification criteria were not unduly restrictive; and
3) Prices are reasonable in comparison to market values[18]

3.8 Price based System - Least Cost Selection (LCS)

3.8.1 In this method of selection, consultants/ service providers submit both a technical proposal and a financial proposal at the same time. Minimum qualifying marks for quality of the technical proposal are prescribed as benchmark (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 adding of weighted technical score to financial score – as in QCBS selection), it would suffice in appropriately simple cases (please refer to para 6.2.2), 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*

[17] As stated under para 11.8 of OM No.F.1/1/2021-PPD issued by Department of Expenditure dated 20.10.2021

[18] Notified under para 11.8 vide OM No.F.1/1/2021-PPD issued by Department of Expenditure dated 29.10.2021

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.* In Finance Ministry's 2006, 'Manual of Policies and Procedure of Employment of consultants/ service providers', this is called QCBS, which is not the generally prevalent nomenclature. *(Rule 193 of GFR 2017, also see para 6.9.1)*

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

3.8.2 **Least Cost Selection - Risks and Mitigations**	
Risk	***Mitigation***
Technical criteria may not be relevant to realization of quality of assignment.	Technical criteria selected should be relevant and proportional to the requirement of quality of assignment and the selection process should be rigorous enough to ensure that on one hand no technically unsatisfactory bids should be able to get past a loose criteria and on the other hand no technically satisfactory offer should get ruled out by tight criteria.
Marking Subjectivity: The scheme of marking or its application may be	It is important to lay down as objective a scheme of marking as possible. Cases

3.8.2 **Least Cost Selection - Risks and Mitigations**	
Risk	***Mitigation***
subjective.	where subjectivity is unavoidable (as in evaluation of methodology etc), a system of grading responses and their marking may be laid down in the bidding documents. Procuring Entity should also have a system of conciliation and moderation of widely disparate markings by different members of evaluation committee.

3.9 Quality and Cost Based Selection (QCBS)

3.9.1 In QCBS selection, minimum qualifying marks (normally 70-80 (seventy – eighty) out of maximum 100 (hundred) marks) as benchmark for quality of the technical proposal will be prescribed and indicated in the RfP along with a scheme for allotting marks for various technical criteria/ attributes. During evaluation of technical proposal, quality score is assigned out of the maximum 100 (hundred) marks, to each of the responsive bids, as per the scheme laid down in the RfP. The consultants/ service providers who are qualifying as per the technical evaluation criteria are considered as technically responsive, and the rest would be considered technically nonresponsive and would be dropped from the list. Financial proposals are then opened for only eligible and responsive offers and other financial offers are returned unopened to bidders. 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. The weight given to the technical score may not be confused with the minimum qualifying technical score (though they may in some case be equal). 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, taking into account 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.* In Finance Ministry's 2006 'Manual of Policies and Procedure of Employment of consultants', this is called CQCCBS, which is not the generally prevalent nomenclature. 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. Table 3 provides a suggestive weighting for QCBS. *(Rule 192 of GFR 2017, also see para 6.9.2)*

Table 3. A suggestive weighting of scores for QCBS

Description	Remarks	Quality/Cost Score Weighting (%) in QCBS
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/ 35-25
Assignments of a standard or routine nature such as auditors/procurement agents handling the procurement	Use of LCS is appropriate	60-50/40-50

3.9.2 **QCBS - Risks and Mitigations**	
Risk	***Mitigation***
Inappropriate Selection of QCBS: There is a possibility that QCBS system is selected where LCS or other systems would have been more appropriate considering the quality requirements or the capability of Procuring Entity to monitor the assignment.	Selection of QCBS should be justified and applied only under circumstances mentioned above.
Weightage of Technical: Cost may not be proportional to quality requirements	Weightage different from 70:30 (seventy: thirty) should be adequately examined and justified.
Technical criteria may not be relevant to realization of quality of assignment.	Technical criteria selected should be relevant and proportional to the requirement of quality of assignment and the selection process should be rigorous enough to ensure that on one hand no technically unsatisfactory bids should be

3.9.2 **QCBS - Risks and Mitigations**	
Risk	***Mitigation***
	able to get past a loose criteria and on the other hand no technically satisfactory offer should get ruled out by tight criteria.
Marking Subjectivity: The scheme of marking or its application may be subjective.	It is important to lay down as objective a scheme of marking as possible. Cases where subjectivity is unavoidable (as in evaluation of methodology etc), a system of grading responses and their marking may be laid down in the bidding documents. Procuring Entity should also have a system of conciliation and moderation of widely disparate markings by different members of evaluation committee.

3.10 Direct Selection: Single Source Selection (SSS)

3.10.1 Under some special circumstances, it may become necessary to select a particular consultant/ service provider where adequate justification is available for such single-source selection in the context of the overall interest of Procuring Entity. In Finance Ministry's 'Manual of Policies and Procedure of Employment of consultants', this is called DNS, which is not the generally prevalent nomenclature. *(Rule 194 of GFR 2017, also see para 6.9.3)* The selection by SSS/ nomination is permissible under exceptional circumstance such as:

i) tasks that represent a natural continuation of previous work carried out by the firm;
ii) in case of an emergency situation, situations arising after natural disasters, situations where timely completion of the assignment is of utmost importance;
iii) situations where execution of the assignment may involve use of proprietary techniques or only one consultant has requisite expertise;
iv) At times, other PSUs or Government Organizations are used to provide technical expertise. It is possible to use the expertise of such institutions on a SSS basis;
v) Under some special circumstances, it may become necessary to select a particular consultant where adequate justification is available for such single-source selection in the context of the overall interest of 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.

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.

3.10.2 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.
   1. The report relating to such awards on nomination basis shall be submitted to the Secretary/Board/Chief Executive /equivalent managing body, every quarter.
   2. The audit committee or similar unit in the organisation may be required to check at least 10% of such cases.

3.10.2 **SSS - Risks and Mitigations**	
Risk	***Mitigation***
Inappropriate Selection of SSS: There is a possibility that SSS system is selected where LCS or other systems would have been more appropriate considering the quality requirements or the capability of Procuring Entity to monitor the assignment. The assignment may be split into parcels to avoid competitive selection systems or to avoid obtaining higher level approvals for SSS.	Full justification for single source selection should be recorded in the file and approval of the competent authority (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/ other services are not split into smaller sized procurement

	to avoid competitive processes.
Cost may be unreasonably High: The single consultant/ service provider is likely to charge unreasonably high price.	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/ service providers to examine reasonableness of quoted price.

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

3.11.1 GFRs 2017 provide three methods for selection/evaluation of consultancy proposals viz. Quality and Cost Based Selection (QCBS), Least Cost System (LCS) and Single Source Selection (SSS). The Fixed Budget Based Selection(FBS) method is hereby also allowed for selection of consultants. Under this method, cost of the consulting services shall be specified as a fixed budged in the tender document itself. FBS may be used when :

(i) the type of consulting services required is simple and/or repetitive and can be precisely defined; and

(ii) the budget can be reasonable estimated and set based on credible cost estimates and/ or previous selections which have been successfully executed; and

(iii) the budget is sufficient for the consultant to perform the assignment.

3.11.2 Under FBS, the selection of the consultant shall be made by one of the following two methods :

(i) By a competitive selection process, based only on quality, using specific marking criteria for quality in the manner indicated in Rule 192(i) of the GFR. The proposal with the highest technical score that meets the fixed budget requirement shall be considered for placement of contract.

(ii) In cases of repetitive or multiple assignments, by empanelling suitable quality criteria. Thereafter, selection of a specific consultant for a specific assignment from such panel shall be based on overall considerations of public interest

including timeliness, practicability, number of other assignments already given to that consultant in the past, etc. In such cases the budget for each assignment shall also be fixed by the procuring entity.

Chapter 4: Preparing for Procurement of Consultancy Services

4.1 Preparation of Terms of Reference (ToR)

4.1.1 ToR is akin to Description, Quantity and Technical Specification in Procurement of Goods. This is the first step in the selection of the consultants once a need has been identified. A ToR 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. ToR is important for an understanding of the assignment and its correct execution to ensure that the objectives of assignment are achieved. It reduces the risk for the Procuring Entity of unnecessary extra work, delays, and additional expenses of the Procuring Entity. In addition, it helps reduce for the bidders the risk of ambiguities during the preparation of bidder's proposals, contract negotiation, and execution of Consultancy.

4.1.2 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:

i) Procuring Entity's organisation background and Project background;
ii) Purpose and Service Outcomes Statement of the assignment; (refer to chapter 1)
iii) Detailed scope of work Statement including schedule for completing the assignment;
iv) Expected requirement of key professionals and kind of expertise;
v) Capacity-building programme and transfer of knowledge, if any;
vi) Deliverables - List of reports (or documents, data, maps, surveys, designs, drawings), schedule of deliveries, and period of performance;
vii) Background material, Data, reports, records of previous surveys, and so on, available and to be provided to the consultant;

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

ix) Institutional and organisational arrangement; and

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

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

i) **Detailed Scope of Work**

As part of the ToR, at its simplest, the 'Detailed Scope of Work ' will contain the type and volume of activity to be undertaken and the time-frame of activity involved to achieve the Purpose and Service Outcomes as 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.

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

Except in very complex Consultancies, it is desirable to not to distinguish the tasks of individual experts but instead to prepare a longer and more detailed description of what the Consultancy team, as a whole, will provide without splitting up tasks. These are generally known as “activity based” ToR as opposed to “position-based” ToR. The ToR would list a range of tasks without regard to who will have the responsibility to undertake them. In most of the cases, where the number of experts is small, the work to be done is not clearly

defined, and a degree of flexibility is required— this is acceptable. In Consultancy services, Key professionals are usually named and their credentials carry weightage in technical evaluation.

iii) **Deliverables and Reports Requirements**

The assignments deliverables and reporting should be clearly specified. In particular, for inception and progress reports, there should be a balance between keeping the 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;

a) **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.

b) **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.

c) **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.

d) **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.

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

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

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

In consultancy services, the Consultancy 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)

4.2 Estimating Costs, Setting the Budget, and Seeking Approval

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

i) **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.

ii) **Estimated Resources**: The cost estimate shall be based on the Procuring Entity's assessment of the resources needed to carry out the assignment:

   a) Staff time
   b) logistical support (City, National and International Travels/ Trips and durations), and
   c) physical inputs (for example, vehicles, laboratory equipment)
   d) Miscellaneous (Support services, contingencies and Profit element, taxes and duties)

iii) **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.

iv) **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.

v) **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.

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

vii) **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.

4.2.2 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:

i) Professional and support staff;
ii) Travel, Hotel, and transport;
iii) Mobilisation and demobilisation;
iv) Office rent, Furniture/ Equipment, supplies, Utilities, IT equipment and communication;
v) Assignment related surveys, training programmes;
vi) Translation, report printing;
vii) Contingencies: miscellaneous, insurance, shipping; and
viii) Indirect local taxes and duties in connection with carrying out the services.

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

4.3 Finalizing and Approval of the ToR

The scope of the work described in the ToR shall be 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.

4.4 Developing a Procurement Plan

The Consultancy may be part of a larger project/ works in which there be other components of work, Goods or 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 consultancy, adoption of the most appropriate method of selection and type of contract, and ensuring that consultant selection is initiated and completed 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 taken into account so that the construction supervision consultant is mobilised before the award of the construction contract.

4.5 e-Procurement

4.5.1 Electronic procurement (e-procurement) is the use of information and communication technology (specially the internet) by the buyer 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. It is now mandatory for Ministries/ Departments to receive all bids through e procurement portals in respect of all procurements. A generic description of how e-Procurement is conducted is given in Appendix 3.

4.5.2 Ministries/ Departments which do not have a large volume of procurement or carry out procurements required only for day-to-day running of offices and also have not initiated e-procurement through any other solution provider 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.

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

4.5.4 In individual cases where national security and strategic considerations demands confidentiality, Ministries/ Departments may exempt such cases from e-procurement after seeking approval of concerned Secretary and with concurrence of Financial Advisers.

4.5.5 In case of tenders floated by Indian Missions abroad, Competent Authority to decide the tender, may exempt such case from e-procurement.

(Rule 160 of GFR 2017)

Chapter 5: Shortlisting Stage in Procurement of Consultancy Services

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

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

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

Unlike Procurement of Consultancy Services, procurement of other (non-consultancy) Services is done by a simpler process akin to those of procurement of Goods and Works. It is normally done in a Single Stage (RfP) Process. In procurements above Rs 10 (Rupees Ten) Lakhs, it should normally be an advertised RfP. For procurement below Rs 10 (Rupees Ten) Lakhs, RfP can be issued to a selected shortlist of likely service providers.

5.1.3 *(Rule 183 (ii) of GFR 2017)* For procurement above Rs 25 *(Rupees Twenty-five)* Lakhs shortlisting is done in an openly advertised competitive 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-Market (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. 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.

5.1.4 **No Global Tender Enquiry (GTE) up to Rs. 200 crores**[19] shall be invited or such limit as may be prescribed by the Department of Expenditure from time to time. In exceptional cases where the Ministry or Department feels that there are special reasons for inviting GTE, for tenders below such limit, it may record its detailed justification and seek prior approval for relaxation from the Competent Authority specified by the Department of Expenditure.

i) The proposal for approval shall be submitted by Administrative Ministry with the concurrence of Financial Advisor and approval of Secretary concerned. The proposals submitted by individual offices/ organisation (e.g. autonomous bodies, Central Public Sector Undertakings and subordinate offices of Central Government etc.) will not be entertained.

[19]Rule 161 of GFR, 2017 Amended vide DoE OM No. F.12/17/2019-PPD dated 15.05.2020.

ii) The proposals shall be submitted along with duly filled format[20] (placed at Annexure-2D).

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

i) Domestic open tender must be floated to identify the domestic manufacturers/ service providers for the items/ services for which approval is being sought for issuance of Global Tenders. In case, if the Ministry/ Department has not floated a domestic open tender after 15.05.2020 for the items to be procured through GTE, such proposals will not be entertained. The proposal must contain the details of domestic open tenders, issued after 15.05.2020.These details shall cover tender number, date of opening, number of offers received, details of offers received, reasons why domestic suppliers were not considered etc.

ii) The proposal must contain the details of deliberations with DPIIT/ relevant industrial bodies for identification of domestic manufacturers/ service providers.

iii) The 3/5-year procurement plan as mandated by Public Procurement (Preference to Make in India) (PPP-MII) order issued by DPIIT must be published on website, before forwarding proposals for the purpose of procurement through GTE. Web-link of published procurement plan should be provided in proposal.

5.1.6 **Exemptions/ Clarifications**

a) For procurement of specialised equipments required for research purposes, and spares and consumables, for such equipments up to Rs. 200 crore for the use of Educational and Research Institutes, Secretary of Ministry/ Department concerned shall be the competent authority to approve issue of Global Tender Enquiries for such requirements subject to fulfilment of conditions as laid down in para 5.1.7 below. The equipment should be of specialized nature

[20]Issued by Cabinet Secretariat vide ID No. 213/2/1/2020-C.A.IV dated 06.10.2020

required for research purposes and not the routine equipment used in offices[21].

b) On procurement of spare parts of the equipments/ Plants & Machinery etc. on nomination basis from Original Equipments Manufacturers (OEMs) or Original Equipment Suppliers (OES) or Original Part Manufacturers (OPMs) as no competitive tenders are invited in such cases[22].

c) On procurement of services like Annual Maintenance Contract (AMC) and auxiliary/ add-on components for existing equipments/ Plant & Machinery etc. , which are procured from OEM/ OES/ OPM on nomination basis, as no competitive tenders are invited in such cases[23].

d) Where procuring entities need to issue GTEs to fulfil contractual commitments/ obligations entered by them before 15.05.2020 i.e. bid has been submitted by them to their clients before 15.05.2020. similarly, where procuring entities need to issue GTEs in view of existing collaboration agreements entered by them with foreign suppliers before 15.05.2020[24].

e) Based on the reference received from Ministry of Health & Family Welfare, GTE can be floated for 128 Medical Devices (placed at Annexure-2E). The exemptions is provided for such items till 31.03.2023. MoHFW will review domestic availability of these items at the end of 2022, keeping in view the Production Linked Incentive (PLI) scheme etc. launched by Department of Pharmaceuticals in Medical Devices and other relevant factors, in consultation with Department of Expenditure[25].

f) For projects funded by Multilateral Development Banks (MDBs like The World Bank, Asian Development Bank etc.)/ Bilateral Funding Agencies (BFAs), where the procurement is governed by the conditions negotiated in the loan agreement, and where the project executing agencies from time to time further award works to various Autonomous Bodies (ABs)/ Central Public

[21]Notified vide OM No. 4/1/2021-PPD issued by Department of Expenditure dated 11.06.2021)

[22]Notified vide OM No. 12/17/2019-PPD issued by Department of Expenditure dated 29.10.2020

[23]Notified vide OM No.F.4/1/2021-PPD issued by Department of Expenditure dated 01.09.2021

[24]Notified vide OM No. 4/1/2021-PPD issued by Department of Expenditure dated 12.03.2021

[25]Notified vide OM No. F.4/1/2021-PPD issued by Department of Expenditure dated 06.01.2022

Sector Enterprises (CPSEs) etc., the Secretary of the Ministry/ Department responsible for execution of such project shall be the Competent Authority for approval for issuance of GTEs by such Autonomous Bodies/ CPSEs etc[26].

g) Exemption to semiconductor..

5.1.7 [Refer to para 5.1.6 (a) above]

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

a) Identification of equipment being procured time and again from abroad, and help developing them in India by identifying potential manufacturers and providing them technical help and expertise for developing the equipment. This programme will be coordinated by the Empowered Technology Group (constituted by Cabinet and chaired by the Principal Scientific Advisor (PSA).
b) Efforts to promote technology transfer through agreements or to encourage technological collaboration with foreign manufacturing in India at the Start-ups set up in Research Parks.
c) Sharing and updating of information about the availability of research equipment across various Indian Institutes on a single portal (the I-STEM[27] portal has been developed for this purpose) so that those can be utilized by the needy institutes.
d) Without compromising quality, Institutes should indicate alternative/ equivalent technical specifications that could suit their requirement, so that there are more chances of local manufacturers participate in the tendering process.
e) Regular interaction between academia and Indian industry organizations at the level of the institution about the requirement of equipment of foreign origin and for encouraging the domestic manufacturing.
f) Regular requirement of proprietary/ non-proprietary research consumables may be assessed and domestic alternatives are explored for use.

[26]Notified vide OM No. F.7/12/2021-PPD-I issued by Department of Expenditure dated 27.07.2021

[27]https://www.istem.gov.in/

g) A national level programme for indigenous development of scientific equipment be initiated by the Office of PSA.

h) Without compromising quality, institutes should be flexible with specifications so that domestic manufactures are encouraged to meet requirements.

5.1.7.2 **Guidelines for resorting to GTE**

a) Market assessment should be done by the concerned institution, as certified by the Head of the Institution. Only after no Indian manufacturer is found, a GTE should be issued.

b) In case no Indian manufacturer/ suppliers are found, procurement may be done, through GTE, subject to compliance of provisions of GFR and requirement of procurement through GeM.

c) DEAN (R&D) or an appropriate authority within the institute will issue certificates as per para 5.1.7.3 below, before inviting GTE. As a reporting matter in the Board of Governors, such certificates should be tabled, and also shared with Office of the PSA, DPIIT and concerned Administrative Ministry.

d) The information about the procurement of equipment should be shared across various Educational and Research Institutes, through the I-STEM portal, already established for this purpose by the PSA's office. This will allow the equipment to be used by other institutions too, for research purposes.

e) Analyze the equipment being procured time and again from abroad, and help developing them in India by identifying potential manufacturers and providing them technical assistance and expertise for developing the equipment. Half yearly reports on this action to be shared by the Institutes with the Office of the PSA, DPIIT and concerned Administrative Ministry/ A national level scheme will also be initiated by the Office of PSA for indigenous development of scientific equipment.

f) Preference to local suppliers over foreign supplier as per the existing Government of India guidelines, should be observed as applicable.

5.1.7.3 **Certificates to be issued**

a) Confirmation of non-availability in India of particular equipment/ consumables of foreign origin through GeM and other sources.

b) Certification that locally available alternatives with equivalent specifications are not suitable for research purposes.

c) The non-availability of such equipment for research purposes with nearby research institutes or within the institute.
d) Certification of the requirement of proprietary items of foreign origin for research purposes (where applicable).

5.1.8 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 hard copies as well as on its website.

5.1.9 *(Rule 183 (i) of GFR 2017)* In procurements of consultancy services below Rs 25 *(Rupees Twenty five)* 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/ service providers 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 25 *(Rupees Twenty five)* Lakhs, Procuring entities who do frequent procurement of consultancy services, may consider preparation of a Panel of qualified consultants, 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 25 *(Rupees Twenty five)* Lakhs, with the approval of CA.

5.1.10 Empanelment of contractors: Public authorities may empanel/ register contractors of those specific goods and services which are required by them regularly. Performance of such empanelled contractors should be reviewed periodically. The list of registered contractors shall be updated on a regular basis. The category/ class of contractors may be upgraded/ downgraded or contractors

may be de-listed based on their performance. Empanelment of contractors shall be done in a fair and equitable manner, preferably online after giving due publicity[28].

5.1.11 **The EoI document shall contain following sections:**

i) **Letter of Invitation:**

It shall include a copy of the advertisement whereby consultants are invited to submit their EoI.

ii) **Instructions to the consultants**

It may include instructions regarding nature of job; submission requirement; requirement of bid processing fees; if any; last date of submission; place of submission; and any related instruction;

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

This may include brief purpose/objective statement; Service Outcomes Statement; broad scope of work including Time-frames; inputs to be provided by the Procuring Entity; and expected deliverables of the assignment. This may also include the place of execution of the assignment. The request for EoI shall not include the assignment ToR, The consultants may also be asked to send their comments on the objectives and scope of the work or service projected in the enquiry.

iv) **Qualification Criteria**

This may clearly lay 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. Information should include: (a) core business and years in business; (b) qualifications in the field of the assignment; (c) technical and managerial organisation of the firm; and (d) general qualifications and number of key staff. In addition, the consultants should indicate information relating to their eligibility and any conflict of interest that they know may impact objective performance and impartial advice for their

[28] Notified under para 9.3 vide OM No.F.1/1/2021-PPD issued by Department of Expenditure dated 29.10.2021

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.

A sample format for seeking an EoI is given at *Annexure 6.*

5.2 Short List of consultants

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

5.2.2 It is important for the Procuring Entity to hire consultants who have a reputation for integrity and impartiality rooted in independence from third parties. It is seen that the process of shortlisting is one of the most difficult and time-consuming tasks in the selection process of a consultant. This could be eased by writing a clear Description of Service (objectives and Scope) and shortlisting criteria.

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

5.2.4 It is seen that the process of shortlisting is one of the most difficult and time consuming tasks in the selection process of a consultant. 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.

5.2.5 The Procuring Entity may assign scores to the response of each consultant based on weightages assigned to each of the criteria in the EoI. Each criterion may be sub-divided into sub-criteria, if called for. Normally, the weightages shown in Table 1 may be used for such an evaluation (this is just an indicative criterion to assist the evaluators. The criteria and their weightage may be changed as per the need of Procuring Entity).

Table 2. Qualification criteria and their weightages

Sl. No.	Criteria	Weightage	
	Sub-criteria	**Criteria Total**	**Sub-criteria**
1	Past experience of the consultant (track record)	**60%**	
	• Number of years' relevant experience		20%
	• Past experience of studies of similar nature		50%
	• Past experience in carrying out		
	• Studies in the related sector		20%
	• Studies carried out in the region		10%
2	General profile of qualification, experience and number of key staff (not individual CVs)	**25%**	
	• Qualifications		30%
	• Relevant experience		70%
3	Overall financial strength of the consultant in terms of turnover, profitability and cash flow (liquid assets) situation	**15%**	
	Turnover figure for Last three Years.		50%
	Net Profit Figure for Last three years		50%
	Totals	**100%**	

5.2.6 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.

In EoI, simplified evaluation criteria can also be used, instead of marking schemes as mentioned above. 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; key professionals must have at least seven years' experience and must have Master's

Qualification in relevant field; 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.

5.2.7 However 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.

5.2.8 The short lists shall normally comprise at least three firms but not more than eight (to avoid inordinate delays in evaluation of subsequent RfP). The short list may comprise only national consultants (firms registered or incorporated in the country), 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. RfP documents would be issued only to the shortlisted consultants.

5.2.9 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.

5.2.10 It is also noted that while selecting consultants, some procuring entities are keeping the minimum qualifying 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 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[29].**

[29] Notified vide OM No.F.18/13/2020-PPD issued by Department of Expenditure dated 13.07.2020

5.3 Shortlisting – Risks and Mitigation	
Risks	***Mitigation***
Conflict of interest situations: It is possible that conflict of interest situations are not reported or declared by the participating consultants (or sometimes by members of the evaluation committee).	These situations need to be dealt with by signing declarations 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).
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 6: Selection of consultants by Competitive Process

6.1 The evaluation process

The selection process for consultants generally includes the following steps:

i) Preparation and issuance of the Request for Proposals (RfP);
ii) Pre-proposal meeting;
iii) Receipt of proposals;
iv) Evaluation of technical proposals: consideration of quality;
v) Public opening of financial proposals;
vi) Evaluation of financial proposals;
vii) Selection of the winning proposal;
viii) Negotiations with the selected bidder, if required; and
ix) Award of the contract to the selected firm.

