



Manual for Procurement of Goods 2017

Government of Tripura
Finance Department

FOREWORD

DISCLAIMER

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



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ABBREVIATIONS AND ACRONYMS

AITB	Additional Instructions to Bidders (may in some instances be called Bid Data Sheet – BDS or Tender Information Sheet -TIS)
AMC	Annual Maintenance Contract
BC	Bill Currency (selling/buying)
BEE	Bureau of Energy Efficiency
BG	Bank Guarantee
BIS	Bureau of Indian Standards
BOC	Bid Opening Committee
BSTC	Buyer Specific Terms & Conditions
BSV	Balance Sale Value
C&AG	Comptroller and Auditor General (of India)
CA	Competent Authority
CBI	Central Bureau of Investigation
CCI	Competition Commission of India
CFR	Cost and Freight
CIF	Cost Insurance and Freight
CIP	Carriage and Insurance Paid
COMPAT	Competition Appellate Tribunal
COTS	Commercially Off The Shelf (Items)
CPCB	Central Pollution Control Board
CPSE	Central Public Sector Enterprise
CVC	Central Vigilance Commission
CVO	Chief Vigilance Officer
DCF	Discounted Cash Flow
DDO	Direct Demanding Officer (for RCs)
DFPRT	Delegation of Financial Power Rules, Tripura
DGS&D	Directorate General of Supplies and Disposals
DSC	Digital Signature Certificate
eASP	E-Auction Service Provider
ECS	Electronic Clearing System
EFT	Electronic Funds Transfer
EMD	Earnest Money Deposit



Eoi	Expression of Interest (Tender)
ERV	Exchange Rate Variation
EXIM	Export Import (Policy)
FA (&CAO)	Financial Adviser (and Chief Accounts Officer)
FAS	Free Alongside Ship
FC	Framework Contract
FEMA	Foreign Exchange Management Act
FM	Force Majeure
FOB	Free On Board
FOR	Free On Rail
FOT	Free On Truck
GCC	General Conditions of Contract
GCS	General Conditions of Sale
GeM	Government Electronic Market
GFR	General and Financial Rules, 2017
GoI	Government of India
GRIR	Goods Receipt and Inspection Report
GST	Goods and services Tax
GTC	General Terms & Conditions
GTE	Global Tender Enquiry
HOD	Head of the Department
IEM	Independent External Monitor
INCOTERMS	International Commercial Terms
IRDA	Insurance Regulatory and Development Authority
ISI	Indian Standards Institute
ISO	International Organization for Standardization
ITB	Instructions to Bidders (may in some instance be called Instructions to Tenderers - ITT)
ITJ	Indian Trade Journal
KPIs	Key Performance Indices
L1	Lowest Bidder
LC	Letter of Credit



LCC	Life Cycle Costing
LD	Liquidated Damages
LoA	Letter (Notification) of Award also called Acceptance of Tender (A/T)
LPP	Last Purchase Price
M&P	Machinery and Plant
MoEF	Ministry of Environment and Forests
MRP	Maximum Retail Price
MSE	Micro and Small Enterprise
MSTC	Metal Scrap Trading Corporation
NEFT	National Electronic Funds Transfer
NIC	National Informatics Centre
NIT	Notice Inviting Tender
NSIC	National Small Industries Corporation
NTH	National Test House
OEM	Original Equipment Manufacturer
OPEX	Operating Expense (model of acquisition/procurement)
OTE	Open Tender Enquiry
PAC	Proprietary Article Certificate
PBG	Performance Bank Guarantee, also see SD
PR	Purchase Requisition/Indent
PSU	Public Sector Undertaking
PVC	Price Variation Clause
QA	Quality Assurance
RBI	Reserve Bank of India
RC	Rate Contract (or Framework Contract FC)
(S)RfP	(Standard) Request for Proposals (Document)
RTGS	Real Time Gross Settlement
RTI	Right to Information
SBD	Standard Bidding Document
SC	Survey Committee



SCC	Special Conditions of Contract
SD	Security Deposit, also see PBG
SLA	Service Level Agreement
SPCB	State Pollution Control Board
STA	Subject to Acceptance
STC	Special Terms & Conditions
STE	Single Tender Enquiry
TC	Tender Committee also called Tender Purchase or Evaluation Committee (TPC/ TEC)
TCO	Total Cost of Ownership
TCS	Tax Collected at Source
TDS	Tax Deducted at Source
ToR	Terms of Reference
TS	Technical Specification
UCP 600	The Uniform Customs and Practice for Documentary Credits (UCPDC or simply UCP)
UNCITRAL	United Nations Commission on International Trade Law
URDG 758	Uniform Rules for Demand Guarantees
VfM	(Best) Value for Money
WOL	Whole of Life (Cost) or Total Cost of Ownership TCO