6.2 Preparation and Issuance of the Request for Proposals (RfP)

6.2.1 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. *In procurement of other (non-consultancy) Services, since the procurement is done without EoI, RfP is advertised, except in case when value of procurement is less than Rs 10 (Rupees Ten) Lakhs.* It contains the following sections:

i) A letter of invitation (LoI);
ii) Information to consultants (ITC) and data sheet (which contains assignment specific information);
iii) Terms of Reference (ToR);
iv) List of key experts required for the assignment;
v) Requirement of qualifications and experience of the firm and key experts;
vi) Criteria of proposal evaluation and selection procedure;
vii) Standard formats for the technical proposal;
viii) Standard formats for the financial proposal; and

ix) Proposed form of the contract, including General Conditions of Contract and Special Conditions of Contract;
x) Proposed procedure to be followed pertaining to mid-term review of the progress of the work and review of the final draft report.

The Procuring Entity shall use the applicable standard RfP with minimal changes as necessary to address project-specific issues. The Procuring Entity may use e-Procurement platform to issue RfP.

6.2.2 **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). 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.

All the firms which meet the minimum qualifying standards/ criteria so prescribed will stand technically qualified for consideration of their financial bids.

6.2.3 **Letter of Invitation (LoI)**

The Letter of Invitation (LoI) shall state 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.

6.2.4 Instructions to consultants (ITC)

The Instructions to consultants (ITC) shall consist of two parts: (1) standard information; and (2) assignment specific information. The assignment specific information is added through the data sheet. The ITC contains all necessary information that would help the consultants prepare responsive proposals, and 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, relating to pre-bid meeting, for seeking clarifications, and so on. The assignment/job specific information will be prepared separately and include the date and time of bid submission, contact address, qualification criteria, method of selection, evaluation process, factors of evaluation and their respective weights, and so on.

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). Consultants, however, shall be free to prepare their own estimates of staff time necessary to carry out the assignment. The ITC shall specify the proposal validity period [normally 60 (sixty) days].

6.2.5 Standard Formats for Technical and Financial Proposals

i) The standard formats for technical proposals include those specified for FTP or STP:

   a) Technical proposal submission form (including declaration on conflict of interest, eligibility, following Code of Integrity in Public Procurement - CIPP);
   b) For a JV, a LoI or copy of existing agreement, as applicable;
   c) Power of attorney (in case of a JV, lead member to be authorised);
   d) consultant's organisation and experience (for FTP only);

e) Comments and suggestions on ToR, counterpart staff and facilities to be provided by the client(for FTP only);
f) Description of approach and methodology and work plan for performing the assignment;
g) Work schedule and planning for deliverables; and
h) Team composition, key expert's inputs, attached CVs.
i) Format for Comments/ modifications suggested on proposed form of contract.

ii) The standard formats for a financial proposal include:
   a) Financial proposal form;
   b) A summary sheet of the cost to be quoted by the Bidder;
   c) Remuneration payable; and
   d) Reimbursable expenses

6.2.6 Important Provisions of RfP/ Contracts

i) **Currency:** Under normal circumstances, all the contracts should be based on Indian Rupees only. RFPs shall clearly state that firms may express the price for their services, in the currency specified in RfP. If RfP allows proposals in any other currency, the date and the exchange rate (normally date of opening of the Technical Bid) for converting all the bid prices to Indian Rupees shall be indicated in RfP.

ii) **Price Adjustment:** In case the duration of the contract is expected to exceed 18 (eighteen) months for a time-based contract or an Indefinite delivery contract, a price adjustment provision for the remuneration rate should be included in the contract based on the Consumer Price Index in the country. Lump-sum contracts shall not generally be subject to price adjustment except for small value multi-year contracts (for example, for auditors). Short-term contracts where the delivery period does not extend beyond 18 (eighteen) months should normally be concluded with a firm and price fixed by inviting tenders accordingly. However, even for shorter deliveries, the price adjustment [or Price Variation Clause (PVC)] may be stipulated for items with inputs (raw material, man power, etc.), prone to short-term price volatility - especially for critical or high value services – otherwise there is a possibility of the contract failing or the purchaser having to pay a higher price if prices fall.

Where it is decided to conclude the contract with a variable price, an appropriate clause incorporating, inter-alia, a suitable price variation formula should also be provided in the tender documents, to calculate the price variation between the base level and scheduled delivery date. It is best to proactively provide our own PVC in the tender document to discourage different bidders quoting different formulae and different base dates, which may lead to problems on bringing their prices on a common comparable footing.

The variations are to be calculated periodically 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 profits, material and man power in the price variation formula.

The following are important elements of PVC:

a) The price agreed upon should specify the base date, that is, the month and year to which the price is linked to enable variations being calculated with reference to the price indices prevailing in that month and year;

b) 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 supplier);

c) The price variation clause should provide for a ceiling on price variations, particularly where escalations are involved. It could be a percentage per annum or an overall ceiling or both;

d) 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;

e) 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 applicable on the price as varied by the operation of the PVC;

f) No upward price variation will be admissible beyond the original scheduled delivery date for defaults on the part of the supplier. However, a downward price variation would be availed by the purchaser as per the denial clause in the letter of extension of the delivery period;

g) Price variation may be allowed beyond the original scheduled delivery date, by specific alteration of that date through an amendment to the contract in cases of force majeure or defaults by Government;

h) Where contract execution depends on imported (subject to customs duty and foreign exchange fluctuations) and/or locally sourced goods/ works/ services (subject to excise duty and other 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 taken into account in the calculation of the price of the imported item;

i) The clause should also contain the mode and terms of payment of the price variation admissible; and

j) The buyer should ensure a provision in the contract for the benefit of any reduction in the price in terms of the PVC being passed on to him.

k) An illustrative PVC clause is available in Annexure 2F.

l) Care should be exercised in contracts providing for price variation to finalise the price before final payment is made, after obtaining data and documents in support of claims for escalation, if any. Where no such claims are submitted by the suppliers, 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 of price variation indices and, in the event of any decrease of such indices during the currency of this contract, we shall promptly notify this to the purchaser and offer the requisite reduction in the contract rate."

m) 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.

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

Ordinarily, payments for services rendered or supplies made should be released only after the services have been rendered or supplies made. However, it may become necessary to make advance payments for example in the following types of cases :-

a) Advance payment demanded by firms holding maintenance contracts for servicing of Air- conditioners, computers, other costly equipment, etc.

b) Advance payment demanded by firms against fabrication contracts, turn-key contracts etc.

Such advance payments should not exceed the following limits :

1) Thirty per cent. of the contract value to private firms;
2) Forty per cent. of the contract value to a State or Central Government agency or a Public Sector Undertaking; or
3) in case of maintenance contract, the amount should not exceed the amount payable for six months under the contract.

Ministries or Departments of the Central Government may relax, in consultation with their Financial Advisers concerned, the ceilings (including percentage laid down for advance payment for private firms) mentioned above. While making any advance

payment as above, adequate safeguards in the form of bank guarantee etc. should be obtained from the firm.

iv) **Bid Securities *(Rule 170 of GFR 2017)*:** 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. When used, to safeguard against a bidder's withdrawing or altering its bid during the bid validity period in the case of advertised or limited tender enquiry, Bid Security (also known as Earnest Money) is to be obtained from the bidders except Micro and Small Enterprises (MSEs) as defined in MSE Procurement Policy issued by Central Purchase Organisation or the concerned Ministry of Department or Startups as recognized by Department of Industrial Policy & Promotion (DIPP)[30]. The bidders should be asked to furnish bid security along with their bids. Amount of bid security should ordinarily range between two percent to five percent of the estimated value. The amount of bid security should be determined accordingly by the Ministry of Department and indicated in the bidding documents. The bid security may be accepted in the form of Insurance Surety Bonds[31], Account Payee Demand Draft, Fixed Deposit Receipt, Banker's Cheque or Bank Guarantee from any of the Commercial Banks or payment online in an acceptable form, safeguarding the purchaser's interest in all respects. The bid security is normally to remain valid for a period of 45 (forty-five) days beyond the final bid validity period. Bid security should be released to unsuccessful bidders once the contract has been signed with the winning consultant at the earliest after expiry of final bid validity and latest on or before the 30th day after the award of the contract. However, in case of two packet or two stage bidding Bid securities of unsuccessful bidders during first stage i.e. technical evaluation etc should be returned within 30 days of declaration of result of first stage i.e. technical evaluation etc[32]. In exceptional cases, in place of a Bid security, Procuring Entities after seeking approval of the competent authority may

[30] Notified vide OM No.F.20/2/2014-PPD(Pt.) issued by Department of Expenditure dated 25.07.2017

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

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

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

a). **Performance Security (*Rule 171 of GFR 2017)***: 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 five (5) to ten (10) per cent of the value of the contract as specified in the bid documents [The value has been reduced to three (3) percent till 31.03.2023. Refer to para 6.1.2 (iv) (d) below]. Performance security may be furnished in the form of Insurance Surety Bond[33], account payee demand draft, fixed deposit receipt from a commercial bank, bank guarantee issued/confirmed from any of the commercial bank in India, or online payment in an acceptable form, safeguarding the purchaser's interest in all respects. In case of GTE tenders, the performance security should be in the same currency as the contract and must conform to Uniform Rules for Demand Guarantees (URDG 758) – an international convention regulating international securities [34] . Submission of Performance Security is not necessary for a contract value uptoRupees1 (one) lakh. Bank guarantees, either received in physical form or electronic form, should be verified for its genuineness following prescribed method for

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

[34] 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.

the same and the Organisations should do due diligence on genuineness of the Bank Guarantees before acceptance of the same

b). Performance Security is to be furnished by a specified date (generally 14 (fourteen) days after notification of the award) and it should remain valid for a period of 60 (sixty) days beyond the date of completion of all contractual obligations of the supplier, including warranty obligations.

c). 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, so make the process transparent and visible.

d). On account of the COVID-19 pandemic, that caused slowdown in economy, it is decided to reduce Performance Security from existing five to ten percent to three (3) percent of the value of the contract for all existing contracts till 31.03.2023. However, the benefit of the reduced Performance Security will not be given in the contracts under dispute wherein arbitration/ court proceedings have been already started or are contemplated. All tenders/ contracts issued/ concluded till 31.03.2023 should also have the provision of reduced Performance Security. In all contracts, where Performance Security has been reduced to three percent, the reduced percentage shall continue for the entire duration of the contract and there should be no subsequent increase of Performance Security even beyond 31.03.2023. Similarly, in all contracts entered into with the reduced percentage of Performance Security of three percent, there will be no subsequent increase in Performance Security even beyond 31.03.2023. Where, there is compelling circumstances to ask for Performance Security in excess of three percent as stipulated above, the same should be done only with the approval of the next higher authority to the authority competent to finalise the particular tender, or the Secretary of the Ministry/

Department, whichever is lower. Specific reasons justifying the exception shall be recorded[35].

e) As per Rule 172 (1) of General Financial Rules (GFRs) 2017, ordinarily payment for services rendered or supplies made should be released only after the services have been rendered or supplies have been made. The rule further provides for advance payment in case of maintenance contracts and fabrication contracts keeping adequate safeguards in the form of obtaining Bank Guarantees (BGs) from the firms.

f) The Government of India has recently approved a revamped Reform based and Results Linked Power Sector scheme, in which installation of smart pre-paid meters will be done across the country. Advance payment towards electricity usage by Government office through pre-paid metering is central to the envisaged reforms process. Government Departments can make advance payments to authorized DISCOMS for pre-paid metered electricity without insisting on any BGs. However, proper accounting of all the payments must be made[36].

v) **Proposed form of contract:** 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.vi) **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

[35]Notified vide OM No.F.9/4/2020-PPD issued by Department of Expenditure dated 30.12.2021

[36]Notified vide OM No.F.1/8/2021-PPD issued by Department of Expenditure dated 29.07.2021

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.

vii) **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 limited to less than a multiplier of the total value of the contract to be indicated in the RfP and special conditions of contract (the amount of such limitation 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.

viii) **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 least the same level of qualifications 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.

ix) **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.

x) **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.

(Rule 186 of GFR 2017)

xi) **Tender Documents**[37] **:**

a) The tender document is the fundamental document in the public procurement process as after award of the contract it becomes part of the contract agreement. All necessary provisions governing the contract should be clearly provided in the tender document. Examples are technical specifications, drawings, commercial terms and conditions including time period, inspection, payment terms, obligations of the procuring entity and the suppliers timeframe/ milestones, tax implications, compliance framework for statutory and other norms, dispute resolution. Provisions/ clauses in the tender document should be clear to avoid differences in interpretation and possible time overrun, cost overrun and quality compromises. Model Tender Documents[38] issued by the DoE may be used, with due customisation.

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

c) Procuring entities may issue instructions regarding appropriate delegation of authority for variations and changes in the scope of the contract.

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

e) Technical and Financial eligibility Criteria for the bidders are important in the public procurement process. They shall be clear and fair, having regard to the specific circumstances of the procurement. Appropriate parameters should be

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

[38] Model Tender Document for Procurement of Non-Consultancy Services issued by Department of Expenditure dated 20.10.2021

prescribed in the eligibility criteria for bidders, to enable selection of the right type of bidders in public interest, balancing considerations of quality, time and cost.

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

g) Pre-bid conference may be conducted for large value tenders by Procuring Entities. The Place and time of pre-bid conferences should be mentioned in the tender document and/ or publicized through the website of the procuring entity and/ or through newspaper publication.

6.3 Pre-proposal Meeting

i) In all cases of large value or complex assignments, a pre-proposal meeting may be prescribed in the RfP. The date and time for such a meeting should normally be after 15 to 30 (fifteen to thirty) days of issue of the RfP and should be specified in the RfP itself. During this meeting, the scope of assignment, responsibilities of either parties or other details should be clearly explained to the prospective bidders so that there is no ambiguity later at the time of submission of technical/financial bids. Where some significant changes are made in the terms/scope of the RfP as a result of the pre-bid meeting or otherwise considered necessary by the Procuring Entity, a formal corrigendum to the RfP may be issued, to all bidders. In such cases, it should be ensured that, after issue of the corrigendum, reasonable time (not less than 15 (fifteen) days) is available to the bidders to prepare/submit their bids. If required, the time for preparation and submission of bids may be extended, suitably.

ii) Pre-Notice Inviting Tender (NIT) Conference: In complex and innovative procurement cases or where the procuring entity may not have the required knowledge to formulate tender provisions, a pre-NIT conference may help the procuring entity in obtaining inputs from the industry. Such conferences should be widely publicised so that different potential suppliers can attend[39].

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

6.4 Receipt of Proposal

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 four weeks and not more than three months. In cases where participation of international consultants is contemplated, a period of not less than eight weeks should normally be allowed. If necessary, the Government Ministry/ Department shall extend the deadline for submission of proposals. 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. The technical bids will be opened immediately after closing of receipt of technical bids by the Consultancy Evaluation Committee (CEC). The financial proposals shall remain sealed and shall be opened publicly only for those firms that have qualified technically. Any proposal received after the closing time for submission of proposals (Late Bids) shall not be considered *(Rue 188 of GFR 2017)* and shall be returned unopened. Report of Bid-opening may be prepared as per Annexure 5. It may be noted that as per guidelines, now all procurement are to be done through e-Procurement. (Rule 187 of GFR 2017).

6.5 Consultancy Evaluation Committee (CEC)

6.5.1 For all cases having financial implications of more than Rs. 10 (Rupees Ten) lakh, 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. No member of CEC should be reporting directly to any other member of the CEC. 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 no need to constitute any other committee for technical evaluation, preliminary

evaluation, etc. Even in case of selection of a consultant by direct negotiations having financial implications more than Rs. 10 (Rupees Ten) lakh, the CEC shall negotiate with the consultant on technical and financial aspects. (separate committees may be constituted for separate assignments).

6.5.2 The representative of the user Department will 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.

6.5.3 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 system for evaluation of the criteria and sub-criteria (if so specified in the RfP) in the technical proposals.

6.5.4 After the review meeting, the CEC meets again 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 Data Sheet. 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:

i) 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;
ii) 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;
iii) 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.

6.5.5 Before starting the evaluation, the CEC members should ensure that they

i) have no conflict of interest;
ii) understand the rating and scoring system;
iii) have been provided with evaluation worksheets; and
iv) Agree on how to evaluate the proposals.

6.5.6 After the rating system has been defined and proposals have been opened, the evaluation process can begin. Members of the CEC should not engage in any communication with short-listed firms from the date of their appointment to the date on which the contract is awarded.

6.5.7 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 service providers have outstanding, advanced expertise in specific problem areas of the assignment that can promise an excellent execution of the assignment. The	Full Marks

Rating	Assessment	Detailed Evaluation, in case of unquantifiable Criteria	Marks
		service providers' staff includes top experts in the field of the assignment. The service providers are considered world-class specialists in the approaches and methodologies dealing with specific issues in the assignment. The service providers operate according to well-established Quality Management (ISO 9002 etc.) Procedures.	
B	Good	The service providers 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 service providers have experience with advanced approaches and methodologies for dealing with the specific requirements of the assignment.	80% of full Marks
C	Satisfactory	The service providers 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 service providers are experienced in the use of standard approaches and methodologies required for the assignment. The service providers' permanent staff are adequate.	60% of full Marks
D	Unsatisfactory	The service provider has experience which is not considered adequate for the quality needed by the Project.	30% of full Marks
E	Not Relevant	The service provider' experience has no or little relevance to the Project under consideration.	10% of full Marks

6.5.8 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.

6.5.9 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.

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.

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.

(Rule 189 of GFR 2017)

6.6 First Stage of Evaluation: Consideration of Responsiveness

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 or other key requirements of the RfP; it also allows CEC members to assess the overall clarity of the proposals and identify elements that will require special attention in the evaluation. Proposals without earnest money (bid security), unsigned and incomplete (i.e. when the required bid formats have not been submitted), not responding to the ToR fully and properly and those with lesser validity than that prescribed in the RfP will be summarily rejected as being non-responsive, before taking up the appraisal of the technical proposal for evaluation of

quality. CEC shall evaluate each proposal on the basis of its responsiveness to the ToR. A proposal shall be considered unsuitable and shall be rejected at this stage if it fails to comply with important aspects as described in the RfP. A technical proposal containing any material financial information shall also be rejected

6.7 Evaluation of the Quality – Technical Proposals

6.7.1 In the second stage evaluation process CEC members shall apply the criteria and sub-criteria set forth in the Data Sheet. Each proposal should be judged on its own merits and assigned an absolute - not comparative -grade. A comparative evaluation would single out the best proposal on a relative scale, but still could leave the Procuring Entity with a poor proposal. Instead, the evaluation should measure absolute quality scored against predefined criteria and sub-criteria. The Procuring Entity shall evaluate each technical proposal taking into account criteria as prescribed in the RfP: (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 of the technical proposals will be evaluated for the criteria prescribed in the RfP by awarding marks so as to make the total maximum technical score of 100 (one hundred). The criteria and weightage to each criteria or sub-criteria 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 2.

Table 3. A model scheme of maximum/minimum marks in terms of percentage

Rated Criteria	Range of Percentage for Score
1.Consultantcy firm's Specific Experience	5-10%
2. Methodology	20-50%
3. Qualification and relevant experience of Key Staff	30-60%
4.Transfer of Knowledge*	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 taken into account 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.

6.7.2 The CEC shall normally divide the above criteria mentioned in Table 2 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:

i) understanding of ToR (30% weightage);
ii) acceptability and detailing of methodology and work plan (50% weight);
iii) innovation, if it is important (20% weightage);

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).

As mentioned in para 6.2.2 earlier, in LCS, 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.

6.7.3 CEC members should carry out the evaluation independently and score the proposal based on the rating criteria.

6.7.4 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.

6.7.5 Next, 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.

6.7.6 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.

6.7.7 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 details 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.

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

6.8 Evaluation of Cost

6.8.1 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. In case of QCBS, 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, and indicate the date and time set for opening the financial proposals. In such a case, the opening date shall not be later than three weeks after the notification date. 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.

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

6.8.3 For the purpose of comparing proposals, the costs shall be converted to Indian Rupees as stated in the RfP. The CEC shall make this conversion by using the BC selling exchange rates for those currencies as per the exchange rate quoted by an official source, for example, the State Bank of India. The RfP shall specify the source of the exchange rate to be used and date of the exchange rate to be taken for comparison of costs. This date shall be the date of opening of technical bids

6.8.4 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

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

(Rule 190 of GFR 2017)

6.8.6 An Abnormally Low Bid is one in which the Bid price, in combination with other elements of the Bid, appears so low that it raises material concerns as to the capability of the Bidder to perform the contract at the offered price. Procuring Entity may in such cases seek written clarifications from the Bidder, including detailed price analyses of its Bid price in relation to scope, schedule, allocation of risks and responsibilities, and any other requirements of the bids document. If, after evaluating the price analyses, procuring entity determines that the Bidder has *substantially*

failed to demonstrate its capability to deliver the contract at the offered price, the Procuring Entity may reject the Bid/Proposal. However it would not be advisable to fix a normative percentage below the estimated cost, which would be automatically be considered as an abnormally low bid. Due care should be taken while formulating the specifications at the time of preparation of bid document so as to have a safeguard against the submission of abnormally low bid from the bidder.

6.9 Selection of the winning consultant

Before a final award is announced, the technical and financial credentials of the selected bidders/ consultant should be crosschecked to the extent feasible.

6.9.1 LCS Selection

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.

6.9.2 QCBS Selection (*Rule 192 of GFR 2017)*

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. 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. 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. The total score, both technical and financial, shall be obtained by weighing the quality and cost scores and adding them up. On the basis of the combined weighted score for

quality and cost, the consultant shall be ranked in terms of the total score obtained. The proposal obtaining the highest total combined score in evaluation of quality and cost will be ranked as H-1 followed by the proposals securing lesser marks as H-2, H-3 etc. The proposal securing the highest combined marks and ranked H-1 will be invited for negotiations, if required and shall be recommended for award of contract. In the event two or more bids have the same score in final ranking, the bid with highest technical score will be H-1

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

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

where

C = Evaluated Bid Price

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

T = the total Technical Score awarded to the Bid

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

X = weightage for the Price as specified in the BDS

The Bid with the best evaluated Bid Score (B) among responsive Bids shall be the Most Advantageous Bid

As an example, the following procedure can be followed. 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

The minimum qualifying marks were 75 (Seventy five) thus, all the three proposals were found technically suitable. Using the formula T/T_{high}, the following technical points are awarded by the evaluation committee:

A: 75/90 = 83 points

B: 80/90 = 89 points

C: 90/90 = 100 points

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.120.

B: Rs.100.

C: Rs.110.

Using the formula C_{low}/C, the committee gave them the following points for financial proposals:

A: 100/120 = 83 points

B: 100/100 = 100 points

C: 100/110 = 91 points

In the combined evaluation, thereafter, the evaluation committee calculated the combined technical and financial score as under:

Proposal A: 83x0.30 + 83x0.70 = 83 points.

Proposal B: 100x0.30 + 89x0.70 = 92.3 points

Proposal C: 91x0.30 + 100x0.70 = 97.3 points.

The three proposals in the combined technical and financial evaluation were ranked as under:

Proposal A: 83 points: H-3

Proposal B: 92.3 points: H-2

Proposal C: 97.3 points: H-1

Proposal C at the evaluated cost of Rs.110 (Rupees One hundred and ten) was, therefore, declared as winner and recommended for negotiations/approval, to the competent authority.

6.9.3 SSS selection

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.

6.10 Negotiations and Award of Contract

6.10.1 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, government ministry/department'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.

6.10.2 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.

6.10.3 The name of the successful bidder along with details of costs, and so on, shall be posted on the departmental website after award of work to the successful bidder has been made and communicated to him in writing.

6.11 Rejection of All Proposals, and Re-invitation

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

6.12 Confidentiality

Information relating to evaluation of proposals and recommendations concerning awards shall not be disclosed to the consultants who submitted the proposals or to other persons not officially concerned 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 by RfP document.

6.13 RfP, Evaluation and Award Stage – Risks and Mitigation

Risks	***Mitigation***
No key expert proposed from the main qualified partner in JV: It is seen that though the shortlisting and contract is won by a JV on the basis of qualifications of the main qualified partner firm, but no key experts (nor team	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

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.	this is not complied with it could be a ground for the proposal being termed as non-responsive.
Request for substitution of key experts at the time of contract negotiation: After the firm is invited for negotiation, it asks for substitution of key staff in the 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
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.

Chapter 7: Special Types of Engagements

7.1 Single Source Selection (SSS)

7.1.1 Selection of consultants/ service providers 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.

7.1.2 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/ service provider should take the likelihood of continuation into account. Continuity in the technical approach, experience acquired, and continued professional liability of the same consultant/ service provider may make continuation with the initial consultant/ service provider preferable to a new competition subject to satisfactory performance in the initial assignment. For such downstream assignments, the Procuring Entity shall ask the initially selected consultant/ service provider to prepare technical and financial proposals on the basis of ToR furnished by the Procuring Entity, which shall then be negotiated.

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

7.1.4 For selecting a consultant/ service provider under this method, the Procuring Entity should prepare a full justification and take the approval of the competent authority as per the Annexure 2B: Delegation of Powers.

7.1.5 While selecting the consultant/ service provider under this method, the Procuring Entity shall ensure that the consultant/ service provider 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.

7.1.6 As per CVC guidelines, 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.

7.2 Selection of Individual consultants/ service providers

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

i) Teams of personnel is not required;
ii) No additional outside professional support is required, and
iii) The experience and qualifications of the individual are the paramount requirement.

7.2.2 The procedures for selecting individual consultants/ service providers are similar to, but much simpler than, those for selecting teams of consultants/ service providers from a firm. Process of selection of Individual consultants/ service providers entails:

i) Preparing a Consultancy and other services package including the ToR, time frame, number of person-months, budget, EoI Short-listing criteria and getting it approved by the CA;
ii) **Advertising:** Advertisement in such case should be given on Central Public Procurement Portal (CPPP) at www.eprocure.gov.in and on Government E-Market (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.
iii) **Method of Selection:** They shall be selected through comparison of qualifications of at least three candidates among those who have expressed interest in the assignment or have been approached directly by the Procuring Entity. Candidates who are already employed with the Procuring Entity shall meet all relevant qualifications and shall be fully capable of carrying out the

assignment. 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.

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

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

7.3 Selection of Specialized Agencies/ Institutions

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

7.3.2 In some cases, the agency or institution has access to special expertise or special backup and support facilities that make it worthwhile considering recruitment on an SSS basis. In such cases, there must be full justification that the use of SSS is in the best interests of Procuring Entity.

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

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

7.4 Selection of Nongovernmental Organizations (NGO)

7.4.1 Nongovernmental organizations (NGOs) may be if they express interest, if the Procuring Entity finds their qualifications satisfactory. Short lists for assignments typically attributed to NGOs because they, for example, emphasize experience in community participation and in-depth local knowledge 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:

i) History of work with grassroots communities and evidence of satisfactory performance;
ii) Familiarity with participatory development approaches and low-cost technologies;
iii) Experienced staff conversant with the cultural and socioeconomic dimensions of beneficiaries;
iv) Committed leadership and adequate management;
v) Capacity to co-opt beneficiary participation

7.4.2 Procuring Entities may select NGOs using SSS, 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.

7.5 Procurement Agents

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

7.6 Inspection Agents

Procuring Entities may hire inspection agents to inspect and certify goods before shipment or on arrival in the Procuring Entity country. The inspection by such agents usually covers the quality and quantity of the goods concerned and the reasonableness of the price. Inspection agents are selected using QCBS, with cost being allocated a weight of up to 50 (fifty) percent. Payment is usually based on a percentage of the value of goods inspected and certified.

It has been brought to the notice of Department of Expenditure that in the contracts signed with suppliers by some of the Ministries/ Departments have clauses of pre-inspection at the firm's premises, where there is a provision that the suppliers or the vendors will pay for the travel, stay, hospitality and other expenses of the Inspecting officials. This is not in keeping with need to safeguard the independence of the inspecting teams. Such provisions win contracts need to be discouraged, so that Inspections are not compromised. Necessary steps may be taken to strictly avoid such provisions in the contracts with suppliers/ vendors[40].

7.7 Financial Advisors

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

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

[40] Notified vide OM No.F.11/13/2017-PPD issued by Department of Expenditure dated 24.10.2017

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

i) a lump-sum retainer fee to reimburse the consultant/ service providers for services made available; and
ii) A success fee, which is either fixed or preferably expressed as a percentage of the value of the privatization transaction.

7.7.3 Depending on the type of activity under 7.7.1 and the circumstances of the Procuring Entity, the 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/ service providers must compete only on the success fee as a percentage of the value of the privatization transaction. For QCBS (notably for large contracts), cost may be given a weight higher than recommended for standard assignments (such as 30 (thirty) percent), or the selection may be based on LCS selection. The 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/ service providers involved. Therefore, success fees are more likely to be adopted at the transaction stage, because by that time the Procuring Entity's objective is to maximize revenue.

7.8 Auditors

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

7.9 Public competition for Design of symbols/logos

7.9.1 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:

i) Design competitions should be conducted in a transparent, fair and objective manner;
ii) 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;
iii) 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;
iv) A detailed Competition Notice should be drawn up and made public. The notice should, inter alia, details on the following:

    a) The objectives of the design competition and the key features expected in the proposed design;
    b) Qualification criteria, if any, for participation in the competition;
    c) 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).
    d) The manner of submission of entries and the format/ details etc. expected with the design;
    e) Whether multiple designs can be submitted by one participant;
    f) The last date and time for submission;
    g) Details of entry fees, if any and the manner of submission of the same;
    h) Expected date for announcement of results and the manner in which the results will be intimated;

i) The number of prizes to be awarded and the amount payable for the successful design(s).

j) 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.

k) 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.

7.9.2 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.

7.9.3 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.

(Rule 196 of GFR 2017)

Chapter 8: Monitoring Consultancy/ Other services Contract

8.1 Monitoring of the Contract

The ministry/department awarding the contract should be involved throughout in monitoring the progress of the assignment so that the output of the assignment is in line with the Procuring Entity's objectives laid down in the Contract. Suitable provision for this should be made in the contracts which should also take care of the need to terminate/ penalize the contractor or to suspend payments till satisfactory progress has not been achieved. A Contract Monitoring Committee (CMC) shall be formed by the Procuring Entity to monitor the progress. The Procuring Entity should also designate a counterpart Project Manager with adequate technical qualification, managerial experience, and power of authority as the nodal person to interact with the consultant/ service provider's team. A system of reporting may be developed so that a statement covering all ongoing consultancies/ Services contracts may be submitted within the Department in detail and from each Department in summary form to the Ministry, 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)

8.2 Contract Monitoring Committee – (CMC)

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 assignment. 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/ service providers 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.

For the assignments which are very complex and/or are of highly technical nature, the Procuring Entity may decide to appoint another qualified consultant/ service provider to assist the CMC in carrying out its functions. Monitoring the progress of Assignment entails following activities:

i) Issuing the notice to proceed;
ii) Review of the inception phase;
iii) Deciding on possible modifications to scope of work and issuing contract variations;
iv) Monitoring progress of assignment, Monitoring that key experts are actually employed; reports and their review including review of draft final report and the final report to ensure that assignment (whether time-based or lump-sum) is completed in accordance with the contract;
v) Billing, payment and monitoring the expenditure vis-à-vis progress;
vi) Resolving problems faced by consultants/ service providers and dealing with disputes and arbitration;
vii) Terminating services prior to the end of the contract; and
viii) Release of final payment and guarantees (if any) and closing the contract;
ix) Post contract evaluation.

8.3 Issuing Notice to Proceed - consultant/ service provider's Mobilisation

A notice to proceed is required to initiate consultancy/ other 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/ service provider or the Consultancy team's members at the premises for the Procuring Entity, if so required under the description of services. The Procuring Entity and the consultant/ service provider agree on the detailed content of inception, progress and final report.

Before issuing notice to proceed, the Procuring Entity and the consultant/ service provider should check the following:

i) Supervising/monitoring arrangements (including CMC) are in place;
ii) Procuring Entity's counterpart staff (including counterpart project manager) are nominated and are available;
iii) Facilities to be provided by the Procuring Entity as per the contract are ready for use by the consultant/ service provider;
iv) All parties involved in the assignment (users, security team and other relevant departments) are informed;
v) All JV members and key experts needed at the beginning of the assignment are effectively participating in the assignment as required by the Contract;
vi) Guarantees and advance payments are implemented;
vii) Data and background information are made available; and
viii) All authorisations (if needed) are provided.

8.4 Consultancy Services - 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/ service provider's experience and observations during this period, and often a workshop or seminar is held to discuss it. Resulting from the factual study of ground situation by the consultants/ service providers, following issues will need resolution at end of the inception phase:

i) Overall Scope of Work;
ii) Work Plan and Staffing Schedule;
iii) Specific Terms of Reference;
iv) Access to Professional and Logistic Support;
v) Working Arrangements and Liaison

8.5 Reporting of Progress

The timing, nature, and number of reports that the consultant/ service provider should provide are normally contained in the Consultancy and other services contract. If the assignment is of a routine nature over a long 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.

8.6 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.

8.7 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.

8.8 Unsatisfactory Performance

Poor performance may involve one or more particular staff from the consultant/ service provider's team, or the whole team or non-participation by the main qualifying JV member. Based on the provisions of the contract, the Procuring Entity will advise the consultant/ service provider to take the necessary measures to address the situation. Poor performance should not be tolerated; therefore, the consultant/ service provider 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/ service provider fails to take adequate corrective actions, the Procuring Entity may take up the issue with the top management of the consultant/ service provider and issue notice to rectify the situation and finally consider terminating the contract.

8.9 Delays

Consultancy and other services may be delayed for a variety of reasons. The consultant/ service provider should notify the Procuring Entity and explain the causes of such delays. If corrective action requires extra work and the delay cannot be attributed to the consultant/ service provider, the extra work should be reimbursed in accordance with the contract.

8.10 Issuing Contract Variations

8.10.1 The formal method of making and documenting a change in the Consultancy and other services contract is through a contract variation. 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. There are few Consultancy and other services contracts of any type that do not require a contract variation at one time or another. 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. Normally, the request for contract variation is prepared by the consultant/ service provider or Consultancy/ service provider firm and submitted to the Procuring Entity. If the variation entails an increase in the contract amount by more than 10% (ten percent), CA's (Competent Authority) prior approval is required. Post contract variation carried out in the form of an amendment shall be published by

the purchaser on the same e-procurement portals/Websites that were used for publication of the original tender enquiry

8.10.2 To take care of any change in the requirement during the contract period of IT Projects as well, there could be situations wherein change 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 vendor 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' 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 (both technical as well as financial) should be considered as final.

8.11 Substitution of Named Key Personnel

8.11.1 One common type of variation involves a substitution of key personnel identified by name in the contract. Sometimes a change of personnel is unavoidable because of resignation, illness, accident, inadequate performance, or personality conflict. The contract must specifically make provision for terms and conditions under which the staff can be replaced, about the remuneration to be paid etc. When personnel are to be replaced, certain factors need to be considered:

i) Any replacement should be as well qualified or better qualified than the person being replaced;
ii) The remuneration should not be more than that was agreed upon for the person being replaced;
iii) The consultant/ service provider should bear all costs arising out of or incidental to the replacement (such as airfares for the substitute expert).

8.11.2 Substitution of key personnel during execution of consultancy contract:

i) Quality in consultancy contracts is largely dependent upon deployment and performance of key personnel, during execution of the contract.

ii) The following conditions should be incorporated in tender documents for procurement of consultancy services:

a) Substitution of key personnel can be allowed in compelling or unavoidable situations only and the substitute shall be of equivalent or higher credentials. Such substitution may ordinarily be limited to not more than 30% of total key personal, subject to equally, or better, qualified and experienced personnel being provided to the satisfaction of the procuring entity.

b) Replacement of first 10% of key personnel will be subject to reduction of remuneration. The remuneration is to be reduced, say, by 5% of the remuneration which would have been paid to the original personal, from the date of the replacement till completion of contract.

c) In case of the next 10% replacement, the reduction in remuneration may be equal to (say) 10% (ten percent) and for the third 10% replacement such reduction may be equal to (say) 15% (fifteen percentage). In case such percentages are not relevant, or for some other practical considerations, for a particular contract, the procuring entity may formulate a suitable mechanism following the above logic, which should be specified in the tender documents.

iii) Public authorities may make use of IT enabled systems at the designated place of deployment to ensure presence of key personnel as for the schedule of deployment.

8.12 Billing and Payments

8.12.1 Payment is made to the consultant/ service provider based on a schedule agreed on in contract, often based on certain milestones or outputs. The consultant/ service provider submits an invoice to the Procuring Entity detailing the expenditures for personnel and out-of-pocket items. The Procuring Entity then reviews the documentation and forwards it to Paying Authority for ultimate payment. In normal practice, if any item needs further scrutiny before the Procuring Entity can approve payment, payment of undisputed items will be made. But payment of any disputed items will be withheld until the circumstances are clarified.

8.12.2 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 Consultancy firm. 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/ service provider liquidates the previous advance. The advance payment security is then released. In some contracts there may be provision for mobilization fee to be paid.

8.13 Disputes and Conflicts

8.13.1 Disputes between the consultant/ service provider and the client may arise for a number of reasons. This could relate to technical and administrative matters such as interpretation of contract, payment for services or substitution of key experts – all of which should be dealt with promptly and amicably between the contracting parties in terms of contract provisions. They may be the result of delays prompted by weaknesses on the part of the consultant/ service provider or the Procuring Entity; by a lack of funds; by delays in getting key approvals, data, or information; or by causes beyond anyone's control such as natural disasters. They may be the result of deviations from the Scope of Work or work plan by the consultant/ service provider or out-of-course requests for deviations by the Procuring Entity.

8.13.2 All reasonable efforts should be made to avoid disputes in the first place; both parties should attempt to deal with problems as they arise on a mutually constructive basis. (This may include the repatriation of consultant/ service provider staff if necessary or a change in the personnel of the Procuring Entity's CMC) If this is not possible, GCC sets clear procedures for dealing with disputes. This entails provision of a notification of dispute by one party to the other, and provision for a mutual resolution at higher levels of authority within the consultant/ service provider and the Procuring Entity. Finally, if the dispute cannot be amicably settled between the consultant/ service provider and the Procuring Entity, then provision is made for arbitration under the Arbitration Clause. The award decried by arbitration tribunal is binding.

8.13.3 **Arbitration and dispute resolution**

i). During operation of the contracts, issues and disputes arising due to lack of clarity in the contract become the root cause of litigation. Litigation has adverse implications on the timelines and overall cost of the project. Before resorting to arbitration/litigation, the parties may opt for mutual discussion, mediation, and Conciliation for the resolution of disputes.

ii). Arbitration /court awards should be critically 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.

iii). 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 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.

iv). 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. (v) 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

v). 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 a 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[41].

8.13.4 **Arbitration Awards**

i) 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.

ii) 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 subsequent to settlement of lenders' dues and completion of projects of the Ministry/ Department may be allowed to be

[41] 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

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.][42]

8.14 Force Majeure

8.14.1 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.

8.14.2 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.

8.15 Terminating Services Prior to End of Contract

8.15.1 At times, a decision is taken to terminate a contract prior to its conclusion and the completion of the Consultancy and other services assignment. This may be for various reasons, for example:

[42]New rule 227A of GFR, 2017 notified vide OM No. F./1/9/2021-PPD issued by Department of Expenditure dated 29.10.2021.

i) **Termination due to External factors:** External factors (like natural disasters) which are beyond the control of the consultant/ service provider or the Procuring Entity;

ii) **Termination for convenience:** The Procuring Entity may also terminate a contract for convenience for reasons like shortage of budget;

iii) **Termination due to breach of contract:** Failure/ inability of one party or the other.

8.15.2 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 Consultancy team.

8.15.3 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, the payment by the Procuring Entity of any legitimate outstanding fees and costs to the consultant/ service provider, and the payment of legitimate costs to wind-up the Consultancy/ other service team(unless the termination was occasioned by the default of the consultant/ service provider).

8.15.4 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.

8.16 Concluding the Assignment

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/ service provider 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/ service provider should submit the final claim promptly after completing the assignment. The standard consultant/ service provider contract states that the claim must be submitted within 60 (sixty) days of completion

8.17 Monitoring of Consultancy Contracts – Risks and Mitigation	
Risks	***Mitigation***
***Substitution of key experts in implementation*:** When the contract progresses, over a period of time, the request for substitution of key staff is made by the firm citing reasons of non-availability, health, and so on.	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 "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.
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/ service providers for the assignment to safeguard against excessive prolonging of time and payments. After this limit is reached, or the period of completion is exceeded, CA should review justification for extension of the contract. One of the ways to prevent cost overruns in time based contract is to require Procuring Entitys 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 careful authorise mobilisation and demobilisation of key experts, and examine the time sheets and other reimbursable expenditures.

Chapter 9: Procurement (Outsourcing) of Other (Non-consultancy) services

To make this chapter self-contained and complete some of the relevant paras are repeated wherever required. Any circumstances which are not covered in this manual for procurement of non-consulting services, the Procuring Entity may refer to Manual of Policies and Procedures for Procurement of Goods and not to the provisions for procurement of consulting services.

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

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

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

9.1.3 If the other services involve construction, fabrication, repair, maintenance, overhaul, renovation, decoration, installation, erection, excavation, dredging, and so on, of Civil assets, then it should be handled on the lines of procurement of Works. In case of fabrication, repair, maintenance, overhaul, renovation, decoration, installation, erection and so on, of mechanical, electrical or ICT assets – e.g. Annual Maintenance Contracts or installation/ commissioning of Machinery and Plant and so on, it may be handled on the lines of Procurement of Goods.

9.1.4 Any circumstance which is not covered in this chapter for procurement of non-consulting services, the Procuring Entity may refer to the Manual of Policies and Procedures for Procurement of Goods.

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

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

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

Authorities competent to procure (outsource) Other (Non-consultancy) Services and their Purchase Powers is covered in para 1.4 in Chapter 1.

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

In the interest of economy, efficiency and to provide more effective delivery of public services, GFR, 2017 permits Ministries/ Departments to procure/ outsource auxiliary and support services. Approval of the competent authority should be obtained before engaging service providers. We may justify need for Procurement of other services on consideration of:-

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

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

9.4 Principles for Public Procurement of other (non-consultancy) services:

9.4.1 Other principles of Public Procurement as mentioned in Para 1.6 in chapter-1, are also equally applicable to Procurement of other services. Additional principles of procurement needed to ensure value for money in of procurement of other services are to ensure:

i) Services to be procured should be justifiable in accordance with Para 1.10 in Chapter-1;
ii) In other (non-consultancy) services an Activity Schedule (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;
iii) Equal opportunity to all qualified service providers to compete should be ensured
iv) Engagements should be economical and efficient; and
v) Transparency and integrity in the selection process (that is, proposed, awarded, administered, and executed according to highest ethical standards);

9.4.2 **Period of Contract:** A very short period of contract would require spending needless administrative time in repeating the exercise at short intervals while a very lengthy contract period may affect service quality. Therefore, in the normal course, the period of initial contract may be fixed normally for two years.

9.4.3 **Extension of Contract:** The clause of extension of contract beyond the period of two years may be for a further period of one year subject to the service provider providing satisfactory service. Thereafter fresh bidding for new tender for the said service may be undertaken. In all cases where the Service Provider has been levied a cumulative penalty of 5 percent of the total contract value, extension beyond the initial period of two years may not be considered.

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

i) system determined vendor selection.

ii) purchaser can select the vendor.

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

9.4.5 **Past Experience:** Bid documents may provide for a qualification criteria considering past experience. Normally past experience in supply of service at a particular station or to Central Government Ministries/ Departments is considered too restrictive. However, in case such restriction is considered essential the same may be provided for in the bid documents, duly recording reasons for such decisions on the file.

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

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

9.5 Types of Contracts in Other (Non-consultancy) Services

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

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

9.6.1 Unlike Procurement of Consultancy Services, procurement of other services is done by a simpler process akin to those of procurement of Goods and Works. *(Rule 206 of GFR 2017)*. It is normally done in a Single Stage (RfP) Process containing Technical and Financial bids. However in highly technical and complex services, where quality is important (say in studies like seismic surveys, airborne data acquisition etc) a pre-qualification (PQB) process may be done on the lines of procurement of Goods and Works.

9.6.2 In procurements above Rs 10 (Rupees Ten) Lakhs, it should normally be an advertised RfP. For procurement below Rs 10 (Rupees Ten) Lakhs, RfP can be issued to a selected shortlist of likely service providers. To start with preparation of a long list of potential service providers 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 service providers as identified above and shortlist the prima facie eligible and capable service providers from the long list. The number of service providers in this moderated long-list should be more than three. To smoothen this shortlisting of service providers for projects below Rs 10 (Rupees Ten) Lakhs, Procuring entities

who do frequent procurement of non-consultancy services, may consider preparation of a Panel of qualified service providers, after evaluation of their credentials, on the lines of registration of vendors in procurement of goods. *(Rule 201 of GFR 2017)*

9.6.3 In procurement of other (non-consultancy) services normally system of selection used is lowest price (L-1) basis among the technically responsive offers, as in procurement of Goods/ works. Under very special circumstances Single Source Selection may also be used. *(Rule 204 of GFR 2017)*

9.7 One Stop Government e-Marketplace (GeM)

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

9.7.2 Ministry of Commerce have developed an online Government e-Market Place for common use goods and services. The procurement process on GeM is end to end from placement of supply order to payment to suppliers. This is to ensure better transparency and higher efficiency. All the process will be electronic and online. The Procurement of Goods and Services by Ministries or Departments will be mandatory for Goods or Services available on GeM.

9.7.3 **Products and services are listed on GeM by various suppliers as on other e-Commerce portals:** The registration of suppliers on GeM is online and automatic based on PAN, MCA-21[43], Aadhar authentication etc. The suppliers offer their products on GeM and the Government buyer are able to view all the products

[43] Ministry of Corporate Affairs Project to fully automate all processes related to enforcement and compliance of the legal requirements under the Companies Act, 1956

as well as compare them. Tools of reverse bidding and e-auction are also available which can be utilised for the procurement of bulk quantities.

9.7.4 **Demand Aggregation:** The best prices to a user can be available if same requirement demands of various organizations are aggregated. This acts as an incentive for the supplier to quote their best price. For the same products, the demand of various Govt. Departments can be clubbed together and reverse auction done on the basis of aggregated demand which will provide the best prices to the Govt. Department.

9.7.5 **Authority of procurement through GeM:** Procurement through GeM has been authorised as per GFR, 2017 Rule 149:-

*"**Government e-Market Place (GeM):*** Government of India has established the Government e-Marketplace (GeM) for common use Goods and Services. GeM SPV will ensure adequate publicity including periodic advertisement of the items to be procured through GeM for the prospective suppliers. The Procurement of Goods and Services by Ministries or Departments will be mandatory for Goods or Services available on GeM. The credentials of suppliers on GeM shall be certified by GeM SPV. The procuring authorities will certify the reasonability of rates. The GeM portal shall be utilized by the Government buyers for direct on-line purchases as under[44]

i) Up to {Rs.25,000/-}[45] through any of the available suppliers on the GeM, meeting the requisite quality, specification and delivery period (in case of procurement of Automobiles only the ceiling of direct purchase will be Rs.30 lakh instead of Rs. 25,000/-[46]);

ii) Above Rs.25,000/- and up to Rs.5,00,000/- through the GeM Seller having lowest price amongst the available sellers (excluding Automobiles where current limit of 30 lakh will continue), of at least three different manufacturers, on GeM, meeting the requisite quality, specification and delivery period. The

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

[45] In case of procurement of Automobiles only, the ceiling of direct purchase will be Rs. 30,00,000/- instead of Rs. 25,000/-. Refer DoE OM No. F.1/26/2018-PPD dated 09.08.2021.

[46]Notified vide OM No. F.1/26/2018-PPD dated 9th August, 2021.

tools for online bidding and online reverse auction available on GeM can be used by the Buyer even for procurements less than Rs 5,00,000.

iii) Above Rs.5,00,000/- through the supplier having lowest price meeting the requisite quality, specification and delivery period after mandatorily obtaining bids, using online bidding or reverse auction tool provided on GeM (excluding Automobiles where current limit of 30 lakh will continue).[47]

iv) *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 terms and conditions of GeM.*

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

vi) 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.

vii) The Government Buyers may ascertain the reasonableness of prices before placement of order using the Business Analytics (BA) tools available on GeM including the Last Purchase Price on GeM, Department's own Last Purchase Price etc.

viii) A demand for goods 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."

47 Amended vide DoE OM No. F.1/26/2018-PPD dated 02.04.2019.[Accessible from https://doe.gov.in/sites/default/files/Amendments%20in%20General%20Financial%20Rules%20%28GFR%29%202017.pdf]

It may be noted that it is the responsibility of the Procuring Entity to do due diligence for ensuring reasonableness of rates.

9.7.6 **GeM Portal:** https://gem.gov.in. Detailed instructions for user organization registration, supplier registration, listing of products, terms and conditions, online bidding, reverse auction, demand aggregation, call centre, etc. are available on this portal.

9.7.7 **Payment Procedure in GeM:** The payment procedure in GeM is governed by O.M. No. F.26/4/2016-PPD dated 23rd January, 2020[48] issued by D/o. Expenditure, M/o. Finance, New Delhi. The following procedures are prescribed for making payments to the Sellers/ Service Providers in GeM which shall be complied and adhered to by all concerned for different type of contracts such as:

a. Supply of Goods & Services

b. Supply, Installation, Testing and Commissioning of Goods

c. Supply, Installation, Testing, Commissioning of Goods and Training of operators and providing Statutory Clearances required (if any)

i) In respect of contracts for Supply of Goods, 100% payment including GST should be made after receipt and acceptance of Goods and generation of "Goods CRAC" (Consignee Receipt and Acceptance Certificate) subject to recoveries, if any, either on account of short supply and Liquidated Damages etc. for delay in supply.

ii) In respect of contracts for Services, payment should be made as per periodicity defined in the contract i.e. Monthly, Quarterly or any other pre-defined payment periodicity. 100% payment including GST for the particular payment cycle should be made after receipt and acceptance of the Services and generation of "Service CRAC" (Consignee Receipt and Acceptance Certificate) subject to recoveries, if any, either on account of short supply,

48Accessible from https://doe.gov.in/sites/default/files/Procedures%20for%20payments%20for%20Goods-Services%20to%20sellers-%20service%20providers%20in%20Government%20e-Marketplace%20%28GeM%29%20-%20through%20PFMS%20and%20by%20non-PFMS%20Agencies-Entities%20%28NPAE%29_1.pdf

SLA (Service Level Agreement) deviations and Liquidated Damages for delay in supply etc.

iii) In respect of contracts for Supply, Installation, Testing, Commissioning of Goods and Training of operators etc. the complete cost break-up indicating Basic price, GST, Installation and commissioning charges, Incidental Services, training etc. is to be indicated separately in the bid. In order to cater to installation intensive products, the different configurable payment terms will have to be incorporated in GeM functionalities (depending upon the quantum of installation and turnkey work required).

a. First Milestone - On delivery of goods: 80 to 90% payment (lower initial payment if installation scope is very extensive) of the basic price of Goods along with 100% GST on the Goods Price but excluding installation, testing and commissioning and other charges should be paid after receipt Goods and generation of "Delivery CRAC for initial payment". This will be issued after physical verification of quantity only but without commitment about quality or functionalities etc. which would be verified after installation/ commissioning etc. While creating the bid, Buyer shall have functionality to define the percentage of payment linked with delivery of Goods.

b. Second Milestone - On Acceptance after installation, testing and commissioning : Balance 10 % to 20% payment of the basic price of Goods and 100% charges for installation, testing and commissioning and other charges along with GST on these charges should be paid after installation and final Acceptance of Goods and generation of "Installation CRAC" to be issued by the End User/ Consignee. Recoveries, if any, either on account of short supply and Liquidated Damages etc. for delay in supply and I or installation etc. shall be made from the payment due under this milestone. While creating the bid, Buyer shall have functionality to define the deliverables in this milestone and the percentage of payment linked with this milestone.

c. Third (and subsequent) milestones - Payment of Incidental Costs: 100% Payment related to Incidental costs at consignee site towards

Incidental Services (such as providing training, or other work/ service as per scope defined in the contract), to be paid on submission of "Final CRAC" by the End User / Consignee. While creating the bid, Buyer shall have functionality to define the deliverables in this milestone. In exceptional cases, Buyer may choose to split this milestone as required.

iv) In case of contracts for Supply, Installation, Testing, Commissioning of Goods bundled with one or more Services such as Comprehensive Maintenance, Human Resource hiring for pre-defined time periods etc., the payments for Goods shall be governed by Para (iii) above while payment for Services shall be Governed as per Para (ii) above.

v) In case of Milestone Based Payments, separate timelines / delivery periods for each milestone will be provided. In case of supply and installation contracts, the delivery period may be specified by filling up the blanks as under:

a. First Milestone - For delivery of goods at site:-----days/ months from date of issue of contract with provision for staggered / multiple delivery period for same consignee.

b. Second milestone - Installation, Testing and Commissioning etc. of goods: -days / months from the date of handing over of site complete in all respect as per contract.

c. Third (and subsequent) milestones - Incidental Services etc.: - days after installation and commissioning.

vi) The payments on GeM are primarily categorized under two heads i.e. through PFMS or GeM Pool Account. The detailed instructions for both type of payment system are as under:

A. **Payments through PFMS:**

1. The Central Government Buyer i.e. the concerned Programme Division or Administrative Unit in a Ministry/ Department will place the Contract online after taking prior approval of the Competent Authority for procuring a particular Good or

Service. Inter-alia, the Contract form will also contain the following fields including fields required for payment related processes:

a). Administrative approval of the Competent Authority indicating the designation of the approving authority,

b). Approval of Competent Financial Authority indicating designation of the officer;

c). Whether IFD concurrence required? (Yes/No)

d). If yes, then IFD Diary No. & Date

e). Budget Head of Account and Year, Major/Minor/Sub-head/Detailed Head/Object Head as in Detailed Demands for Grants.

f). Budget availability as on date (Yes/No)

g). Amount (Contract Value)) Rs (Budget to be blocked)

h). If expenditure is committed for more than a year, the year-wise details (portal should generate a Liability Register for recording multi-year payment commitments, the format for which is prescribed in Rule 53 of the GFR)

2. When these fields are duly captured, the Buyer will be in a position to place the Contract online. The GeM portal will generate a Sanction Order and the Contract which will be digitally/e-signed by the Buyer. These documents duly digitally/e-signed by the Buyer will be made available online to the concerned DDO and PAO or Paying Authority as defined in the contract and Seller/ Service Provider. The DDO and PAO/Paying Authority shall have access to the Contract online in order to ensure that the Bill is generated at the stage of payment in accordance with the contractual provisions.

3. The GeM portal will send the Sanction Order details to PFMS.

4. On issue of Sanction order and placing the Contract for goods, the full amount required from the relevant Budget Head should be blocked in the PFMS. In cases of Services, amount should be blocked for one payment cycle as defined in the contract. Before releasing payment for any cycle, the funds required for the next payment cycle should be blocked so as to ensure availability of payable funds for the next payment cycle. Blocked fund will be treated as accrued expenditure by PFMS for the financial year in question and it will not be withdrawn for any other purpose

other than the one for which the amount is Blocked. In order to alleviate the operational issues as well as to ensure optimum utilization of available funds, the following additions[49] are made in para 4.17.7 (vi) (A) (4)

a. The provision of fund blocking equivalent to full contract value is applicable only for contracts with delivery periods of up to 20 days. For contracts with longer delivery periods, fund blocking of appropriate amounts shall be initiated at a date 20 days prior to expected delivery date or on the date of invoice generation by the Seller in GeM whichever is earlier. In case of non-availability of required funds at that point of time, both buyer and seller shall be alerted, and the Buyer, the HoD, the DDO/ PAO and finally up to AS&FA of concerned Ministry/ Department shall be alerted by email and SMS by GeM. On failure in making available the required funds in the appropriate head of account within 10 days, seller has right to decline supply and to seek contract cancellation without any administrative action against the seller. Also, in such a case, any delay in delivery by the seller will also become exempt from the provision of Liquidated Damages.

b. Functionality to un-block the blocked funds in exceptional cases/ emergency cases with some validations: Head of Department (HoD) of the organization on GeM can unblock certain % of blocked funds of a contract (may be upto 100%) with the approval of associated finance of the Ministry/ Department or the CPSE in exceptional cases/ emergency cases after giving a clear undertaking that he will ensure timely availability of funds and unblocking will not lead to delay payments to sellers. However, such unblocking will not allowed if the seller has already raised an invoice (before 1st March of Financial Year).

c. **Funds for the relevant financial year should be blocked only if the delivery period is such that the delivery is scheduled before the 1st of March of that financial year.** If the delivery is scheduled in March of that financial year or scheduled in the next financial year then

[49] Notified vide OM No. F.6/18/2019.PPD issued by Department of Expenditure dated 29.12.2020

fund blocking is optional for buyer in current financial year and mandatory only in the next financial year in the 1st week of April.

5. Should it be necessary to amend the Contract, such Amendment in the Contract with due approval of the Competent Authority and acceptance of the Seller/Service Provider (wherever required) shall be made available to the Seller /Service Provider/DDO/PAO/Paying Authority on the GeM portal.

6. Similarly, in the event of complete/ partial cancellation of the Contract the information would be made available to the Seller/Service Provider, DDO and PAO on the GeM portal. In that event, funds so blocked earlier would be released to the extent of cancelled amount.

7. The Programme Division/Administrative Unit in the Ministries/Departments shall periodically review the blocked budget to ensure that funds are utilized within the same financial year.

8. The Performance Security (if any)would be obtained from the Seller/Service Provider as per Contract, and their details would be reflected on the GeM portal by the Buyer.

9. **Provisional Receipt of Stores on GeM:**

a. On dispatch of Goods, the Seller would enter the Dispatch Details and date of Dispatch and will upload documentary evidence of Dispatch against each consignment on GeM Portal. All these documents and details shall be shown to the Consignee on his dashboard and shall also be notified to the consignee on his e-mail and on his registered mobile number.

b. The Seller shall prepare an electronic Invoice, digitally/e-signed, on GeM portal and shall submit the same on-line to the Buyer. GeM portal will send an SMS/ email alert to the Buyer, on submission of Invoice. This Invoice will contain mode of dispatch of goods, dispatched/delivered quantity with date and all inclusive price claimed based on digitally/e-signed Contract. In case Services are procured, the required data as per Contract may be incorporated in the Invoice.

c. After actual delivery of goods at consignee destination/ milestone achievement (such as completion of installation/ commissioning or training etc. as defined in the contract)/ service delivery, Seller would enter the actual date of delivery/ milestone achievement/ Service Log-sheet (as applicable) and will upload documentary evidence for the same duly digitally signed / e-signed. All these documents and details shall be shown to the Consignee on his dashboard and shall also be notified to the consignee on his e-mail and on his registered mobile number. In case of Services Contracts, the Service Provider will fill up the required data as per the contract (such as log sheets and /or Invoice etc duly digitally signed/ e-signed).

d. Immediately upon above entry by Seller I Service Provider regarding delivery of goods/ milestone achievement/ service delivery, an alert will be flashed on the Dashboard of the consignee and an email and an SMS Alert will be sent to Consignee informing that consignee has to mandatorily acknowledge receipt of stores/ milestone achievement/ service delivery through generation of PRC on GeM. The Buyer/Consignee should receive the Goods/Services and issues an online Provisional Receipt Certificate (PRC), within 48 hours, on 'said to contain basis' on the GeM portal with his/her digital signature / e-sign, mentioning the date of Receipt. (From this date of receipt mentioned in PRC, the period of ten (10) days for consignee's/buyer's right of rejection and return policy would be applicable unless otherwise specified in a particular contract)

e. In case the consignee does not issue PRC within 48 hrs from entry of delivery of goods/ milestone achievement/ service delivery by Seller/ Service Provider, an alert will be flashed on the dashboard of the consignee and an email and an SMS Alert will be sent to Consignee and Buyer informing that consignee has to mandatorily acknowledge receipt of stores/ milestone achievement/ service delivery through generation of PRC on GeM.

f. After expiry of 72 hrs. from the first alert, another alert will be flashed on the dashboard of the Consignee, Buyer including HoD and an email

along with an SMS Alert to Consignee , Buyer, HoD informing that consignee has to mandatorily acknowledge receipt of stores/ milestone achievement/ service delivery through generation of PRC on GeM and if the time limit of 96 hrs expires from the date of delivery of goods/ milestone achievement/ service delivery as per entry made by Seller/ Service provider and if the consignee does not acknowledge receipt of stores/ milestone achievement/ service delivery by generating PRC or disputes the same by rejecting receipt, it would be presumed that goods have been delivered/milestone achievement I service delivery has been made to consignee and PRC will be auto generated by the system (Deemed PRC).

g. However, if the consignee does not issue PRC within 96 hrs from delivery of goods/ milestone achievement/ service delivery as per entry made by Seller/ Service provider ,GeM System/Portal would auto generate unsigned PRC considering the date of delivery of goods/ milestone achievement/ service delivery as indicated by the seller as deemed date of receipt for issuance of PRC. GeM portal shall also send periodic notifications every 24 hrs. to the Consignee, Buyer and the HoD about issuance of auto generated Deemed PRC for next 48 hrs.

h. In case the PRC is auto-generated, the consignee shall have the provision on GeM to respond back within 48 hrs, if the goods have not been received or short received recommending to cancel or amend/correct the date of receipt/ quantity in the auto-generated Deemed PRC. In case nothing is reported/ corrected by consignee on the system, it will be presumed that the consignee has nothing to say and the auto-generated Deemed PRC will be considered as final for all purposes.

i. If it is found at any stage that seller/ service provider has sent/ uploaded wrong information on GeM, based on which PRC has been wrongly auto generated, the seller/ service provider will be dealt severely and should be debarred by GeM for three years.

10. **Consignee Receipt and Acceptance of Stores on GeM:**

After issue of PRC/ Deemed PRC, the system will start sending an alert on the Dashboard of the consignee and an email and an SMS Alert will be sent as per escalation matrix specified below to issue the CRAC within 10 days:

a. Level 1 - Upto 3 days - Consignee
b. Level 2-4 and 5th day - Consignee and Buyer
c. Level 3 - 6 to 10th day - Consignee, Buyer, HOD

After verification including assessment of quality and quantity of goods /verification of completion of all deliverables defined in the milestone/ completion of service for the defined period, the Consignee(s) will issue an on-line digitally/e-signed Consignee's Receipt & Acceptance Certificate (CRAC) (Goods CRAC/Service CRAC/ Delivery CRAC/ Installation CRAC/ Final CRAC as the case may be) (within 10 days (unless otherwise specified in a particular contract) of date of receipt indicated in PRC/deemed date of receipt as indicated in Deemed PRC. The CRAC would clearly indicate the Order quantity/ milestone achievement/ service delivery, rejected quantity/ unacceptable milestone achievement /unacceptable service delivery (if any, with reasons for rejection including shortages/damaged/unaccepted quality), quantity/ milestone achievement/ service delivery accepted and cleared for payment. However, if the consignee does not issue CRAC within 10 days (unless some other time line is specified in a particular contract for issue of CRAC), on 11th day from the date of receipt/ deemed date of receipt of quantity/ milestone achievement / service delivery as indicated in PRC, GeM System/Portal would auto generate unsigned CRAC which, backed with digitally/e-signed PRC or deemed PRC based on Seller Evidence for the corresponding quantity/ milestone achievement/ service delivery shall be taken as deemed acceptance for payments in lieu of the requirement of digitally/e-signed CRAC. This will be made available on GeM to the Buyer/ Seller and also the concerned DDO (if applicable) and PAO/Paying Authority. The GeM portal would generate a unique serial number for CRAC relating to concerned DDO (if applicable) & PAO/Paying Authority, so that the payments are made seriatim.

In case the CRAC is auto-generated, the consignee shall have the provision on GeM to cancel or amend the auto-generated CRAC within 72 hrs, if the goods have not been accepted or found defective/ short received. In case nothing is corrected by

consignee on the system, it will be presumed that the consignee has nothing to say and the auto-generated CRAC will be considered as final for all purposes including payments.

11. After generation of CRAC, the Buyer shall prepare 'Payment advice' on GeM Portal, indicating any contractual deductions such as penalties for violation of Service Level Agreement (as applicable)/Liquidated Damages for delayed supplies/ milestone achievement/ service delivery etc. which will be used by GeM portal to compute the net amount payable for the accepted quantity/milestone achievement/service delivery after factoring in the contractual deduction(s) and generate claims for payments digitally/e-signed by the Buyer. This claim for payment shall be made available to the DDO on GeM Portal and the requisite data will also be pushed online in the PFMS. DDO will log into PFMS and generate the Bill against the said claims and forward the same to the PAO/Paying Authority for payment, after deducting any statuary deductions including TDS as applicable.

12. It is obligatory to make payments without any delay for purchases made on GeM. In no case should it take longer than the prescribed timelines. The timelines after Consignee Receipt and Acceptance Certificate (CRAC) issued on-line and digitally/e-signed by consignee, will be two (2) working days for Buyer, one (1) working day for concerned DDO and two (2) working days for concerned PAO for triggering payment through PFMS for crediting to the supplier's account. In case of return of Bills by PAO/Paying authority, the discrepancies should be addressed by concerned Buyer/DDO within one working day and thereafter on re- submission of Bill the PAO should also not take more than one (1) working day for triggering payment to the Seller/ service provider Any matter needing a resolution will be escalated to the next higher level in each agency (Buyer, DDO and PAO) where the matter should be resolved within 24 hours. In the entire process, time taken for payment should not exceed ten (10) days including holidays

13. After online pre-check of all relevant documents, PAO/Paying Authority shall debit the Government account, releasing the corresponding payment through PFMS/ to be credited into the bank account of the Seller/service Provider. The payment so released shall be credited to the Seller/Service Provider account within 24 hours (excluding public holidays), by the Bank. SMS alerts shall be sent to the

Seller/Service Provider and Buyer after the payment is authorized by PAO and also after the confirmation of the payment by the Bank. The payment authorization as well as payment confirmation details shall be shared by PFMS on the GeM portal. The PAO/Paying Authority and DDO shall comply with the provisions of General Financial Rules for budget implementation.

14. In case of return of Bill, if necessary by PAO/Paying Authority, it should be made online with all queries/discrepancies/reasons for rejections indicated in one go with the approval of competent authority, to the DDO/Buyer for the needful corrections at their end.

15. The DDO shall also be responsible for issuing TDS certificate (as per Income Tax Act, 1961 amended from time to time) to the Seller after release of the payment to the Seller/Supplier. The DDO shall also be responsible for deduction of TDS on GST as per GST provisions and to deposit the same with the Govt, as per GST rules and issue Form GSTR 7A to the person whose TDS has been deducted.

16. GeM System/Portal would also have on-line provisions for generating supplementary Invoice(s) for claim/refund of statutory changes in Duties and taxes, if any, as above. A provision for all types of refunds/claims should be available on-line through PFMS.

17. In terms of the provisions of the Information Technology Act 2000 as amended from time to time, digitally/e-signed online documents generated on GeM shall be treated at par with ink-signed documents for release of payment to the Seller/Service Provider and no ink signed paper/documents shall be demanded/insisted.

18. The multi-year liabilities so created as referred to in Para 9.7.7 (vi) (A) (1) (h) above shall be reviewed regularly by the Programme Division/Administrative unit in consultation with the Financial Adviser. The consolidated information on the total committed liabilities, year-wise, shall be submitted by the Financial Adviser to the Budget Division, Department of Economic Affairs, Ministry of Finance for suitably reflecting in the Budget Estimates for the relevant financial year and in the Medium Term Expenditure Framework (MTEF).

19. **For all contracts placed through GeM, the payment through PFMS to all Sellers/ Service Providers must be released online only against electronic bill generated on GeM. No offline payment should be made in such cases to avoid**

double payment. Only in exceptional cases such as non-availability of the GeM platform or long shutdown of internet services at Buyer location or similar force majeure conditions, such off-line payments can be resorted to subject to the condition that immediately after resolution of the problem, necessary entries would be made on-line in GeM portal to obviate the possibility of double payment.

B. **Payment for Non-PFMS Agencies/ Entities (NPAE)**

1. Non-PFMS Agency/ Entity (NPAE) is a Government of India (GoI) not using PFMS for its payments of transactions and having their own payment system for making payments against contracts placed for goods/services placed by the NPAE on GeM. All NPAE shall open & operate a special purpose account namely GeM Pool Account for the purpose of ensuring prompt payment to Seller/Service Provider of GeM who supply Goods/ Services to the NPAE through GeM.

2. Accordingly, all the Organisations/ Departments including CPSUs, Municipalities, Educational Institutions, Autonomous bodies, Societies, etc. not operating through PFMS shall be covered under these instructions. These organisations are hereby directed to open, operationalize and operate a GeM Pool Account (GPA) for all procurement. GPA is a special purpose bank account (interest bearing savings/current Account) opened, operated and controlled exclusively by each NPAE. GeM Pool Account shall be mandatory for all procurement irrespective of value. The GeM Pool Account shall be opened, operated and controlled exclusively and completely by the buyer entity/agency subject to certain restrictions on withdrawals of funds as explained in succeeding paragraphs .The Account shall carry interest applicable to savings/ current account. Such account shall be opened in any scheduled bank having already integrated the pool account with GeM.

3. The following are the core elements of GPA that should be incorporated during the opening and operations/ procurement stages:

a. The NPAE will open the GPA (as a savings or current account) which will be utilized by buyer through the online integration of Bank with the platform owned and maintained by GeM SPV, as per Service Level

Agreement (SLA), and solely for procurement of goods and services on GeM.

b. The terms and conditions of procurement on GeM will be part of the operations agreement between the bank and the NPAE.

c. The role of the bank will be limited to ensuring operations of the account on the instruction of the NPAE through the authorized NPAE nodal officer for GeM/ buyer.

d. Real time details of all operations of the account will be shared by the bank, in a mutually accepted format (to be amended from time to time) with the NPAE, only through the GeM Platform.

e. Once a sub-account/ transaction specific account is credited with an amount, the NPAE cannot withdraw this amount, apart from transfer to the designated Seller/Service Provider, till such a time that the transaction is live.

f. Any withdrawal/transfer by the NPAE from this account, except for payment to the Seller I Service Provider, would be permitted in the following conditions.

a) Order cancellation
b) Order rejection
c) Refund

All the above situations would first be required to be enabled/ flagged on the GeM Platform for the NPAE to be able to act accordingly.

4. While procuring goods & services through GeM, the NPAEs should credit 100% of the projected Contract Value in case of Goods Contract in their GeM Pool Account before award of contract. In cases of Services, amount should be credited for one payment cycle as defined in the contract and before releasing payment for any cycle, the funds required for the next payment cycle should be credited so as to ensure availability of payable funds for the next payment cycle. Payment so credited will not be withdrawn for any other purpose other than the one for which the amount is credited into GeM Pool Account.

5. After placement of contract on GeM, the process for PRC and CRAC will be same for NPAE category also as indicated in Para 9.7.7 (vi) (A) (9) above regarding

Provisional Receipt of Stores on GeM and Para 9.7.7 (vi) (A) (10) Consignee Receipt and Acceptance of Stores on GeM for PFMS Buyers.

6. After issue of CRAC, NPAE Nodal Officer shall issue an advice without delay to the bank to release actual amount payable to Seller/ Service Provider as per terms of contract from the GeM Pool Account. On authorization, the bank should transfer the prescribed amount to the Seller/Service Provider supplier mapped in the transaction.

7. In case of a Service level agreement (SLA) breach on the part of the NPAE in terms of payments to the Seller/Service Provider, GeM will intimate the buyer and bank of the same. Post such intimation, and non-action on the part of the NPAE with respect to payment transfer, bank will release payments for the delivery of goods at consignee destination/ milestone achievement (such as completion of installation/ commissioning or training etc. as defined in the contract)/ service delivery as notified in the terms and conditions of procurement on GeM to the Seller/ Service Provider mapped in the transaction. Such a provision is required to be incorporated in GPA and should be considered as a standing instruction from the NPAE to the bank. The residual amount cannot be withdrawn/ transferred by the NPAE, in such cases.

8. In case, even after 10 days of issue of Consignee receipt and acceptance certificate (CRAC)/ auto generated CRAC , the buyer has not initiated the payment process through the GeM platform, a payment trigger will be automatically generated for payment equivalent to 80% of the corresponding quantity/ milestone achievement/ service delivery deduced by the system as per CRAC. Simultaneously intimation will be sent to the HoD, buyer and NPAE Nodal officer for GeM, regarding the release of payment, at their risk and cost in line with the terms and condition (T&C) and SLA of procurement on GeM. The residual payment of 20% is to be processed by the buyer within 35 days after adjusting for any statutory deduction and damages, failing which after 35 days, the same will be released to the Seller/ Service Provider automatically through an alert to the bank by the GeM Platform, after statutory deductions and any system know deductions.

9. Unutilized funds after closure of the Contract and interest accrued on the credited amount will be at the disposal of nominated NPAE Nodal officer, who may advise banker for further action as deemed fit.

10. The Steering Committee on GeM of each Ministry should monitor the implementation of these instructions regarding operationalization of GeM Pool Account.

11. Ministries/ Departments of Government of India are accordingly requested to issue necessary instructions to all Non-PFMS Agencies/ Entities under their control.

i) In case any Non PFMS Agency/ Entity decides with the approval of their Competent Authority to have integration of their on-line payment Systems with functionality for Blocking of Funds etc. as per PFMS system of payments, the Payment procedures outlined for PFMS in Para 9.7.7 (vi) (A) shall be mutatis mutandis applicable to them.

ii) Currently, for unlocking of funds, especially during the fag end of the financial year, buyers need to send emails etc. to GeM. Thereafter, GeM manually unlocks the payments. GeM will automate this whole process.

9.7.8 It is mandatory for a buyer to generate a "GeM Availability Report and Past Transaction Summary" (GeMAR&PTS)[50] with a unique ID on GeM portal using his login credentials on GeM for procurement outside GeM (for example for procurement through Central Public Procurement Portal). The Past Transaction Summary will be provided, where available. "GeMAR&PTS" shall be a pre-requsite for arriving at a decision by the competent authority for procurement of required goods and services by floating a bid outside GeM and its unique ID would be required to be furnished on the publishing portal along with the tender proposed to be published.

9.7.9 Purchase of goods without quotation can be resorted for value upto Rs. 25,000/-only on each occasion may be made without inviting quotations or bids on the basis of a certificate to be recorded by the competent authority, only when the required goods are not available on GeM.

9.7.10 In case a certain item is not available on the GeM portal,][51]Purchase of goods costing above [Rs.25,000 (Rupees twenty five thousand only) and upto Rs.2,50,000/- (Rupees two lakh and fifty thousand only)] on each occasion may be made on the recommendations of a duly constituted Local Purchase Committee

[50]Notified vide OM No. F.6.18.2019-PPD issued by Department of Expenditure dated 11th June, 2021.

[51] Inserted vide OM No. F.1.26/2018-PPD dated 02.04.2019.

consisting of three members of an appropriate level as decided by the Head of the Department. The committee will survey the market to ascertain the reasonableness of rate, quality and specifications and identify the appropriate supplier and will jointly record a certificate before placement of the purchase order.

9.7.11 Where an item is available on GeM and Ministry/ Department/ Organization wants to buy outside the GeM in view of any compelling circumstances, the approval of Standing Committee of GeM (SCoGeM) and Secretary concerned shall be required[52]9.7.12 Rule 149 of GFR provides for the mandatory procurement of common use Goods and Services by Ministries or Departments for Goods or Services available on GeM. Hence only in case of goods and services (of required specification or within required delivery period etc.) are not available on GeM, the procuring entity can resort to Rule 154 and 155 of GFRs i.e. procurement without quotation or procurement on the recommendations of a duly constituted Local Purchase Committee[53]. However, it is mandatory for a buyer to generate a "GeM Availability Report and Past Transaction Summary" (GeMAR&PTS)[54] with a unique ID on GeM portal using his login credentials on GeM for procurement outside GeM.

9.8 Procurement Proposal (Concept Paper) for other (non-consultancy) Services

The steps for initiating procurement (outsourcing) of Other (Non-consultancy) Services, is similar to that described in para 1.15 in Chapter 1. *(Please refer to Annexure 3, for a suggested format)*

9.9 Obtaining Final Administrative and Budgetary Approvals

Before a final administrative and budgetary approval is taken, a detailed Activity Schedule and Cost estimate is required to be prepared in following manner:

52 Refer OM No F.6/15/2018-PPD issued by Department of Expenditure dated 5th February 2020. [Accessible from https://doe.gov.in/sites/default/files/Clarification%20regarding%20function%20of%20Standing%20Committee%20on%20Government%20e-marketplace%20%28ScoGeM%29%20vis-a-vis%20Rule%20149%20of%20General%20Financial%20Rules%20%28GFR%29.pdf]

53 Notified vide OM No.F/6/1/2018-PPD issued by Department of Expenditure dated 19.01.2018

54 Notified vide OM No. F.6.18.2019-PPD issued by Department of Expenditure dated 11th June, 2021.

9.9.1 Activity Schedule and Other Requirements

The objectives of the Activity Schedule are:

i) To provide sufficient information on the quantities of Services to be performed to enable bids to be prepared efficiently and accurately; and
ii) When a Contract has been entered into, to provide a priced Activity Schedule for use in the periodic valuation of Services executed.

Besides detailing the activities, quantum and time frame, Activity Schedule should contain the following sections also:

a) **Description of Services:** A brief description of service required is important information that would help the bidders understand the service requirement. It should cover background about the Procuring Entity's organisation and about the project/ service. The Purpose and Service Outcome statement should be included in the description of services (as finalised for initiating the procurement - Para 1.15, Chapter-1) to help the service providers understand the requirement.
b) **Itemized Activity Schedule:** In order to attain objectives of the Activity Schedule, Services should be itemized in the Activity Schedule in sufficient detail to distinguish between the different classes of Services, or between Services of the same nature carried out in different locations or in other circumstances which may give rise to different considerations of cost. Consistent with these requirements, the layout and content of the Activity Schedule should be as simple and brief as possible. All information relevant for the bidder to quote a price may be included e.g. -the frequency and quantum and time-frame/ duration of completion of activities to be performed. In activity schedule containing scores of items, evaluation can be simplified if the system used in Works contracts is borrowed, if feasible, where Schedule of rates (SoR) for each activity is specified in the bid documents by the Procuring Entity and only percentage +/- above the SoR (separately for different Schedules or combined) is asked to be quoted by the bidders.
c) **Labour/ Personnel Activity Schedule:** If labour/ personnel are used in the activity, these may be quantified specifying place, shifts and frequency of utilization in the Activity Schedule. In case any key professionals or Project

Manager is required, their qualification and experience required may also be mentioned. Any relievers and leave reserve for deploying the personnel should be included in the rate for such personnel and would not be separately payable.

d) **Material Schedule:** In case any Materials/ Consumables/ tools of trade are to be consumed/ deployed, a Separate Materials Schedule should be included, indicating the specification and quantity of such materials/ consumables/ tools to be consumed/ deployed per unit activity/ day/ location/ per manpower deployed. Price of all these materials/ tools etc is to be shown as a separate lump-sum cost in the financial bid by the bidder.

e) **Essential Equipment Schedule:** Any essential equipment, machinery (Trucks, Cranes, Washing Machines, Vessels/ crafts, plant and machinery etc) that the service provider must have and should deploy as a qualifying requirement must be mentioned along with specification, capacity, age of equipment etc. It should be ensured that operators for such equipment must be mentioned as key personnel;

f) **Performance Specifications, Drawings:** The performance specification or drawings if necessary should be specified for each activity, materials, tools and machines to be used in the activity. Any reporting requirement, periodic meetings or other submissions must be part of the activity schedule.

g) **Statutory and contractual obligations to be complied with by the contractor:** Service provider mostly works within the premises of Procuring Entity, along with staff of Procuring Entity. Many services are subject to various statutory provisions relating to labour, taxation, Workmen Safety, Child and Women Labour, Private Security Agencies, Environmental Protection, Mining, Forest clearance, Employment reservations etc. The bidder must have Service Tax Number, ESI, EPF Registration Certificate, Registration Declaration of ownership under Indian Registration Act 1908 and Labour License and PAN (Income Tax). Moreover the Procuring Entity himself may have its own regulation about safety, security, confidentiality etc. All such statutory and contractual obligations must be listed, so that price implications and compliance is taken care of by the bidder. In case of security services contracts, the bidder must have the valid license to run the business of Private

Security Agency in the state issued by the appropriate authority for operating Security Services.

h) **Facilities and Utilities to be provided by the Procuring Entity to service provider at Site:** It should be mentioned, if any facility/ utility (Operation Manuals, Emergency Medical, Room, Furniture, Electricity connection, Water connection) etc would be made available to the successful bidder to carry out the service. In case it is proposed to charge the Electricity/ Water supplied to the service provider, the same may be mentioned, including the rate of charges. 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. Specially mention facilities and utilities which will not be provided, or the facilities which would be provided on chargeable basis. It should be clearly mentioned that the service provider will not be allowed to use any of Procuring Entity's facility/ area which are not listed in this section.

i) **Institutional Arrangements and Procedure for Review of Work of consultant after the Award of Contract:** Institutional arrangements like the placement in a Department, name of project manager and chain of command for reporting may be specified. Process of Review of Service Outcomes and deployment of personnel and resources should be Cleary brought out.

A template for Activity and other Schedules is given at Annexure 7.

9.9.2 Estimating Costs, Setting the Budget, and seeking Approval.

Preparation of a well-thought-through cost estimate is essential if realistic budgetary resources are to be earmarked. The cost estimate shall be based on the Procuring Entity's assessment of the resources needed to carry out the assignment: managerial and staff time and physical inputs (for example, materials, consumables, tools and machines). Costs shall be divided into three broad categories:

i) Remunerations for Personnel deployed;
ii) Reimbursable: (Travel, logistics, Consumable, Material, Tools, Hiring of third party services etc.);

iii) Administrative and Miscellaneous (Mobilisation, demobilisation, Temporary Structures, Administrative expenses, office and IT equipment, contingencies, financing costs, Costs for hiring/ depreciation/ financing of machinery and equipment etc).

In general, staff remuneration rates include basic salary, social charges, overheads, fees or profit and allowances. Profit element, Taxes and duties should be added to the estimated costs.

9.9.3 Final Administrative and Budgetary Approvals

The Activity Schedule 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. The next step is to determine whether adequate budget has been allocated to implement the assignment as designed. Since the budget may be fixed or limited, a series of iterations may be required before a final, acceptable Activity Schedule is formulated. CA's approval may be taken for the Procurement 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. Indent may be initiated after such budgetary provisions/ confirmations. Procurement should be initiated only after such approvals and budgetary provisions.

9.10 Procedure for Single Source Selection (SSS)

Should it become necessary, in an exceptional situation to outsource a job to a specifically chosen contractor, the CA’s approval may be taken. In such cases the detailed justification, the circumstances leading to the outsourcing by choice and the special interest or purpose it shall serve shall form an integral part of the proposal. Threshold Limits for use of SSS method of Selection may be prescribed in SoPP.

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

In many small value procurement of other services, the service provider may neither be capable of handling the bidding process, nor would this be a cost-effective

process for the Procuring Entity. For procurement upto Rs 25,000 (twenty five thousands), the 'Direct Procurement without Quotation' mode of procurement used in Procurement of goods may very well be utilised in such cases. Similarly for procurement of services upto Rs 2.5 (Rupees two and a half) Lakhs, 'Direct Procurement by a Purchase Committee' mode as used in procurement of Goods may be utilised. In all such modes of procurement, the procedure prescribed in the Manual for Policies and Procedures for Procurement of Goods may be followed. Please refer to Annexure 8 & 9 for certificates to be recorded for such procurements.

9.12 Procedure for Procurements below Rs 10 (Rupees Ten) Lakhs

For procurements below Rs. 10 (Rupees Ten) lakh, the User should prepare a list of likely and potential service providers on the basis of formal or informal enquiries from Ministries or Departments and Organisations involved in similar activities, scrutiny of 'Yellow pages', and trade journals, if available, web site etc. The Procuring Entity should scrutinise the preliminary list of likely contractors as identified above, shortlist the prima facie eligible and capable contractors and issue RfP to these shortlisted firms on a limited tender enquiry basis as per standard practice. The number of the contractors so identified for issuing RfP should be more than three. Services which are available on GeM have to be mandatorily procured through that portal (please refer to 9.7).

9.13 Procedure for higher Value of Procurements

For Procurements above the Rs 10 (Rupees Ten) lakh, the Procuring Entity should issue advertised single stage tender enquiry asking for the offers by a specified date and time etc. Advertisement in such case should be given on Central Public Procurement Portal (CPPP) at www.eprocure.gov.in and on Government E-Market (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. Attention of known reputed service providers (as ascertained as per para above) may also be separately drawn wherever possible. Services which are available on GeM have to be mandatorily procured through that portal (please refer to para 9.7 above).

9.14 Preparation of the Request for Proposals (RfP)

In procurement of other (non-consultancy) Services, a Standard RfP document should be basis for preparation of Bid Documents. There are variations in the way information and sections in standard RFPs are formulated but essential information/sections are as follows:

i) A letter of invitation (LoI);
ii) Instructions to Bidders (ITB) and data sheet (which contains assignment specific information);
iii) Qualification/ Eligibility Criteria for service providers;
iv) Activity Schedules and other Requirements

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

v) General Conditions of Contract (GCC);
vi) Special Conditions of Contract (SCC);
vii) Formats

   a) service provider's Bid Cover Letter
   b) Qualification Information
   c) Standard formats for the technical proposal;
   d) Standard Format for the Financial Proposal
   e) Letter of Acceptance

f) Contract Form

g) Securities Formats

1. Bid Security (Bank Guarantee)
2. Bank Guarantee for Advance Payment
3. Performance Security (Bank Guarantee)

9.15 Important Provisions of ITB

9.15.1 **Eligibility Criteria:** Eligibility for firms to be considered as responsive bid in procurement of Other (Non-consultancy) Services should be specified. For example:

i) The bidder must be registered under appropriate authorities i.e. must be registered with Service Tax authorities/Income Tax/EPF/ESI authorities/ PSARA/ PAN etc;

ii) Joint Ventures (JV) are normally not permitted in the procurement of Other (Non-consulting) services;

iii) Must not have been under any declaration of ineligibility by any authority. A declaration to the effect should be furnished;

iv) A consistent history of litigation or arbitration awards against the Applicant may result in disqualification;

v) Each Bidder shall submit only one Bid for one RfP. The system shall consider only the last bid submitted through the e-procurement portal. In case of Packaging/ Slicing of Services, it should be clarified, how multiple bids and discounts by a bidder in different slices would be considered.

9.15.2 **Qualifying criteria** to be met by bidders to qualify for award of the Contract may be specified. Although the qualification criteria would depend on the type of service, its complexity and volume, but a sample qualifying criteria is given below:

i) **Financial Capability:**

a) Average Annual financial turnover of related services during the last three years, ending 31st March of the previous financial year, should be at least 30% (thirty percent) of the estimated cost.

b) Liquid assets and/or credit facilities, net of other contractual commitments and exclusive of any advance payments which may be

made under the Contract, of no less than the amount specified in the BDS.

ii) **Past Experience:**

a) The bidder must have at least three years' experience (ending month of March prior to the bid opening) of providing similar type of services to Central/State Government/ PSUs/ Nationalised Banks/ Reputed Organisations. Services rendered with list of such Central/State/ PSUs/ Nationalized Banks with duration of service shall be furnished.

b) The bidder must have successfully executed/completed similar Services (definition of "similar services" should be clearly defined), over the last three years i.e. the current financial year and the last three financial years: -

1. Three similar completed services costing not less than the amount equal to 40% (forty percent) of the estimated cost; or
2. Two similar completed services costing not less than the amount equal to 50% (fifty percent) of the estimated cost; or
3. One similar completed service costing not less than the amount equal to 80% (eighty percent) of the estimated cost.

iii) **Equipment and Managerial Capability:**

a) Ownership/ proposals for the timely acquisition (own, lease, hire, etc.) of the essential equipment listed in the BDS;

b) a Contract Manager with five years' experience in Services of an equivalent nature and volume, including no less than three years as Manager;

9.15.3 **Qualification Documents to be submitted:** To judge their qualification, all bidders should be asked to include the following information and documents with their bids:

i) Copies of original Registration certificate documents defining the constitution or legal status, place of registration, and principal place of business; written power of attorney of the signatory of the Bid to commit the Bidder. Appropriate business licences/ registrations:

a) Service Tax registration certificate
b) PAN number
c) Copies of EPF, ESI, Labour license
d) Copy of valid license under the Private Security Agencies (Regulation) Act, 2005 or the similar Act/ Rules promulgated by State in which the service is performed (in case of Security Service)

ii) Total monetary value of Services performed for each of the last five years;
iii) Copies of work orders and experience in Services of a similar nature and size for each of the last three years, and details of Services under way or contractually committed; and names and address of clients who may be contacted for further information on those contracts;
iv) Evidence of adequacy of working capital for this Contract (access to line(s) of credit and availability of other financial resources);
v) Audited financial Statements for the last three years (Copies of the Profit and Loss (P/L) statements along with Balance Sheet for the concerned period);
vi) Bank Account details;
vii) Authority to seek references from the Bidder's bankers;
viii) Information regarding any litigation, current or during the last five years, in which the Bidder is involved, the parties concerned, and disputed amount; and
ix) Proposals for subcontracting components of the Services amounting to more than 10 (ten) percent of the Contract Price.

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

9.15.5 **Restrictions regarding Personnel Deployed:** The quoted rates shall not be less than the minimum wage fixed/notified by the State Government – where the service is performed and shall include all statutory obligations. However bids without any element of cost over and above such minimum wage (or below it) shall be treated as 'Nil' price quotation and would be rejected. The service provider shall be liable for all kinds of dues payable in respect of all personnel provided under the contract and the Procuring Entity shall not be liable for any dues for availing the services of the personnel. The service provider should ensure that persons to be

deployed are not alcoholic, drug addict and not indulge in any activity prejudicial to the interest of the Procuring Entity. The service provider shall ensure to get the Police verification for all the manpower deployed by them and the contractor should ensure that the manpower deputed should bear good moral character.

9.15.6 **Workmen Safety and Insurance:** The service provider shall alone be fully responsible for safety and security and insurance or life insurance of their personnel who is working on the operation and maintenance works. The service providers (a) shall take out and maintain, and shall cause any Subcontractors to take out and maintain, at their (or the Subcontractors', as the case may be) own cost but on terms and conditions approved by the Procuring Entity, insurance against the risks, and for the coverage, as shall be specified in the SCC; and (b) at the Procuring Entity's request, shall provide evidence to the Procuring Entity showing that such insurance has been taken out and maintained and that the current premiums have been paid. The service provider shall provide and ensure sufficient protection gears like safety shoes, hand gloves, ladders, etc. are being used by their workers while carrying out works. The Procuring Entity shall not be liable for any compensation in case of any fatal injury/death caused to or by any man power while performing/discharging their duties/ for inspection or otherwise.

9.15.7 **Liquidated Damages for Delay in Performance:** The service provider shall pay liquidated damages to the Procuring Entity at the rate per day stated in the SCC for each day that the Completion Date is later than the Intended Completion Date. The total amount of liquidated damages shall not exceed the amount defined in the SCC. The Procuring Entity may deduct liquidated damages from payments due to the service provider. Payment of liquidated damages shall not affect the service provider's liabilities.

9.15.8 **Penalty for non-performance:** If the service provider has not corrected a Defect within the time specified in the Procuring Entity's notice, a penalty for Lack of performance will be paid by the service provider. The amount to be paid will be calculated as a percentage of the cost of having the Defect corrected, assessed as described in SCC.

9.15.9 **Filling up the Financial Bid by the Bidders:** The Bidder should be asked to fill in rates and prices for all items of the Services described in the in the Activity Schedule. Items for which no rate or price is entered by the Bidder will not be paid for by the Procuring Entity when executed and shall be deemed covered by the other rates and prices in the Activity Schedule. The priced Activity Schedule contains sections on Remuneration for Staff deployed, Reimbursable Expenses and Miscellaneous Expenses. All duties, taxes, and other levies payable by the service provider 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. For the purpose of determining the remuneration due for additional Services, a breakdown of the lump-sum price shall be provided by the Bidder. Bidding Documents should include a clause that "if a firm quotes NIL charges/ consideration, the bid shall be treated as unresponsive and will not be considered".

9.15.10 **Price Adjustment**

In case the duration of the contract is expected to exceed 18 (eighteen) months for a time-based contract or an Indefinite delivery contract, a price adjustment provision for the remuneration rate should be included in the contract based on the Consumer Price Index in the country. Lump-sum contracts shall not generally be subject to price adjustment except for small value multi-year contracts (for example, for auditors). Short-term contracts where the delivery period does not extend beyond 18 (eighteen) months should normally be concluded with a firm and price fixed by inviting tenders accordingly. However, even for shorter deliveries, the price adjustment [or Price Variation Clause (PVC)] may be stipulated for items with inputs (raw material, man power, etc.), prone to short-term price volatility - especially for critical or high value services – otherwise there is a possibility of the contract failing or the purchaser having to pay a higher price if prices fall.

Where it is decided to conclude the contract with a variable price, an appropriate clause incorporating, inter-alia, a suitable price variation formula should also be provided in the tender documents, to calculate the price variation between the base level and scheduled delivery date. It is best to proactively provide our own PVC in the tender document to discourage different bidders quoting different formulae and

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

The variations are to be calculated periodically 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 profits, material and man power in the price variation formula.

The following are important elements of PVC:

a) The price agreed upon should specify the base date, that is, the month and year to which the price is linked to enable variations being calculated with reference to the price indices prevailing in that month and year;

b) 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 supplier);

c) The price variation clause should provide for a ceiling on price variations, particularly where escalations are involved. It could be a percentage per annum or an overall ceiling or both;

d) 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;

e) 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 applicable on the price as varied by the operation of the PVC;

f) No upward price variation will be admissible beyond the original scheduled delivery date for defaults on the part of the supplier. However, a downward price variation would be availed by the

purchaser as per the denial clause in the letter of extension of the delivery period;

g) Price variation may be allowed beyond the original scheduled delivery date, by specific alteration of that date through an amendment to the contract in cases of force majeure or defaults by Government;

h) Where contract execution depends on imported (subject to customs duty and foreign exchange fluctuations) and/or locally sourced goods/ works/ services (subject to excise duty and other 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 taken into account in the calculation of the price of the imported item;

i) The clause should also contain the mode and terms of payment of the price variation admissible; and

j) The buyer should ensure a provision in the contract for the benefit of any reduction in the price in terms of the PVC being passed on to him.

k) An illustrative PVC clause is available in Annexure 2F.

l) Care should be exercised in contracts providing for price variation to finalise the price before final payment is made, after obtaining data and documents in support of claims for escalation, if any. Where no such claims are submitted by the suppliers, 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 of price variation indices and, in the event of any decrease of such indices during the currency of this contract, we shall promptly notify this to the purchaser and offer the requisite reduction in the contract rate."

m) 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.

9.16 Standard Formats for Technical and Financial Proposals

i) The standard formats for technical proposals should include:

a) service provider's Bid Cover Letter(including eligibility, following Code of Integrity in Public Procurement - CIPP);
b) Power of attorney;
c) Qualification Information with enclosures;
d) Write up on Bidder's Organisation, confirmation of compliance with (or deviations from)Description of Services, Activity Schedule, Essential Equipment Schedule, Manpower/ Team, Statutory Obligation and Facilities to be provided by the Procuring Entity, Statutory and Contractual requirements, Respective obligations of Procuring Entity and service provider, Contract For, GCC and SCC; etc. and
e) Enclosures: Cost of Bid/ Bid Processing Fee/ Bid Security

ii) The standard formats for a financial proposal include:

a) Financial Bid Format;
b) Summary Price Schedule;
c) Priced Activity Schedule;
d) Priced Material Schedule;
e) Priced Miscellaneous Schedule (including administrative costs, Essential Equipment, Operating Manpower);
f) Breakdown of Contract Prices

9.17 Receipt of Bids, Evaluation and Award of Contract

9.17.1 Receipt and opening of Bids is done in a manner similar to procurement of other categories. Annexure 5 may be used mutadis-mutandis for format of Bid Opening Attendance cum Report

9.17.2 The Procuring Entity should evaluate, segregate, rank the responsive bids and select the successful bidder for placement of the contract, in a manner similar to Procurement of Goods/ Works. Procuring Entity will award the Contract to the Bidder whose Bid has been determined as the lowest evaluated Bid price, provided the offer is determined in accordance with the bid documents to be:

i) Substantially responsive;
ii) Eligible bidder;
iii) Meets the minimum Technical/ qualification standards

9.17.3 If, the contract is being let on a "slice and package" basis, the lowest evaluated Bid Price will be determined when evaluating the contract in conjunction with other contracts to be awarded concurrently, taking into account any discounts offered by the bidders for the award of more than one contract.

9.17.4 The Procuring Entity reserves the right to accept or reject any Bid, and to cancel the bidding process and reject all bids, at any time prior to the award of Contract, without thereby incurring any liability to the affected Bidder or bidders or any obligation to inform the affected Bidder or bidders of the grounds for the Procuring Entity's action.

9.17.5 Notification of Award, Performance Security and Signing of the Contract also follows same procedure as in other categories of procurements.

A format of Tender Evaluation and Report is given in Annexure 10.

(Rule 203 of GFR 2017)

9.17.6 **Quality-cum-cost based Selection (QCBS) for Works and Non-Consultancy Services**[55]

9.17.6.1 Procuring entities are hereby allowed to use QCBS for procurement of works and non-consultancy services in the following cases:

(i) where the procurement has been declared to be a Quality Oriented Procurement (QOP) by the competent authority or

[55] Notified under para 15.2 vide OM No.F.1/1/2021-PPD issued by Department of Expenditure dated 29.10.2021

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

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

(a) In case the difference between estimated value (including taxes etc as above) and value of the proposed contract (including taxes etc) is less than 10% of the estimated value, there will be no bar on placement of contract.

(b) In all other cases, the procurement process is to be scrapped and restarted either as QOP or on non QCBS basis.

The principles of QCBS shall be as provided in Rule 192(i), (ii) and (iii) of the GFR. However, the maximum weight of the non-financial parameters shall in no case exceed 30%.

9.17.6.2 The Competent Authority for allowing QCBS shall be as follows:-

(i) For declaring a procurement as QOP:

a) Where the procuring entity/ project executing authority is covered by Rule 1 of GFR, the Secretary of the Ministry/ Department, to which the procuring entity belongs.

b) Where the procuring entity is a CPSE, the Board of Directors of the CPSE.

(ii) For Non-consulting Services not exceeding Rs.10 crore in value:

a) Where the procuring entity is covered by Rule 1 of GFR, by the officer or authority two levels above the officer/ authority competent to finalize the particular procurement, or the Secretary of the Ministry/ Department whichever is lower.

b) Where the procuring entity is a CPSE, the authority or officer two levels above the officer competent to finalize the particular procurement, or the Board of Directors of the CPSE whichever is lower.

9.17.6.3 In all cases of QOP, a Special Technical Committee (STC) shall be constituted with the following composition:-

(i) Two or more persons who have expert knowledge and/or long experience relevant to the procurement in question;

(ii) One or more persons with extensive experience in handling public projects and/or public finance in the Government or State/Central Public Sector;

(iii) One or more persons with experience in financial management/ financial administration/audit/accountancy;

(iv) Not more than one member representing the procuring entity who may inter alia provide administrative support to the Committee.

(v) Any person who is a member of the STC shall not associate himself in any manner with any bidder for the procurement concerned.

(vi) The persons referred to in sub paras (i) to (iii) shall be persons not working under the Competent Authority specified in para 9.17.6.2. and shall not belong to any organization under the control of, or receiving funding from, the procuring entity or the Ministry/ Department to which such procuring entity belongs.

9.17.6.4 The names of members of the Special Technical Committee shall be decided either by the Competent Authority specified in para 9.17.6.2 above or by any other authority to whom such power is delegated by the competent authority; however, powers shall not be delegated to the officer or authority competent to finalize the particular procurement. Sitting fee may be paid to the members of the STC. Incidental costs including travel shall be paid by the procuring entity.

9.17.6.5 The STC shall make specific recommendations on the following matters:-

(i) The weight to be given to non-financial parameters (not exceeding 30%).

(ii) The specific quality/ technical parameters, their weights, their scoring methodology, the minimum qualification score etc. and other relevant criteria necessary for ensuring fair and transparent quality/ technical evaluation of the bids.

The recommendations of the STC shall be followed except where there are special grounds in public interest for deviating from them. However, every case of deviation from the recommendations of the STC shall require approval of the Competent Authority specified in para 9.17.6.2 (i) above who approved the declaration of the procurement as QOP.

9.17.6.6 In respect of QCBS for Non-Consultancy Services not exceeding Rs.10 crore, a Technical Committee shall be constituted to carry out functions mentioned in para 9.17.6.5 in lieu of the STC. The composition of the Technical Committee shall follow the provisions of para 9.17.6.3 (i) to (v). The provisions of 9.17.6.3 (vi) shall however not be applicable in such cases.

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

9.17.6.8 Tender Documents - Fixing/ Selection of the Evaluation/ Qualification Criteria

(i) To ensure quality, some of the criteria used in marking may be made mandatory and if a bidder does not meet those, then bids shall not be evaluated further.

(ii) Weightage may also be given for timely completion of past projects of similar nature by the bidder.

(iii) In all cases of QOP, a pre-bid meeting shall be held in which the technical criteria including the marking scheme shall be discussed with the potential bidders. If any changes in the criteria are necessitated by such consultation, such changes shall require the recommendation of the STC. In Non-Consultancy Services, pre-bid meetings may be held at the discretion of the public authority.

9.17.6.9 Fixing of Scoring/ Marking Criteria:

(i) The scoring should not be a variable that relies on the subjective opinion of the evaluating panel. The marking scheme should enable achievement of almost similar scores irrespective of the persons/ experts being involved in the evaluation process. When the outcomes are consistent for the available information, the QCBS parameters are more reliable. Unambiguous description and criteria help to avoid grey areas so as to ensure that there is only one possible score for the item. As far as possible, the criteria should be so specific and clear that bidders can self-mark their own bids.

(ii) It is better to specify minimum marks for meeting the qualifying criteria specified.

(iii) Examples of fixed quality parameters that ought not to be considered for relative scoring include organizations' ISO/ standards' accreditation, etc. These are required to establish the credentials of the service provider but cannot be used for relative comparison between various bidders.

(iv) Bidders should be asked to produce certificates for the past performance. A format may be given in the tender itself outlining the contract details, completion, sustainability of service etc and bidders may be asked to fill it and give evidence to that effect.

(v) Bidders may be asked to submit a detailed presentation on their proposals in the form of soft copy along with the bid so as to facilitate better understanding of their proposal and to ensure commitment.

(vi) Besides the Bill of Quantity (BOQ) output criteria for payment, Key Performance Indicators (KPIs) may be specified with minimum achievement levels for payment so as to ensure quality compliance.

9.17.6.10 Evaluation of QCBS Bids: For evaluation, a suitable committee shall be constituted. However, members of the STC shall not be involved.

9.17.6.11 Joint ventures in QCBS:

(i) In conventional tenders, some bidders adopt "name borrowing" and Joint Ventures (JV) often do not function in letter and spirit. This results in lack of quality and accountability. JVs often end in one-sided participation, diluting the essence of the tender evaluation during its performance. Since quality is

given weightage in the evaluation itself, in QCBS procurement, it is even more important to guard against such tendencies. Therefore, Joint Ventures may be avoided in QCBS procurements as far as possible. Joint Ventures could, however, become necessary in high technology or innovative projects where a single entity may not be able to execute the work alone.(ii) If JVs are allowed, adequate safeguards should be provided. Since weightage for quality/ experience influences the award itself, measures should be taken to ensure that all the JV partners are present and deliver services all through the contract period. An Implementation Board with participation of all JV partners may be provided for wherein the Project Manager from the procuring entity shall also be allowed audience when required. Meeting of JV partners with the project executing authority for quarterly progress review may be made as a criterion linked to achievement of key dates or even payment.

9.18 Service Level Agreement (SLA)

A service level agreement (SLA) is an agreement designed to create a common understanding about services, priorities and responsibilities, improve communications, manage expectations, clarify responsibilities and build the foundation for a win-win relationship. It must be specified in the bidding Document and finalised before the Services are started. The objectives of SLA are:

i) Identify and define the Procuring Entity's needs;
ii) Eliminate unrealistic expectations on either side;
iii) Provide a framework for understanding between the service provider and the Procuring Entity;
iv) Reduce areas of conflict and encourage dialog in the event of disputes

While drafting the SLAs, care should be taken that they are balanced to both the contracting parties and penalties are proposed on both the sides.

SLA has two sets of elements:

a) **Service elements**

1. the services to be provided (and perhaps certain services not to be provided, if Procuring Entity might erroneously assume the availability of such services);
2. conditions of service availability;
3. service standards, such as the timeframes within which services will be provided
4. the responsibilities of both parties
5. escalation procedures in case of performance deficiencies

b) **Management elements**

1. how service effectiveness will be tracked
2. how information about service effectiveness will be reported and addressed
3. how service-related disagreements will be resolved
4. how the parties will review and revise the SLA- Conditions warranting change; Change frequency and Change procedures

9.19 Monitoring the Contract

Before commencement of the Services, the service provider shall submit to the Procuring Entity for approval a Program showing the general methods, arrangements, order and timing for all activities. The Services shall be carried out in accordance with the approved Program as updated. CA should nominate an officer/ Committee to be involved throughout in the conduct of the contract and to continuously monitor the performance of the contractor. The process is described in chapter-8, which is broadly applicable to both Consultancy and Non-consultancy services. *(Rule 205 of GFR 2017)*

Annexures

Hierarchy Level	**Annexure 1: Procurement Guidelines** (Refer Para 1.1)
I – Statutory Framework	The Constitution of India
	Indian Contract Act, 1872; Sale of Goods Act, 1930 and Mercantile Laws
	Laws relevant to Public Procurement (Right To Information Act, 2005; The Micro, Small and Medium Enterprises Development Act, 2006; Prevention of Corruption Act, 1988)
II – Rules and Regulations	General Financial Rules, 2017
	Delegation of Financial Power Rules
	Any other financial, vigilance, security, safety, counter- trade and other regulatory aspects; orders and guidelines of the Government on the subject of Public Procurement
III –Ministry of Finance's Manuals	Ministry of Finance's Manual for Procurement of Goods, Works and Consultancy Services & other Services
IV – Procuring Entities' Codes/ Manuals and Standard Bidding Documents	More Comprehensive and detailed Codes and Manuals for Public Procurement for various categories issued by 'Procuring Entities' for their own use
	Standard Bidding Documents for Procurement of Goods/ Works/ Consultancy Services etc.

Remarks: The documents at Hierarchy Levels I and II above are of fundamental and generic nature. Documents at lower levels of hierarchy must conform to the Documents higher up in hierarchy. Relationships of Bidders/ Suppliers/ contractors/ service providers with procuring entities are solely governed by the law of the land and the relevant bid/ contract/registration document(s). Other documents at hierarchy levels II and III mentioned above shall have no locus standi in such relationships.

Annexure 2A: Delegation of Financial Powers – Indents, Contracts and Purchases for public service

(Excerpts from DFPR, Refer Para 1.4)

DFPR Rule 21 of the Delegation of Financial Power Rules**	DFPR Rule 21(a) Minister in Charge of the Department	DFPR Rule 21 (b)Secretary of the Department
For open or limited tender contracts	Full Powers	Rs. 20 crore@@
For single tender including resultant single offer or proprietary contracts		Rs. 5 crore
For agreements or contracts for technical collaboration and consultancy services		Rs. 2 crore

*** DoE, Ministry of Finance No.F.1(17)-E.II(A)86-No.F.1(15)-E.II(A)88 Dated: 16th September, 2003*

@@ Secretary, D/o Commerce would have powers to approve rate contracts of DGS&D of value upto Rs. 100 crore in each case (DoE, Ministry of Finance No.1 (5)/E.II(A)/2009 Dated: the 24th December, 2009)

Notwithstanding anything as above, in cases where the award of contract or purchase or consultancy is inseparably linked with the project or scheme and forms a part of the proposals for Standing Finance Committee (SFC) or Committee on Non-Plan Expenditure (CNE) or Expenditure Finance Committee (EFC) or Cabinet, the same will be processed as per the financial limits laid down for sanction of such schemes or projects by the Competent Authority.

Explanation- In this rule, the word "contract" includes miscellaneous contracts, such as handling contracts and leases. Leases for hiring accommodation for office, residential and other purposes shall, however, be regulated under item 16 of the Annexure to Schedule V. 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. Further a limited or open tender which results in only one effective offer shall also be treated as a single tender contract."

Annexure 2B: Suggested Structure of Schedule of Procurement Powers (SoPP)

(Refer Para 1.4)

A suggested structure of SoPP[56] is given below. However individual threshold values (wherever not given in GFR/ DFPR) would depend on the respective circumstances of various Organisations.

	Threshold Value in Rupees (Lakh)				
Levels of Powers -> Level 1 is entry level and Level 5 is highest e.g. Secretary	**Level -1**	**Level-2**	**Level 3**	**Level-4**	**Level-5**
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 – QCBS					
Approval for Selection by nomination of Services					

[56] *indicate value threshold above which consultations with/ concurrence/ vetting from IFD would be required*

Preparation and Approval of Bidding Documents and floating of Tenders – EoI/ RfP for services					
Approval of Retendering of a discharged tender after second attempt					
Competent Authority (CA) for Evaluation and Acceptance of Tenders					
other services - Procurement without calling Quotation					
other services - Procurement Through a Purchase Committee					
Direct Approval of Tenders Without Tender committee					
Tender Committee/ CEC Composition (including Member Secretary thereof) as well as designated level of CA for Acceptance of TC/ CEC Recommendations for Various Slabs of Estimated Tender Value – EoI/ RfP for Services					
Slab 1 (Rs 10 Lakh to 30 Lakh) – Level 2 officers' TC, Acceptance by Level 3 Officer					
Slab 2 (Rs 30 Lakh to 2 Crore) – Level 3 Officers' TC acceptance by Level 4 Officer					
Slab 3 (Rs 2 Crore 25 Crore) – Level 4 officers' TC acceptance by Level 5 Officer					
Higher levels and other type of TC to suit local requirements, Acceptance at Sec 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 2C: Model Clause/ Certificate to be inserted in tenders etc. w.r.t Order (Public Procurement No.1)

[Refer para 1.6 and Appendix-1 (Para 1.3(iii)(e))]

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

Model Clauses for Tenders

I. Any bidder from a country which shares a land border with India will be eligible to bid in this tender only if the bidder is registered with the Competent Authority.

II. “Bidder” (including the term ‘tenderer’, ‘consultant’ or ‘service provider’ in certain contexts) means any person or firm or company, including any member of a consortium or joint venture (that is an association of several persons, or firms or

companies), every artificial juridical person not falling in any of the descriptions of bidders stated hereinbefore, including any agency branch or office controlled by such person, participating in a procurement process.

III. “Bidder from a country which shares a land border with India" for the purpose of this Order means: -

a. An entity incorporated, established or registered in such a country; or

b. A subsidiary of an entity incorporated, established or registered in such a country; or

c. An entity substantially controlled through entities incorporated, established or registered in such a country; or

d. An entity whose beneficial owner is situated in such a country; or

e. An Indian (or other) agent of such an entity; or

f. A natural person who is a citizen of such a country; or

g. A consortium or joint venture where any member of the consortium or joint venture falls under any of the above

IV. The beneficial owner for the purpose of (iii) above will be as under:

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

exercises control through other means.

Explanation—

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

b. ''Control'' shall include the right to appoint majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholders agreements or voting agreements;

2. In case of a partnership firm, the beneficial owner is the natural person(s) who, whether acting alone or together, or through one or more juridical person, has ownership of entitlement to more than fifteen percent of

capital or profits of the partnership;

3. In case of an unincorporated association or body of individuals, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has ownership of or entitlement to more than fifteen percent of the property or capital or profits of such association or body of individuals;

4. Where no natural person is identified under (1) or (2) or (3) above, the beneficial owner is the relevant natural person who holds the position of senior managing official;

5. In case of a trust, the identification of beneficial owner(s) shall include identification of the author of the trust, the trustee, the beneficiaries with fifteen percent or more interest in the trust and any other natural person exercising ultimate effective control over the trust through a chain of control or ownership.

V. An Agent is a person employed to do any act for another, or to represent another in dealings with third person.

VI. [To be inserted in tenders for Works contracts, including Turnkey contracts] The successful bidder shall not be allowed to sub-contract works to any contractor from a country which shares a land border with India unless such contractor is registered with the Competent Authority. Model Certificate for Tenders (for transitional cases as stated in para 3 of this Order)

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

Model Certificate for Tenders

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

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

"I have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India and on sub-contracting to contractors from such countries; I certify that this bidder is not from such a country or, if from such a country, has been registered with the Competent Authority and will not sub-contract any work to a contractor from such countries unless such contractor is registered with the Competent Authority. I hereby certify that this bidder fulfills all

requirements in this regard and is eligible to be considered. [Where applicable, evidence of valid registration by the Competent Authority shall be attached.]"

Model Certificate for GeM:

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

Annexure 2D: Format for seeking the approval of the Competent Authority for inviting Global Tender Enquiry for procurements less than Rs. 200 crores

(Refer Para 5.1.4)

(i) Every page should be attested by Administrative Ministry

(ii) Proposals are to be simultaneously sent to the following:

a) Cabinet Secretariat, email: ca4-cabsec@gov.in
b) Department of Promotion of Industry & Internal Trade (DPIIT) email: manmeet.nanda@ias.nic.in&rajesh.gupta66@gov.in
c) Department of Expenditure, email: kanwal.irss@gov.in and sudesh.kumar85@gov.in

Table-1

S.No	Particulars	Remarks
1	Name of the Ministry:	
2	Name of the Department:	
3	Name of the sub-ordinate office (if applicable):	
4	Detailed Description of the Item	
5	Use of the Item	
6	Life time of the item proposed (in years)	
7	Whether item is procured regularly? [If so, details of procurement of the said item over the past three years (three completed financial years or last three tenders and the current financial year] inclusive of supply details as per format given under table-2.	
8	Quantity required to be procured with justification for the quantity (States/UT/Region wise projection)	
9	Estimated procurement price along with basic of such estimation (International Price comparison chart)	
10	Justification to be submitted as under	
	a. Detailed justification for Global Tender and essentially of import (item wise)	

S.No	Particulars	Remarks
	b. Who are the (possible) vendors of the item under procurement, in the global (including India) market?	
	c. Whether the Department has tried and floated the tender to identify the domestic suppliers in the past financial year (If not, the reason thereof)	
	d. Capacity of all domestic local suppliers as per the domestic tender floated, if any	
11	What are technical alternatives available within country and whether they can be used *(substituted) for the proposed item under GTE?*	
12	Whether the Department had in the past attempted at development of local suppliers/ phased indigenization/ promotion of alternative technology having sufficient local suppliers. (If so, details thereof)	
13	Consequences of non-procurement of the item through GTE.	
14	Whether BIS standards are available for the items proposed under procurement. If not, the efforts made to operationalize such standards.	
15	Whether the department had published procurement plan for next 5 years, for the item under discussion?	

The above proposal is submitted, with the approval of the Secretary of the Administrative Department/ Ministry, for the consideration of the Competent Authority, as mandated by D/o Expenditure order dated 15th May, 2020 regarding Amendment in GFRs-2017, regarding Global Tender Enquiry.

Also, it is informed that the above proposal had been sent to Cabinet Secretariat (via Email ID: ca4-cabsec@gov.in), D/o Expenditure (via Email ID: GTEnquiry-200@gov.in) and to DPIIT, for their consideration.

Stamp and Signature of the
Authorized officer of the proposing Department

Name
Designation
Contact Number
Email ID

Table-2

Details of procurement of the said item over the past three years (Three completed financial years and the current financial year) inclusive of supply details.

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

Annexure 2E: List of Medical Devices and IVDs, where local manufacturers are not available, as on 17.12.2021 (as verified with the Medical Devices Manufacturing Associations)

[Refer para 5.1..6 (e)]

S.No	Name of Medical Device/ Equipment
1	Intra-aortic balloon Pump (IABP)
2	Video Assisted Thoracic Surgery (VATS) and Minimally Invasive Cardiac Surgery instrument set
3	Flow Track Cardiac Output Monitoring (EV1000)
4	Sander's Jet Ventilator for Emergency Airway
5	ENT Coblator system with standard set of wands
6	Automated Identification and antibiotic susceptibly system
7	Automated Semen Analyzer
8	Histopathology fully automated H& E slide Stainer
9	Fully Automated IHC Stainer
10	Auto PAP cervical cancer screening system with HPV
11	Automatic components preparation machine
12	Visual Field Analyzer
13	Cystoscope paediatric cystoscope
14	Flow Cytometer
15	Flexible cysto-nephoscopy
16	T Piece Resuscitator
17	CO2 Fraction Laser
18	Diode Laser
19	Q-Switched ND YAD Laser
20	Video Bronchoscope set Adult, Paediatric, and Neonatal
21	Surgical Opera
22	Cavitational /Cavitron - Ultrasonic Surgical Aspirator (CUSA)
23	Endobronchial Ultrasound System
24	Rotary Microtome
25	Magnifying surgical loups
26	Endoscopic Saphenous Vein Harvesting (EVH) System
27	Intra operative Imaging and TTFM for CT Surgery
28	DEXA Scan
29	Radio surgery equipment
30	Near Infrared Spectroscopy
31	Fluid therapy
32	Near Infrared Spectrometer (NIRS)
33	Electro Physiology (EP) System
34	TOF Monitor/Watch for Neuro Muscular block
35	Transcranial Doppler
36	Low Temperature Hydrogen Peroxide Gas Steriliser

S.No	Name of Medical Device/ Equipment
37	Mannequins (Laerdal) for training of CPR for COVID Preparedness
	a) Intubation
	b) Cardio Pulmonary Resuscitation (CPR)
	c) Peripheral, Central and Arterial Cannulation
	d) Front of neck Access (Cricothyroidotomy and tracheostomy)
38	Image Analysis Tools/Trinocular Compound Phase Contrast Microscope for Andrology Lab
39	Gas Analysis Apparatus Halden's Student Type
40	Gas Analyzer Automatic for CO2,O2 and N2
41	High end Operating Microscope
42	Plasma Coblation System
43	Stroboscope
44	ENT Skull Base Navigation System
45	Automated Microbial Identification and Sensitivity System
46	NAT Analyzer
47	Cryostat
48	Vitek2-Automated Microbiology Susceptibility Testing Analyser
49	FFR Machine (Fractional Flow Reserve)
50	VIDAS
51	Kingfisher Flex
52	ACL Elite
53	Cytoprep Centrifuge withVortex Mixer
54	Antigen Retrieval System
55	Trans Oesophageal Echo Cardiograph
56	IVUS -Volcano
57	STERRAD-100 NX All Clear
58	Minimally Invasive Cardiac Instruments
59	Impella
60	Endourology set
61	Cystoscope Karl Storz
62	Video Endoscopy Systems
63	Floppy wire with extra support 0 Coronary Angioplasty
64	Fully Automated Non-Contact Tonometer
65	Optical Biometer
66	Phaco Machine with Posterior and Anterior Vitrectomy
67	Portable Ultrasound Machine for Anaesthesia and Vascular Access
68	Activated Clotting Time Machine
69	Thromboelastogram (TEG)/ Thromboelastometer/ ROTEM
70	Bone Anchored Hearing Aid (BAHA) Sound Processor with Soft Band.
71	CI Speech Processor for Cochlear Implant
72	Bi-Ventricular Pacemaker with Quadripolar LV Lead
73	DDDR with Matching Electrodes Pacemaker
74	MRI Conditional Automatic Implantable Cardioverter Defibrillator (AICD)
75	MR1 Conditional Cardiac Resynchronisation Therapy - Pacing (CRT- P)
76	Single Chamber (SSI) MRI Compatible Pacemaker
77	Single Chamber Temporary Pacemaker
78	Non-complain /semi complain /CTO coronary balloon.
79	Vacuum Heart Stabilizer System for off Pump CABG
80	Expandable Corpectomy device
81	Biomimetic Synthetic Absorbable Dural substitute of sizes

S.No	Name of Medical Device/ Equipment
82	AO TRS Modular Drive for Drill/Reamer
83	AO TRS Modular Sagittal saw system
84	Battery Oscillator
85	Arthroscopy Systems
86	Navigation System for Neurosurgery & Orthopaedic Surgery
87	Time Lapse Embryo Imaging System
88	Portable Mobile Endoscopy Unit
89	Cryoprobe
90	Isothermal Calorimeter (ITC)
91	Electrical Impedance Tomography
92	FNIRS (Functional Near Infra-Red Spectroscopy) System
93	Automated Hand-Held Analyzer
94	Automated High Throughput Liquid Based Cytology (LBC) System
95	Automated IHC (Immuno Histochemistry Stainer)
96	Automated Slide Stainer for Histopathology
97	3T Digital PET/MR
98	Dual Particle Cyclotron on buyback basis
99	Sweat Collection and Chloride Estimation
100	Automated Bronchoscope Cleaning Equipment
101	Electronics and console for the existing 700 MHz NMR Spectrometer
102	Video bronchoscope with mobility of tip in four directions
103	Freeze Facture System
104	Cryo Plunge Freezing Unit
105	Biological High- Resolution Atomic Force Microscopy
106	Carbon Coater (Evaporator) for grids
107	Hemostasis Analyzer System
108	Auricular Reconstruction Set
109	Thin Layer Chromatography Liner Analyser for lipid analysis
110	Digital Slide Scanner System
111	Full Endoscopic lumbar IT & ED set
112	Rapid Blood/Fluid Flow warmer
113	Fully Automated Computerized Archival System for Histopathology & Cytology Slides
114	Vacuum Assist Drainage Controller Device
115	VAP Care System
116	Cryoablation Unit
117	3D Printer Hardware with SLA (LFSJ TM Technology and Machine interface software
118	Transcutaneous Oxygen Monitor
119	Non-Invasive Jugular Oximetry Monitor
120	Dedicated Solid-state cardiac SPECT Camera
121	Hemodynamic Recorded for Cardio Vascular Lab
122	Gel Documentation System
123	Automatic Colony Counter
124	Droplet Digital Polymerase Chain Reaction System (PCR)
125	Multi-block PCR Machine
126	Integrated Automated Charting System upgradable for ICU Monitoring System
127	Viscoelastic Global coagulation Testing Device
128	Robotic Surgery System with accessories

Annexure 2F: Example of Formula for Price Variation Clause

[Refer Para 6.2.6 (ii) and Para 9.15.10]

(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 month prior to the month in which base month falls and average of the month, two month 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:

- Base dates shall be due dates of opening of bids (technical bid in two or three envelop/cover system).
- Date of supply shall be the date of calculation/determination of the price variation.
- No price increase is allowed beyond original delivery period.
- 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.
- Total adjustment will be subject to maximum ceiling of ____%.
- No price adjustment shall be payable if this is less than or equal to 2% (two percent) of Po.
- 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.
- 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.
- 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 of price variation indices and in the event of any decrease of such indices during the currency of this contract we shall promptly notify the same to the purchaser and offer requisite reduction in the contract rate."

Annexure 3: Format of Procurement Proposal

Procurement Proposal (Concept Paper) for Procurement of Consultancy/ other services

(Refer Para 1.15 and 9.8)

NO.		Date	
Category of Assignment		Consultancy Services/ other services	
Name of Officer/ Office proposing the Assignment			
Brief Description of Consultancy/ other services Proposed:			
Proposed Period of Engagement:			
Place and Nodal Officer for execution			
Total Estimated Cost:			
Estimate Name/ number:			
Allocation No		Allocation Code No	

Purpose/ Objective Statement of Services

i) Description of service:

ii) Background of the Organisation and the Project:

iii) Purpose/ Objectives of the Assignment: (Highlight how the proposed procurement of services would fit in with short-term and strategic goals of Procuring Entity)

Service Outcome Statement

i) 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)

Justification for the procurement of Services

i) Capabilities required for carrying out the assignments:

a) Rough assessment of available in-house capabilities as compared to required capabilities:
b) The eligibility and pre-qualification criteria to be met by the consultants/ service providers:
c) Precedences and similar assignments carried out earlier in our organisation/ similar organisations
d) Justification: Based on assessment of required and in-house capabilities;

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;

a) Staff/ Management/ Organization;

b) Technological and Material Resources;

c) Money, and

d) Time/ Speed of execution; and

iii) Also tick one or more of following:

a) The need to have qualified consultant for providing a specialized high quality service; or/ and

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

c) The need for Transfer of Knowledge/ Training/ Capacity and capability building as a by-product of such engagement

d) Need to acquire information about/ Identifying and implementing new methods and systems

e) Need for planning and implementing organizational change

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):

   a) Staff/ Management/ Organization;

   b) Technological and Material Resources;

   c) Money, and

   d) Time/ Speed of execution.

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 4.1)

1. Description of Assignment
2. Procuring Entity's Organisation Background
3. Assignment Background
4. Statement of Purpose/ Objectives
5. Statement of Assignments Outcomes
6. Detailed Scope of Work and Time-lines
    a. Tasks, Activities, dependencies, bar chart and Gantt Chart, Milestones
    b. Place of Assignment and Touring Requirements if any
    c. Length and Duration of assignments
7. Team Composition and Qualification Requirements for the Key Experts (and any other requirements which will be used for evaluating the key experts under the Bid data sheet)
8. Capacity Building, Training and Transfer of Knowledge, if any
9. Deliverables, Reporting Requirements and Time Schedule for Deliverables [If no reports are to be submitted, state here "Not applicable."]
    a. Format, frequency, and contents of reports; dates of submission
    b. Number of copies, and requirements for electronic submission (or on computer media)
    c. Persons (indicate names, titles, submission address) to receive them;
10. Background material, Data, reports, records of previous surveys, and so on, to be provided to the consultant (Mention a caveat about reliability of material provided and need for the consultant to verify and crosscheck vital aspects)
11. Facilities such as local conveyance, office space, office machines, secretarial assistance, utilities, local services, etc., which would be provided to the consultant by the Procuring Entity (Specifically mention, what facility/ utilities would not be provided and also, charges if any for facilities offered)
12. Institutional and organisational arrangement
    a. Counterpart Project Manager and Team
    b. Consultancy Management Committee
    c. Chain of Command for reporting

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

Annexure 5: Bid Opening Attendance Sheet cum Report

(Refer Para 6.4, 6.8 and 9.17)

[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, 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, 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 5.1, 5.2 and 6.7)

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 6A)
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) Describe briefly 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 (Formats given in Annexure 6B to 6F)

a) Technical Evaluation Summary (simplified in case of LCS or EoI, otherwise detailed, if so chosen in RfP)
b) Evaluation of Consultancy Firm's Experience (In case of Detailed Technical Evaluation specified)
c) Evaluation of Methodology & Work Schedule (In case of Detailed Technical Evaluation specified)
d) Evaluation of the Key Professionals (In case of Detailed Technical Evaluation specified)

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) Describe briefly 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,

i) Give a summary of recommended bids, award value, bid expiry date and special conditions, if any;
ii) Also mention that the rates recommended are considered reasonable (and basis for such determination);
iii) Total value of the recommendations for determining level of acceptance

<table>
<tr><td colspan="4">authority;
iv) Mention that none of the TC members have any conflict of interest with the parties recommended for award;
v) Request acceptance of recommendations by competent authority and that it's within his powers of acceptance as per SoPP/ DFPR.</td></tr>
<tr><td colspan="4">Signature Name and Designation of the Members</td></tr>
<tr><td>1</td><td></td><td>2</td><td></td></tr>
<tr><td></td><td>Date:</td><td></td><td>Date:</td></tr>
<tr><td></td><td>(Name & Designation)</td><td></td><td>(Name & Designation)</td></tr>
<tr><td>3</td><td></td><td>4</td><td></td></tr>
<tr><td></td><td>Date:</td><td></td><td>Date:</td></tr>
<tr><td></td><td>(Name & Designation)</td><td></td><td>(Name & Designation)</td></tr>
<tr><td colspan="4">Remarks by the Accepting Authority:
_____</td></tr>
<tr><td colspan="4">Signature:_____ Date:_____</td></tr>
<tr><td colspan="4">Name & Designation of Accepting Authority_____</td></tr>
</table>

Annexure 6A: Format for evaluation of Responsiveness

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 6B: Format for Simplified evaluation of quality (LCS/ EoI)

(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.

(If so specified in RfP)

Annexure 6C: Format for Detailed Technical evaluation - Summary Sheet

(To be compiled from Annexures 6D; 6E; and 6F)

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 6D Evaluation of Consultancy Firm's Experience

(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 6E Evaluation of Methodology & Work Schedule

(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 6F Evaluation of the Key Professionals

(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 7: Activity and Other Schedule for Other (Non-consultancy) Services

(Refer Para 9.9.1)

i) Description of Assignment

ii) Procuring Entity's Organisation and Assignment Background

iii) Statement of Purpose/ Objectives

iv) Statement of Assignments Outcomes

v) Itemized Activity Schedule and Time-lines

   a. Tasks, Activities, dependencies, categorised into classes, location and features affecting prices.

   b. Frequency of Activities, Quantum, Length and Duration of Activities

   c. Performance standards for such activities

vi) Labour/ Personnel Deployment Schedule:

   a. Type of Personnel, Number of each type, Place, Shifts, Frequency of deployment

   b. Project Managers, Supervisors, Their qualifications/ experience, numbers

   c. Leave reserve and reliving staff needed are not included in the numbers of personnel, these must be included in the rate of each personnel

vii) Material Schedule, if any: Materials, Consumables, Tools of Trade, to be consumed/ deployed, tabulate, quantum, specifications, per unit of activity/ Manpower/ day/ location etc

viii) Essential Equipment Schedule: Deployment of essential machinery (equipment, Trucks, Cranes, Washing Machines, vessels/ crafts, plant & machinery) – mention quantity/ activity, specifications, capacity, age. Possession/ access to such machinery may also be included in the qualification requirements.

ix) Outcomes, deliverables, reports and Time Schedule for Deliverables

x) Statutory and contractual obligations to be complied with by the contractor: Various statutory provisions relating to labour, taxation, Workmen Safety, Child and Women Labour, Private Security Agencies, Environmental Protection, Mining, Forest clearance, Employment reservations and Procuring Entity's own regulation about

safety, security, confidentiality etc. must be listed, so that price implications and compliance is taken care of by the bidder.

xi) Facilities and Utilities to be provided by the Procuring Entity to service provider at Site: It should be mentioned, if any facility/ utility (Operation Manuals, Emergency Medical, Room, Furniture, Electricity connection, Water connection) etc would be made available to the successful bidder to carry out the service. In case it is proposed to charge the Electricity/ Water supplied to the service provider, the same may be mentioned, including the rate of charges. Specially mention facilities and utilities which will not be provided, or the facilities which would be provided on chargeable basis.

xii) Institutional and organisational arrangement

   a. Counterpart Project Manager and Team
   b. Chain of Command for reporting

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

Annexure 8: Certificate for Procurement of other services without Quotation

(Refer Para 9.11)

Ref No: _____

Place: _____ Date: _____

"I, _____, am personally satisfied that the other 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 9: Purchase Committee Certificate for Procurement of other services

(Refer Para 9.11)

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 Commerce or Ministry/Department concerned." The details of recommended purchase are:

Annexure 10: Tender Committee Minutes Format for Other (Non-consultancy) Services

(Refer Para 9.17)

Organisation:_____

_____

Minutes of Tender Committee Meeting

(Techno-commercial/Financial Bids)

Procuring Entity/ Client:	**Stage of Evaluation:** Technical/ Financial Bids

Section I: Top Sheet

File No:		Date:	
Name of Assignment			
Type of Contract	Lump-sum/ Time Based/ Indefinite Delivery/ Unit (Item) Rate	Estimated Cost:-	
Tender Published In		Date of Publication	
Bid Validity and extensions taken		Bid Opening Date	

Past Precedents/ Procurements

Sr. No.	Supplier	Order Reference & Date	Quantity	Basic Rate (Rs.)	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. 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: a) Participated: b) Shortlisted in Technical Evaluation prior to this
Section III: Preliminary Evaluation of Responsiveness
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/ Quality Evaluation
i) Describe briefly the meetings and actions taken by the evaluation committee: formation of a technical evaluation team, outside assistance, evaluation guidelines, justification of evaluation criteria in the standard RfP and compliance of evaluation with RfP. ii) Present results of the technical evaluation iii) Highlight strengths and weaknesses of each proposal: (a) Strengths: Experience in very similar projects in the country; proving a clear understanding of the scope of the assignment; (b) Weaknesses: Of a particular component of the proposal; of a lack of experience in the region or type of service; of a lack of responsiveness;
Section V: Evaluation of Technically Successful Bids: Financial Evaluation
a) Start with review of techno-commercial evaluation and shortlisted Firms and approval and directions by CA b) Describe briefly the meetings and actions taken by the evaluation committee: formation of a financial evaluation team, outside assistance, evaluation guidelines, and compliance of evaluation with RfP. c) Insert a summary table of evaluated bid prices from L-1 to highest d) 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,

i) Give a summary of recommended bids, award value, bid expiry date and special conditions, if any.

Also mention that the rates recommended are considered reasonable (and basis for such determination).

Total value of the recommendations for determining level of acceptance authority.

Mention that none of the TC members have any conflict of interest with the parties recommended for award.

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_____

Appendix

Appendix 1: Basic Aims and Fundamental Principles of Public Procurement

(Refer Para 1.5, 1.6)

1.1 Basic Aims of Procurement – the Five Rs of Procurement

In every procurement, public or private, the basic aim is to achieve just the right balance between costs and requirements concerning the following five parameters called the Five R's of procurement. The entire process of procurement (from the time the need for an item, facility or services is identified till the need is satisfied) is designed to achieve such a right balance. The word 'right' is used in the sense of 'optimal balance'.

i). **Right Quality**

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

ii). **Right Quantity**

There are extra costs and systemic overheads involved with both procuring a requirement too frequently in small quantities or with buying large quantities. Hence, the right quantity is procured (in appropriate size of contract) which balances extra costs associated with larger and smaller quantities. In case of Procurement of Services, scope of Work determines the quantum of services.

iii). **Right Price**

It is not correct to aim at the cheapest materials/ facilities/ Services available. The price should be just right for the quality, quantity and other factors involved (or

should not be abnormally low for a facilities/works/ services which could lead to a situation of non-performance or failure of contract). The concept of price can be refined further to take into account not only the initial price paid for the requirement but also other costs such as maintenance costs, operational costs and disposal costs (Also termed as life cycle costing - please also refer to para 1.2 below)

iv). **Right Time and Place**

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

v). **Right Source**

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

1.2 Refined Concepts of Cost and Value – Value for Money

The concept of price or cost has been further refined into Total Cost Of Ownership (TCO) or Life Cycle Cost (LCC) or Whole-of-Life (WOL) to take into account not only the initial acquisition cost but also cost of operation, maintenance and disposal during the lifetime of the external resource procured. Similarly, the concept of quality is linked to the need and is refined into the concept of utility/ value. These two, taken together, are used to develop the concept of Value for Money (VfM, also called Best Value for Money in certain contexts). VfM means the effective, efficient, and economic use of resources, which may involve the evaluation of relevant costs and benefits, along with an assessment of risks, non-price attributes (e.g. in goods and/or services that contain recyclable content, are recyclable, minimise waste and greenhouse gas emissions, conserve energy and water and minimize habitat destruction and environmental degradation, are non-toxic etc.) and/or life cycle

costs, as appropriate. Price alone may not necessarily represent VfM. *In public procurement, VfM is achieved by attracting the widest competition by way of optimal description of need; development of value-engineered specifications/ Terms of Reference (ToR); appropriate packaging/ slicing of requirement; selection of an appropriate mode of procurement and bidding system.* These advanced concepts are explained below.

1.2.1 The Concept of Value

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

1.2.2 Total Cost of Ownership

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

costs associated with a product, service, or capital equipment that are incurred over its expected life. Typically, these costs can be broken into four broad categories:

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

1.2.3 Value for Money

Besides value of a product or service, the customer also has his own notion of "value" of a particular sum of money. This is different for different people or even for the same person in different circumstances. When the perceived value of a product matches the perceived value of the amount of money (cost of the product), the customer feels he got the full value for his money. This is called the VfM. In procurement, Total Cost of Ownership is taken to evaluate value for money. Given the limited resources available to the government, ensuring VfM in procurement is the key to ensuring the optimum utilisation of scarce budgetary resources. It usually means buying the product or service with the lowest WOL costs that is 'fit for purpose' and just meets the specification. VfM also incorporates affordability; clearly,

goods or services that are unaffordable cannot be bought. This should be addressed as soon as possible within the process, ideally at the need assessment stage before procurement commences. In order to address this issue, a change in the procurement approach, specification or business strategy may be required.

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

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

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

1.3 Fundamental Principles of Public Procurement

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

i). Transparency Principle

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

ii). Professionalism Principle

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

prescribe professional standards and specify suitable training and certification requirements for officials dealing with procurement matters.

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

"Rule 144 of GFR 2017: Fundamental principles of public buying. (for all procurements including procurement of works).— Every authority delegated with the financial powers of procuring goods in public interest shall have the responsibility and accountability to bring efficiency, economy, and transparency in matters relating to public procurement and for fair and equitable treatment of suppliers and promotion of competition in public procurement.

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

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

   1. be objective, functional, generic and measurable and specify technical, qualitative and performance characteristics;

   2. not indicate a requirement for a particular trade mark, trade name or brand.

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

c) *Where applicable, the technical specifications shall, to the extent practicable, be based on the national technical regulations or recognized national standards or building codes, wherever such standards exist, and in their absence, be based on the relevant international standards. In case of Government of India funded projects abroad, the technical specifications may be framed based on requirements and standards of the host beneficiary Government, where such standards exist. Provided that a Procuring Entity*

may, for reasons to be recorded in writing, adopt any other technical specification.

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

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

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

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

h) *at each stage of procurement the concerned procuring authority must place on record, in precise terms, the considerations which weighed with it while taking the procurement decision.*

i) *a complete schedule of procurement cycle from date of issuing the tender to date of issuing the contract should be published when the tender is issued.*

j) *All Ministries/Departments shall prepare Annual Procurement Plan before the commencement of the year and the same should also be placed on the their website"*

k) *[Notwithstanding anything contained in these Rules, Department of Expenditure may, by order in writing, impose restrictions, including prior registration and/or screening, on procurement from bidders from a country or countries, or a class of countries, on grounds of defence of India, or matters directly or indirectly related thereto including national security; no procurement shall be made in violation of such restrictions.]*[57]

iii). Broader Obligations Principle

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

[57] Inserted vide Department of Expenditure (DoE), Ministry of Finance (MoF) OM No. F.6/18/2019-PPD dated 23.07.2020.

a) Preferential procurement from backward regions, weaker sections and MSEs, locally manufactured goods or services, to the extent specifically included in the 'Procurement Guidelines'; and
b) Reservation of procurement of specified class of goods from or through certain nominated CPSEs or Government Organisations, to the extent specifically included in the 'Procurement Guidelines'.
c) Support to broader social policy and programme objectives of the government (for example, economic growth, strengthening of local industry - make-in-India, Ease of Doing Business, job and employment creation, and so on, to the extent specifically included in the 'Procurement Guidelines');
d) Facilitating administrative goals of other departments of government (for example, ensuring tax or environmental compliance by participants, Energy Conservation, accessibility for People With Disabilities etc. to the extent specifically included in the 'Procurement Guidelines').
e) Procurement policies and procedures must comply with accessibility criteria which may be mandated by the Government from time to time. Keeping this in view, Department of Expenditure amended Rule 144 of GFR, 2017 and introduced a sub-point (xi) imposing restrictions under the rule [as mentioned under (ii) above]. The detailed provisions were notified through Order (Public Procurement No.1)[58] which are as follows:

1. **Requirement of registration**

a) Any bidder from a country which shares a land border with India will be eligible to bid in any procurement whether of goods, services (including consultancy services and non-consultancy services) or works (including turnkey projects) only if the bidder is registered with the Competent Authority, specified in Para 12(c) below.
b) The Order shall not apply to (i) cases where orders have been placed or contract has been concluded or letter/notice of award/ acceptance (LoA) has

[58] Inserted vide Department of Expenditure (DoE), Ministry of Finance (MoF) OM No. F.6/18/2019-PPD dated 23.07.2020.

been issued on or before the date of the order (23rd July 2020); and (ii) cases falling under para 13 below.

2. **Transitional cases**

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

a) In tenders which are yet to be opened, or where evaluation of technical bid or the first exclusionary qualificatory stage (i.e. the first stage at which the qualifications of tenderers are evaluated and unqualified bidders are excluded) has not been completed: No contracts shall be placed on bidders from such countries. Tenders received from bidders from such countries shall be dealt with as if they are non-compliant with the tender conditions and the tender shall be processed accordingly.

b) If the tendering process has crossed the first exclusionary qualificatory stage, if the qualified bidders include bidders from such countries, the entire process shall be scrapped and initiated *de novo.* The *de novo* process shall adhere to the conditions prescribed in the Order.

c) As far as practicable, and in cases of doubt about whether a bidder falls under paragraph (1) above, a certificate shall be obtained from the bidder whose bid is proposed to be considered or accepted, in terms of paras 5(c), 5(d) and 6 read with para (1).

3. **Incorporation in tender conditions**

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

4. **Applicability**

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

b) to public sector banks and public sector financial institutions; and

c) subject to any orders of the Department of Public Enterprises, to all Central Public Sector Enterprises; and

d) to procurement in Public Private Partnership projects receiving financial support from the Government or public sector enterprises/ undertakings.

e) Union Territories, National Capital Territory of Delhi and all agencies/ undertakings thereof

5. **Definitions**

a) "Bidder" for the purpose of the Order (including the term 'tenderer', 'consultant' 'vendor' or 'service provider' in certain contexts) means any person or firm or company, including any member of a consortium or joint venture (that is an association of several persons, or firms or companies), every artificial juridical person not falling in any of the descriptions of bidders stated hereinbefore, including any agency, branch or office controlled by such person, participating in a procurement process.

b) "Tender" for the purpose of the Order will include other forms of procurement, except where the context requires otherwise.

c) "Bidder from a country which shares a land border with India" for the purpose of the Order means

i. An entity incorporated, established or registered in such a country; or

ii. A subsidiary of an entity incorporated, established or registered in such a country; or

iii. An entity substantially controlled through entities incorporated, established or registered in such a country; or

iv. An entity whose beneficial owner is situated in such a country; or

v. An Indian (or other) agent of such an entity; or

vi. A natural person who is a citizen of such a country; or

vii. A consortium or joint venture where any member of the consortium or joint venture falls under any of the above

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

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

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

b) In case of a partnership firm, the beneficial owner is the natural person(s) who, whether acting alone or together, or through one or more juridical

person, has ownership of entitlement to more than fifteen percent of capital or profits of the partnership;

c) In case of an unincorporated association or body of individuals, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has ownership of or entitlement to more than fifteen percent of the property or capital or profits of such association or body of individuals;

d) Where no natural person is identified under (6) (a) or (6) (b) or (6) (c) above, the beneficial owner is the relevant natural person who holds the position of senior managing official;

e) In case of a trust, the identification of beneficial owner(s) shall include identification of the author of the trust, the trustee, the beneficiaries with fifteen percent or more interest in the trust and any other natural person exercising ultimate effective control over the trust through a chain of control or ownership.

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

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

8. **Certificate regarding compliance**

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

9. **Validity of registration**

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

10. **Government e-Marketplace**

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

11. **Model Clauses/ Certificates**

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

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

a) The Competent Authority for the purpose of registration under this Order shall be the Registration Committee constituted by the Department for Promotion of Industry and Internal Trade (DPIIT)[59].

b) The Registration Committee shall have the following members[10]

   i. An officer, not below the rank of Joint Secretary, designated for this purpose by DPIIT, who shall be the Chairman;

   ii. Officers (ordinarily not below the rank of Joint Secretary) representing the Ministry of Home Affairs, Ministry of External Affairs, and of those Departments whose sectors are covered by applications under consideration;

   iii. Any other officer whose presence is deemed necessary by the Chairman of the Committee.

c) DPIIT has laid down the method of application, format etc. for such bidders as stated in para (1) (a) above[60]. On receipt of an application seeking registration

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

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

from a bidder from a country covered by para (1) (a) above the Competent Authority shall first seek political and security clearances from the Ministry of External Affairs and Ministry of Home Affairs, as per guidelines issued from time to time. Registration shall not be given unless political and security clearance have both been received.

d) The Ministry of External Affairs and Ministry of Home Affairs may issue guidelines for internal use regarding the procedure for scrutiny of such applications by them.

e) The decision of the Competent Authority, to register such bidder may be for all kinds of tenders or for a specified type(s) of goods or services, and may be for a specified or unspecified duration of time, as deemed fit. The decision of the Competent Authority shall be final.

f) Registration shall not be granted unless the representatives of the Ministries of Home Affairs and External Affairs on the Committee concur[61].

g) Registration granted by the Competent Authority of the Government of India shall be valid not only for procurement by Central Government and its agencies/ public enterprises etc. but also for procurement by State Governments and their agencies/ public enterprises etc. No fresh registration at the State level shall be required.

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

[60] Notified vide OM No.P-45021/112/2020-PP (BE-II) (E-43780) issued by DPIIT dated 30.03.2021

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

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

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

j) In transitional cases falling under para (2) above, where it is felt that it will not be practicable to exclude bidders from a country which shares a land border with India, a reference seeking permission to consider such bidders shall be made by the procuring entity to the Competent Authority, giving full information and detailed reasons. The Competent Authority shall decide whether such bidders may be considered, and if so shall follow the procedure laid down in the above paras.

k) Periodic reports on the acceptance/ refusal of registration during the preceding period may be required to be sent to the Cabinet Secretariat. Details will be issued separately in due course by DPIIT.

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

a) Bona fide procurements made through GeM without knowing the country of the bidder till the date fixed by GeM for this purpose, shall not be invalidated by the Order.

b) Bona fide small procurements, made without knowing the country of the bidder, shall not be invalidated by the Order.

c) In projects which receive international funding with the approval of the Department of Economic Affairs (DEA), Ministry of Finance, the procurement guidelines applicable to the project shall normally be followed, notwithstanding anything contained in the Order and without reference to the Competent Authority. Exceptions to this shall be decided in consultation with DEA.

d) The Order shall not apply to procurement by Indian missions and by offices of government agencies/ undertakings located outside India.

e) The Order will not apply to bidders from those countries (even if sharing a land border with India) to which the Government of India has extended lines of credit or in which the Government of India is engaged in development projects. Updated lists of countries to which lines of credit have been

extended or in which development projects are undertaken are given in the website of the Ministry of External Affairs[62].

f) A bidder is permitted to procure raw material, components, sub-assemblies etc. from the vendors from countries which shares a land border with India. Such vendors will not be required to be registered with the Competent Authority, as it is not regarded as "sub-contracting". However, in case a bidder has proposed to supply finished goods procured directly/ indirectly from the vendors from the countries sharing land border with India, such vendor will be required to be registered with the Competent Authority[63].

g) Procurement of spare parts and other essential service support like Annual Maintenance Contract (AMC)/ Comprehensive Maintenance Contract (CMC), including consumables for closed systems, from Original Equipment Manufacturers (OEMs) or their authorized agents, shall be exempted from the requirement of registration as mandated under Rule 144(xi) of GFR, 2017 and Public Procurement orders issued in this regard[64].

14. Clarification to Order (Public Procurement No.1) dated 23rd July 2020[65]

a) For the purpose of (2)(b) above, "qualified bidders" means only those bidders would otherwise have been qualified for award of the tender after considering all factors including price, if the Order (Public Procurement No.1) dated 23rd July 2020 had not been issued.

b) If bidders form such countries would not have qualified for award for reasons unconnected with the said Orders (for example, because they do not meet tender criteria or their price bid is higher or because of the provisions of purchase preference under any other order or rule or any other reason) then there is no need to scrap the tender/ start the process *de novo.*

c) The following examples are given to assist in implementation of the Order

[62] Notified through Order (Public Procurement No. 2) vide F.No.6/18/2019-PPD issued by Department of Expenditure dated 23.07.2020

[63] Notified vide OM No. F.18/37/2020-PPD issued by Department of Expenditure dated 08.02.2021

[64] Notified vide OM No. F.12/1/2021-PPD(Pt.) issued by Department of Expenditure dated 02.03.2021

[65] Notified through Order (Public Procurement No. 3) vide F.No.6/18/2019-PPD issued by Department of Expenditure dated 24.07.2020

i. Example I: Four bids are received in a tender. One of them is from a country which shares a land border with India. The bidder from such country is found to be qualified technically by meeting all prescribed criteria and is also the lowest bidder. In this case, the bidder is qualified for award of the tender, except for the provisions of the Order (Public Procurement No. 1) dated 23rd July. In this case, the tender should be scrapped and fresh tender initiated.

ii. Example 2: The facts are as in Example 1, but the bidder from such country, though technically qualified is not the lowest because there are other technically qualified bidders whose price is lower. Hence the bidder from such country would not be qualified for award of the tender irrespective ofthe Order (Public Procurement No. 1) dated 23rd July 2020. In such a case, there is no need to scrap the tender.

iii. Example 3: The facts are as in Example 1, but the bidder from a country which shares a land border with India, though technically qualified, is not eligible for award due to the application of price preference as per other orders/ rules. In such a case, there is no need to scrap the tender.

iv. Example 4: Three bids are received in a tender. One of them is a bidder from a country sharing a land border with India. The bidder from such a country does not meet the technical requirements and hence is not qualified. There is no need to scrap the tender.

iv). **Extended Legal Responsibilities Principle**

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

authorities have also the responsibility and accountability to comply with the laws relating to Governance Issues like Right to Information (RTI) Act and Prevention of Corruption Act, and so on. Details of such extended legal obligations are given in Appendix 2.

v). **Public Accountability Principle**

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

a) documents pertaining to determination of need for procurement;
b) description of the subject matter of the procurement;
c) statement of the justification for choice of a procurement method other than open competitive bidding;
d) documents relating to pre-qualification and registration of bidders, if applicable;
e) particulars of issue, receipt, opening of the bids and the participating bidders at each stage;

f) requests for clarifications and any reply thereof including the clarifications given during pre-bid conferences;
g) bids evaluated, and documents relating to their evaluation;
h) contracts and Contract Amendment; and
i) complaint handling, correspondences with clients, consultants, banks.

Appendix– 2: Legal Aspects of Public Procurement

(Refer Para 1.3 and 1.12)

1.0 Relevant Provisions of the Constitution of India

1.1 Equality for Bidders

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

1.2 Persons Authorised to Make and Execute Contracts on Behalf of Governments

"Part III - FUNDAMENTAL RIGHTS - Right to Freedom
§19 Protection of certain rights regarding freedom of speech, etc.
(1) All citizens shall have the right-
(a) to freedom of speech and expression;
(b) to assemble peaceably and without arms;
(c) to form associations or unions;
(d) to move freely throughout the territory of India;
(e) to reside and settle in any part of the territory of India; [and]
(g) to practise any profession, or to carry on any occupation, trade or business."

"Part XII. - Finance, Property, Contracts and Suits
§299 Contracts:
All contracts made in the exercise of the executive power of the Union or of a State shall be expressed to be made by the President, or by the Governor of the State, as the case may be, and all such contracts and all assurances of property made in the exercise of that power shall be executed on behalf of the President or the Governor by such persons and in such manner as he may direct or authorise.
Neither the President nor the Governor shall be personally liable in respect of any contract or assurance made or executed for the purposes of this Constitution, or for the purposes of any enactment relating to the Government of India heretofore in force, nor shall any person making or executing any such contract or assurance on behalf of any of them be personally liable in respect thereof."

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

1.3 Other Mercantile Laws

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

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

2.0 Salient Features of the Indian Contract Act

2.1 Legal Aspects Governing Public Procurement of Goods - Introduction

A public procurement contract, besides being a commercial transaction, is also a legal transaction. There are a number of laws that may affect various commercial aspects of public procurement contracts. A public procurement professional is

expected to be generally aware of the implications of following basic laws affecting procurement of goods; however, he or she is not expected to be a legal expert. Where appropriate in complex cases, legal advice may be obtained. In other categories of procurement, additional set of laws may be relevant:

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

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

2.2 Elementary Legal Practices

2.2.1 **What is a Contract?** The proposal or offer when accepted is a promise, a promise and every set of promises forming the consideration for each other is an agreement, and an agreement if made with free consent of parties competent to contract, for a lawful consideration and with a lawful object is a contract.

2.2.2 **Proposal or Offer:** When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of the other to such act or abstinence, he is said to make a proposal or offer. In a sale or purchase by tender, the tender signed by the tenderer is the proposal. The invitation to tender and instructions to tenderers do not constitute a proposal.

2.2.3 **Acceptance of the Proposal:** When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal when accepted becomes a promise.

2.2.4 **What agreements are contracts:** An agreement is a contract enforceable by law when the following are satisfied. A defect affecting any of these renders a contract un-enforceable

i) Competency of the parties;
ii) Freedom of consent of both parties
iii) Lawfulness of consideration
iv) Lawfulness of object

2.3 Competency of Parties

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

2.3.1 Categories of persons and bodies who are parties to the contract may be broadly sub-divided under the following heads: -

i) Individuals;
ii) Partnerships;
iii) Limited Companies;
iv) Corporations other than limited companies

a) **Contracts with Individuals:** Individuals tender either in their own name or in the name and style of their business. If the tender is signed by any person other than the concerned individual, the authority of the person signing the

tender on behalf of another must be verified and a proper power of attorney authorizing such person should be insisted on. In case, a tender is submitted in a business name and if it is a concern of an individual, the constitution of the business and the capacity of the individual must appear on the face of the contract and the tender signed by the individual himself as proprietor or by his duly authorized attorney.

b) **Contracts with Partnerships:** A partnership is an association of two or more individuals formed for the purpose of doing business jointly under a business name. It is also called a firm. It should be noted that a partnership is not a legal entity by itself, apart from the individuals constituting it. A partner is the implied authority to bind the firm in a contract coming in the purview of the usual business of the firm. The implied authority of a partner, however, does not extend to enter into arbitration agreement on behalf of the firm. While entering into a contract with partnership firm care should be taken to verify the existence of consent of all the partners to the arbitration agreement.

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

examine if the person signing the tender is authorized by the company to enter into contracts on its behalf.

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

2.4 Consent of both Parties

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

i) When the misunderstanding relates to the identity of the other party to the agreement;

ii) When it relates to the nature or terms of the transactions;

iii) When it related to the subject matter of the agreement.

2.5 Free consent of both Parties

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

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

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

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

2.6 Consideration

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

2.7 Lawfulness of object

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

2.8 Communication of an Offer or Proposal

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

2.9 Communication of Acceptance

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

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

2.10 Acceptance to be identical with Proposal

If the terms of the tender or the tender, as revised, and modified, are not accepted or if the terms of the offer and the acceptance are not the same, the acceptance remains a mere counter offer and there is no concluded contract. It should, therefore, be ensured that the terms incorporated in the acceptance are not at variance with the offer or the tender and that none of the terms of the tender are left out. In case, uncertain terms are used by the tenderers, clarifications should be obtained before such tenders are considered for acceptance. If it is considered that a counter offer should be made, such counter offer should be carefully drafted, as a contract is to take effect on acceptance thereof.

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

2.11 Withdrawal of an Offer or Proposal

A tenderer firm, who is the proposer may withdraw its offer at any time before its acceptance, even though the firm might have offered to keep the offer open for a specified period. It is equally open to the tenderer to revise or modify his offer

before its acceptance. Such withdrawal, revision or modification must reach the accepting authority before the *date and time of opening of tender*.

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

2.12 Withdrawal of Acceptance

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

2.13 Changes in terms of a concluded Contract

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

2.14 Discharge of Contracts

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

i) **By mutual agreement:** If neither party has performed the contract, no consideration is required for the release. If a party has performed a part of the contract and has undergone expenses in arranging to fulfil the contract it is necessary for the parties to agree to a reasonable value of the work done as consideration for the value.

ii) **By breach:** In case a party to a contract breaks some stipulation in the contract which goes to the root of transaction, or destroys the foundation of

the contract or prevents substantial performance of the contract, it discharges the innocent party to proceed further with the performance and entitles him to a right of action for damages and to enforce the remedies for such breach as provided in the contract itself. A breach of contract may, however, be waived.

iii) **By refusal of a party to perform:** On a promisor's refusal to perform the contract or repudiation thereof even before the arrival of the time for performance, the promisee may at his option treat the repudiation as an immediate breach putting an end to the contract for the future. In such a case the promisee has a right of immediate action for damages.

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

2.15 Stamping of Contracts

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

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

2.16 Authority for Execution of Contracts

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

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

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

2.17 Contract Effective Date

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

i) Date of signing of the contract;

ii) Furnishing of performance bond in terms of performance security;

iii) Receipt of Bank Guarantee for advance payment;

iv) Obtaining Export Licence for supply of stores by seller and confirmation by the buyer;

v) Receipt of End User's Certificate. The supplier shall provide the End User's Certificate within 30 (thirty) days of the signing of the contract.

3.0 Salient Features of the Indian Arbitration & Conciliation Act 1996

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

3.1 Arbitration

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

3.2 Arbitrator, Arbitration and Arbitral Award

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

3.3 Arbitration Agreement

It is an agreement by the parties to submit to arbitration all or certain disputes, which have arisen or which may arise between them, in respect of a defined legal relationship, whether contractual or non-contractual. The dispute resolution method of arbitration, as per the Arbitration and Conciliation Act, can be invoked only if there is an arbitration agreement (in the form of an arbitration clause or a separate arbitration agreement) in the contract. If there is such an agreement, courts are barred from directly entertaining any litigation in respect of such contracts, and are bound instead to refer the parties to arbitration.

3.4 Appointment and Composition of Arbitral Tribunal

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

appointment of arbitrator has to be made to the Chief Justice of India. In case of other domestic disputes, the application has to be made to the Chief Justice of the High Court within whose jurisdiction the parties are situated.

3.5 Challenge to Appointment of Arbitrator

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

3.6 Conduct of Arbitral Proceedings

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

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

3.7 Arbitral Award

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

3.8 Recourse against Arbitral Award

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

3.9 Conciliation

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

3.10 Changes introduced by the Arbitration and Conciliation (Amendment) Act, 2015

i) Independence, Disqualification and Obligations of arbitrators at the time of appointment

a) **Independence, Impartiality and Accountability of Arbitrators**: A fixed fee structure ensures the independence of the arbitral tribunal and also provides a

reasonable cost estimate to the parties entering into arbitration. The Amendment Act in the Fourth Schedule prescribes the model fees for arbitrators and the High Courts have been assigned the responsibility of framing the rules for determination of the fees and the manner of its payment. The model fee varies from Rs 45,000 (Rupees forty-five thousands) to Rs 30 (Rupees thirty) Lakhs for various slabs of disputed value from Rupees five Lakh to above Rs 20 (Rupees Twenty) Crore (with a sole arbitrator entitles to 25% (twenty five percent) extra above the model fee) it is clarified that such fees shall not be applicable in International Commercial Arbitration and in cases where parties have agreed for determination of fees as per the rules of an arbitral institution.

b) **Disqualification from appointment:** A long and exhaustive list of specific circumstances which shall act as a bar against any person from being appointed as an arbitrator in a dispute, have been enumerated in the seventh schedule. However, the parties to the dispute have been given the opportunity, after the dispute has arisen, to waive the applicability of the seventh schedule, by mutual written agreement, if they so deem fit. Especially of interest in Public Procurement is disqualification of past or present employees, consultant, advisors or other related business relationship not only with the Procuring Entity but also with any affiliated entity thereof. Thus the earlier practice of appointing serving officers of Procuring Entity as arbitrator is no more legal.

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

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

ii) Fast-tracking Arbitration in India

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

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

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

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

1. Dispute is to be decided based on written pleadings only.
2. Arbitral Tribunal shall have the power to call for clarifications in addition to the written pleadings where it deems necessary.

3. Oral hearing maybe held only if all the parties make a request or if the arbitral tribunal considers it necessary.
4. The parties are free to decide the fees of the arbitrator(s).

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

3.10.1 **Procedural and Jurisprudence simplified**

a) **Arbitration to commence within 90 (ninety) days of interim relief:** Where the court grants interim relief before the commencement of arbitration, the arbitration must commence within 90 (ninety) days from such order of interim relief. The court however has been given the authority to extend the period within which the arbitration must commence, if it deems such extension necessary. The Act prohibits courts from entertaining any application for interim relief once the arbitration has entered into reference, unless the court finds that circumstances exist which may not render the remedy provided under section 17 efficacious.

b) **Powers of Interim Relief in Section 9 also to Arbitral Tribunal:** The parties to arbitration can now directly approach the arbitral tribunal for seeking interim relief on the same grounds as were available to the parties under section 9 of the previous act. Further, the tribunal has now been granted the powers of a court while making interim awards in the proceedings before it.

c) **Arbitral tribunal not bound to rule in accordance with terms of the contract:** The arbitral tribunal was previously bound to deliver an award in accordance with the terms of the agreement and was required to take into consideration the 'usages of the trade applicable to the transaction'. Vide the Amendment the arbitral tribunal has been freed of the obligation to only rule in accordance with the terms of the agreement. The arbitral

tribunal is only required to take the agreement into account while delivering its award and is free to deviate from the terms of the agreement if the circumstances so warrant.

d) Act made applicable on International Commercial Arbitration with even seat outside India: Part I of the act has been made applicable for limited purpose (listed below) on International Commercial Arbitrations even in instances where the seat of the arbitration is outside India, however giving freedom to exclude the applicability the Act by entering into an agreement to this effect:

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

4.0 Salient Features of Competition Act, 2002 relating to Anti-competitive Practices

i) The **Preamble of the Competition Act, 2002**, provides for the establishment of a Commission keeping in view of the economic development of the country to promote and sustain competition in markets; prevent practices having adverse effect on competition; protect consumer interest; and ensure freedom of trade carried on by participants in Indian markets.

ii) The Act was amended by **Competition (Amendment) Act, 2007** and again by Competition (Amendment Act), 2009.

iii) In India, **Competition Commission of India ("CCI"),** formulated under the Competition Act is a quasi-judicial and regulatory body entrusted with the task enforcement of the Competition Act, 2002. Apart from specific functions under the Competition Act, 2002 the CCI also has extra-territorial jurisdiction, inquiry into anticompetitive conduct, sector-specific regulatory work, competition advocacy,

power of appointment of professional and experts, and procedure for investigation (in terms of regulating its own procedure).

iv) Section 8 dealing with **composition of Commission** provides for a chairperson and not less than two and not more than six members which are to be appointed by Central Government. The CCI is vested with inquisitorial, investigative, regulatory, adjudicatory and also advisory jurisdiction. Vast powers have been given to the Commission and under Section 64, the Commission can frame regulations.

v) The **Competition Appellate Tribunal (COMPAT)** is another body entrusted with the responsibility of hearing and disposing of appeals against any direction or decision or order of the CCI. It also adjudicates on compensation claims arising from the findings of the CCI or its own findings on appeals against the CCI orders and passes orders on the recovery of compensation.

vi) Any person aggrieved by the order or decision of the CCI may prefer an **appeal** to the Competition Appellate Tribunal ('COMPAT') within 60 (sixty) days from the date of communication of such order or decision. The second and final appeal under Section 53T lies before the Supreme Court of India from the orders of the COMPAT within a period of 60 (sixty) days from the date of communication of the order by the COMPAT.

vii) CCI may **initiate an inquiry**:

   a) On its own motion on the basis of information and knowledge in its possession, or

   b) On receipt of any information, in such manner and accompanied by such fee as may be determined by regulations, from any person, consumer or their association or trade association, or

   c) On receipt of a reference from the Central Government or a State Government or a statutory authority

viii) The Act provides for Director General office as a separate investigative wing to assist the CCI. The DG looks into the complaints received from the CCI and submits all findings to it. DG is solely responsible for making enquiries, for examining documents and for making investigations into complaints. The DG is vested under the Act with powers of summoning of witnesses, examining them on

oath, requiring the discovery and production of documents, receiving evidence on affidavits, issuing commissions for the examination of witnesses etc.

ix) The Act in Section 49 (3) lays down the advocacy function of CCI and lays down that the CCI shall take suitable measures for the promotion of competition advocacy, creating awareness and imparting training about competition issues. Section 32 of the Act grants the CCI extra-territorial jurisdiction over anticompetitive conduct which has an appreciable adverse effect on competition within India. Any anticompetitive activity taking place outside India but having an appreciable adverse effect on competition within India shall be subject to the application of the Competition Act.

x) Under s. 21 of the Act, any statutory authority can suo motto or on request of a party in the course of a proceeding before it can make a reference to CCI. CCI shall give its opinion within sixty days of receipt of such reference by such statutory authority. Under the provisions of the Act, the authority which made reference shall consider the opinion of the Commission and thereafter, give its findings recording reasons on the issues referred to in the said opinion by CCI. Section 21A in the same language provides for such reference by CCI to any statutory authority.

xi) The key provisions of the Competition Act include:
   a) Section 3 of the Competition Act, 2002 dealing with anti-competitive agreements;
   b) Section 4 of the Competition Act, 2002 which discusses abuse of dominance;
   c) Section 5 and 6 of the Competition Act, 2002 dealing with the regulation of combinations.

xii) The term ‘agreement’, has been defined broadly in the Competition Act. It extends to a mere ‘arrangement’, ‘understanding’ or ‘action in concert’, none of which need be in writing or enforceable by law.

xiii) Section 3(1) of the Competition Act lays down that no enterprise or association of enterprises or person or association of persons shall enter into any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition within India. The Act prohibits an anti-competitive agreement and declares that such an agreement shall be void.

xiv) Section 3(3) of the Competition Act deals with the horizontal agreements as it covers the agreements between entities engaged in identical or similar trade of goods or provision of services. It also includes cartels. The section covers:

a) Agreement entered into between enterprises or associations of enterprises or persons or associations of persons or between any person and enterprise
b) Practice carried on by any association of enterprises or association of persons
c) Decision taken by any association of enterprises or association of persons

xv) Section 3(3) of the Competition Act enlists four broad classifications of horizontal agreements which are presumed to cause an appreciable adverse effect on competition (AAEC) in India.

a) Agreements regarding Prices
b) Agreements regarding Quantity/ Quality
c) Market Allocation
d) Bid Rigging

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

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

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

a) Collusive bidding: Agreement between firms to divide the market, set prices or limit production – involves, kickbacks and misrepresentation of independence
b) Bid Rotation
c) Bid Suppression
d) Complementary Bidding
e) Subcontracting arrangements
f) Market Allocation

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

a) Declare Anticompetitive Agreements Void

b) Impose Heavy Penalties

1. Penalty can be up to 10% (ten percent) of the average turnover for the last three preceding financial years upon each of such persons or enterprises which are parties to bid-rigging
2. Cartel, a penalty of up to three times of its profit for each year of the continuance of such agreement or 10% (ten percent) of its turnover for each year of the continuance of such agreement, whichever is higher

c) Order the parties to Cease & Desist

d) Modification of agreements

e) Remedy Damage to reputation

f) Fix Individual Liability

g) Grant Interim orders

h) Any other order as CCI deems fit

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

a) Any person, consumer or their association or trade association can file information before the Commission.

b) Central Govt. or a State Govt. or a statutory authority can also make a reference to the Commission for making an inquiry.

c) “Person” includes an individual, HUF, firm, company, local authority, cooperative or any artificial juridical person.

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

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

b) Class of consumers.

xxii) The fee -

a) Rupees 5000/- (Five thousand only) in case of individual, or Hindu undivided family (HUF), or Non Government Organisation (NGO), or Consumer Association, or Co-operative Society, or Trust, duly registered under the respective Acts,

b) Rupees 20,000/-(twenty thousand only) in case of firms, companies having turnover in the preceding year upto Rupees one Crores, and

c) Rupees 50,000/- (fifty thousand only) in case not covered under clause (a) or (b) above.

5.0 Salient Features of the Whistle Blowers Protection Act, 2011 and the Whistle Blowers Protection (Amendment) Act, 2015

i) The Act seeks to protect whistleblowers, i.e. persons making a public interest disclosure related to an act of corruption, misuse of power, or criminal offence by a public servant.

ii) Any public servant or any other person including a non-governmental organization may make such a disclosure to the designated agencies i.e. Central or State Vigilance Commission. The Time Limit for making any complaint or disclosure to the Competent Authority is seven years from the date on which the action complained against is alleged to have taken place.

iii) The Designated Agency cannot entertain any disclosure relating to any inquiry ordered under the Public Servants (Inquiries) Act, 1850 and Commissions of Inquiry Act, 1952.

iv) Similarly, the Amendment Act, 2015, The Bill prohibits the reporting of a corruption related disclosure if it falls under any 10 (ten) categories including information related to:

a) The sovereignty, strategic, scientific or economic interests of India, or the incitement of an offence

b) Records of deliberations of the Council of Ministers

c) That which is forbidden to be published by a court or if it may result in contempt of court;

d) A breach of privilege of legislatures;

e) Commercial confidence, trade secrets, intellectual property (if it harms a third party);

f) That relayed in a fiduciary capacity;

g) That received from a foreign government;

h) That which could endanger a person's safety etc.;

i) That which would impede an investigation etc.;

j) Personal matters or invasion of privacy.

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

v) Any public interest disclosure received by a Competent Authority will be referred to a government authorised authority if it falls under any of the above prohibited categories. This authority will take a decision on the matter, which will be binding.

vi) The Identity of the Complainant must be included in the Complaint or the Disclosure. However the Designated Agency shall conceal the identity of the complainant unless the complainant himself has revealed his identity to any other office or authority while making public interest disclosure or in his complaint or otherwise. However, the Designated Agency can reveal the identity of the complainant in circumstances where it becomes inevitable or extremely necessary for the purposes of the enquiry.

vii) The Designated Agency may, with the prior written consent of the complainant, reveal the identity of the complainant to such office or organization where it becomes necessary to do so. If the complainant does not agree to his name being revealed, in that case, the complainant shall provide all documentary evidence in support of is complaint to the Designated Agency.

viii) Any person who negligently or with mala fide reveals the identity of the complainant shall be punished with imprisonment up to three years and fine not exceeding fifty thousand rupees.

ix) Similarly any disclosure made with mala fide and knowingly that it was false or misleading shall be punished with imprisonment up to two years and fine not exceeding thirty thousand rupees.

x) After receipt of the report or comments relating to the complaint, if the Designated Agency is of the opinion that such comments or report reveals either wilful misuse of power or wilful misuse of discretion or substantiates allegations of corruption, it shall recommend to the public authority to take appropriate corrective measures such as initiating proceedings against the concerned public servant or other administrative and corrective steps. However, in case the public authority does not agree with the recommendation of the Designated Agency, it shall record the reasons for such disagreement.

xi) While dealing with any such inquiry, the Designated Agency shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908 in respect of matters like receiving evidence, issuing commissions, discovery and production of any document etc. Also, every proceeding before the Designated Agency shall be deemed to be a judicial proceeding under the Code of Criminal Procedure, 1973and Indian Penal Code.

xii) No obligation to maintain secrecy or other restrictions upon the disclosure of information shall be claimed by any Public Servant in the proceedings before the Designated Agency.

xiii) But, no person is required to furnish any information in the inquiry under this act if such information falls under the 10 (ten) categories mentioned before.

xiv) It shall be the responsibility of the Central Government to ensure that no person who has made a disclosure is victimised on the ground that such person had made a disclosure under this act.

xv) If any person is victimised or likely to be victimised on the above-mentioned ground, he may contact the Designated Agency and the Designated Agency may pass appropriate directions in this respect. The Designated Agency can even restore status quo ante with respect to the Public Servant who has made a disclosure. Also, the Designated Agency can pass directions to protect such complainant.

xvi) If an offence under this act has been committed by any Head of the Department unless he proves that the offence was committed without his knowledge or that he exercised all due diligence in this respect.

xvii) This Act extends to all the Companies as well. When any offence under this act has been committed by a company, every person who at the time of the offence was responsible for the conduct of the business of the company shall be deemed to be guilty of the offence unless he proves that the offence was committed without his knowledge or that he exercised all due diligence in this respect.

xviii) No court can take cognizance of any offence under this act save on a complaint made by the Designated Agency. No court inferior to that of a Chief Metropolitan Magistrate or a Chief Judicial Magistrate shall try any offence under this act. The High Court shall be the appellate authority in this respect.

Appendix 3: Electronic Procurement (e-Procurement)

(Refer Para 4.5)

1.0 Electronic procurement (e-procurement)

E-procurement is the use of information and communication technology (specially the internet) by the buyer 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. The Procurement Policy Division, Department of Expenditure, MoF, has vide Office Memorandum no: 10/3/2012-PPC dated January 9, 2014[66] prescribed mandatory procurement of tenders through the e-procurement mode for tenders valued above Rupees two lakh. (as per GFR, 2017, now this is mandatory for all tenders)

2.0 Service Provider

A service provider is engaged to provide an e-procurement system covering the following:

i) All steps involved, starting from hosting of tenders to determination of techno-commercially acceptable lowest bidder, are covered;
ii) The system archives the information and generates reports required for the management information system/decision support system;
iii) A helpdesk is available for online and offline support to different stakeholders;
iv) The system arranges and updates the Digital Signature Certificate (DSC) for departmental users; and
v) Different documents, formats, and so on, for the e-procurement systems are available.

3.0 The e-Procurement Process: In e-procurement, all processes of tendering have the same content as in normal tendering and are executed, once the necessary changes have been made, online by using the DSC as follows:

[66] http://eprocure.gov.in/cppp/sites/default/files/instruction_contents/INST_DOC_NO_1/eProcurement090120 8.4.pdf

i) **Communications:** Wherever traditional procedures refer to written communication and documents, the corresponding process in e-procurement would be handled either fully online by way of uploading/downloading/emails or automatically generated SMSs or else partly online and partly offline submission. It is advisable to move to full submissions online. More details would be available from e-procurement service provider's portal. In e-procurement, the tender fee, EMD and documents supporting exemption from such payments are submitted in paper form to the authority nominated in the NIT, but scanned copies are to be uploaded – without which the bid may not get opened. In future, such payments may be allowed online also;

ii) **Publishing of tenders:** Tenders are published on the e-procurement portal by authorised executives of Procuring Entity with DSC. After the creation of the tender, a unique "tender id" is automatically generated by the system. While creating/publishing the tender, the "bid openers" are identified – four officers (two from the Procuring Entity and two from the associated/integrated Finance) with a provision that tenders may be opened by any two of the four officers. As in case of normal tenders, NITs are also posted on the Procuring Entity website. The downloading of the tender may start immediately after e-publication of NIT and can continue till the last date and time of bid submission. The bid submission will start from the next day of e-publication of NIT. In case of limited and PAC/ single tenders, information should also be sent to target vendors/contractors through SMS/email by the portal;

iii) **Registration of bidders on portal:** In order to submit the bid, bidders have to register themselves online, as a one-time activity, on the e-procurement portal with a valid DSC. The registration should be in the name of the bidder, whereas DSC holder may be either the bidder himself or a duly authorised person. The bidders will have to accept, unconditionally, the online user portal agreement which contains all the terms and conditions of NIT including commercial and general terms and conditions and other conditions, if any, along with an online undertaking in support of the authenticity of the declarations regarding facts, figures, information and documents furnished by the bidder online;

iv) **Bid submission:** The bidders will submit their techno-commercial bids and price bids online. No conditional bid shall be allowed/ accepted. Bidders will have to upload scanned copies of various documents required for eligibility and all other documents as specified in NIT, techno-commercial bid in cover-I, and price bid in cover-II. To enable system generated techno-commercial and price comparative statements, such statements should be asked to be submitted in Excel formats. The bidder will have to give an undertaking online that if the information/declaration/scanned documents furnished in respect of eligibility criteria are found to be wrong or misleading at any stage, they will be liable to punitive action. EMD and tender fee (demand draft/banker's cheque/pay order) shall be submitted in the electronic format online (by scanning) while uploading the bid. This submission shall mean that EMD and tender fee are received electronically. However, for the purpose of realisation, the bidder shall send the demand draft/banker's cheque/pay order in original to the designated officer through post or by hand so as to reach by the time of tender opening. In case of exemption of EMD, the scanned copy of the document in support of exemption will have to be uploaded by the bidder during bid submission;

v) **Corrigendum, clarifications, modifications and withdrawal of bids:** All these steps are also carried out online mutatis mutandis the normal tendering process;

vi) **Bid opening:** Both the techno-commercial and price bids are opened online by the bid openers mentioned at the time of creation of the tender online. Relevant bidders can simultaneously take part in bid opening online and can see the resultant bids of all bidders. The system automatically generates a technical scrutiny report and commercial scrutiny report in case of the techno-commercial bid opening and a price comparative statement in case of price bid opening which can also be seen by participating bidders online. Bid openers download the bids and the reports/statements and sign them for further processing. In case of opening of the price bid, the date and time of opening is uploaded on the portal and shortlisted firms are also informed

through system generated emails and SMS alerts – after shortlisting of the techno-commercially acceptable bidders;

vii) **Shortfall document:** Any document not enclosed by the bidder can be asked for, as in case of the traditional tender, by the purchaser and submitted by the bidder online, provided it does not vitiate the tendering process;

viii) **Evaluation of techno-commercial and price bids:** This is done offline in the same manner as in the normal tendering process, based on system generated reports and comparative statements;

ix) **Award of contract:** Award of the contract is done offline and a scanned copy is uploaded on the portal. More needs to be done in this regard. The information and the manner of disclosure in this regard must conform to Section 4(1) (b), 4(2) and 4(3) of the RTI Act to enhance transparency and also to reduce the need for filing individual RTI applications. Therefore, the award must be published in a searchable format and be linked to its NIT. Please see Para 8.5 for further details; and

x) **Return of EMD:** EMD furnished by all unsuccessful bidders should be returned through an e-payment system without interest, at the earliest, after the expiry of the final tender validity period but not later than 30 (thirty) days after conclusion of the contract. EMD of the successful bidder should be returned after receipt of performance security as called for in the contract.