PROCUREMENT GLOSSARY

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

- i) "Bid" (including the term '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) "Bid security" (including the term 'Earnest Money Deposit'(EMD), in certain contexts) means a security from a bidder securing obligations resulting from a prospective contract award with the intention to avoid: the withdrawal or modification of an offer within the validity of the bid, after the deadline for submission of such documents; failure to sign the contract or failure to provide the required security for the performance of the contract after an offer has been accepted; or failure to comply with any other condition precedent to signing the contract specified in the solicitation documents.;
- v) "Competent authority" means the officer(s) who finally approves the decision.
- vi) "Consultancy services" means a one-off (that is, not repetitive and not routine) services, involving project specific intellectual and procedural processes using established technologies and methodologies but the outcomes – which are primarily of non-physical nature – may not be standardised and would vary from one consultant to another. It may include small works or supply of goods which are incidental or consequential to such services;
- vii) "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;



- viii) 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;
- ix) “Government undertaking ” means Government companies under the companies Act 1956, statutory corporations, co-operative and other societies and all other autonomous bodies fully or partly financed or otherwise assisted by the State Government.
- x) “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;
- xi) “Inventory” means any material, component or product that is held for use at a later time;
- xii) “Invitation to register” (wherever applicable) means a document including any amendment thereto published by the Procuring Entity inviting offers for bidder registration from prospective bidders;
- xiii) “Non-consultancy services” includes services of physical and procedural nature and are bid and contracted on the basis of performance of a measurable physical output, and for which performance standards can be clearly identified and consistently applied such as drilling, aerial photography, satellite imagery, mapping and similar operations. It may include small works or supply of goods which are incidental or consequential to such services;
- xiv) “ 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.;
- xv) “Procurement” or “public procurement” (or ‘Purchase’, or ‘Government Procurement/ Purchase’ in certain contexts) means acquisition by way of purchase, lease, license or otherwise, either using public funds or any other source of funds (e.g. grant, loans, gifts, private investment etc.) of goods, works or services or any combination thereof, including award of Public Private



Partnership projects, by a Procuring Entity, whether directly or through an agency with which a contract for procurement services is entered into, but does not include any acquisition of goods, works or services without consideration, and the term “procure” or “procured” shall be construed accordingly;

- xvi) “Procurement contract” (including the terms ‘Purchase Order’ or ‘Supply Order’ or ‘Withdrawal Order’ or ‘Work Order’ or ‘Consultancy Contract’ or ‘Contract for Services’ under certain contexts), means a formal legal agreement in writing relating to the subject matter of procurement, entered into between the Procuring Entity and the supplier, service provider or contractor on mutually acceptable terms and conditions and which are in compliance with all the relevant provisions of the laws of the country. The term “contract” will also include “rate contract” and “framework contract”;
- xvii) ‘(Public) Procurement Guidelines’ means guidelines applicable to Public Procurement, consisting of under relevant context a set of – i) Statutory Provisions (The Constitution of India; Indian Contract Act, 1872; Sales of Goods Act, 1930; and other laws as relevant to the context); ii) Rules & Regulations (General Financial Rules, 2017; Delegation of Financial Power Rules and any other regulation so declared by the Government); iii) Manuals of Policies and Procedures for Procurement (of Goods; Works; Consultancy Services or any for other category) promulgated by the Ministry of Finance and iv) Procuring Entity’s Documents relevant to the context (Codes, Manuals and Standard/ Model Bidding Documents);
- xviii) “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;
- xix) “Procuring authority” means the officer who finally approves as well as those officials and committee members who submit the notes/reports for the approval for any decision.
- xx) “Procuring Entity” means any Department of the State Government or a unit thereof or its attached or subordinate office to which powers of procurement have been delegated;
- xxi) “Prospective bidder” means anyone likely or desirous to be a bidder
- xxii) 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;

xxiii) "Service" means any subject matter of procurement other than goods or works, except those incidental or consequential to the service, and includes physical, maintenance, professional, intellectual, training, consultancy and advisory services or any other service classified or declared as such by a Procuring Entity but does not include appointment of an individual made under any law, rules, regulations or order issued in this behalf;

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

xv) "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.



INTRODUCTION- POLICIES AND PRINCIPLES

1.1 Procurement rules and regulations and this manual

Various 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 Departments have been delegated powers to make their own arrangements for procurement of goods under the Delegation of Financial Power Rules, which have to be exercised in conformity with the 'Procurement Guidelines' described below.

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

At the apex of the Statutory framework governing public procurement is Article 299 of the Constitution of India, which stipulates that contracts legally binding on the Government have to be executed in writing by officers specifically authorized to do so. The Constitution also enshrines Fundamental Rights (In particular Article 19 (1) (g) – Right to carry on a Profession) which have implications for Public Procurement. Further, the Indian Contract Act, 1872 and the Sale of Goods Act, 1930 are major legislations governing contracts of sale/purchase of goods in general. There are other mercantile laws (Arbitration and Conciliation Act, 1996; Competition Act, 2002; Information Technology Act, 2000 etc), which may be attracted in Public Procurement Transactions. There is no law exclusively governing public procurement.

However, comprehensive Rules and Regulations in this regard are available in the General Financial Rules (GFR), 2017, Delegation of Financial Powers Rules Tripura (DFPRT); Government orders regarding product reservations if any or procurement preference or other facilities to local industrial units, Pharmaceutical Central Public Sector Enterprises if applicable, Khadi/Handlooms goods if applicable 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 Finance Department, Government of Tripura would be the nodal authority.

1.3 Applicability of this Manual

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

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

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



This Manual is to be taken as generic guidelines, which have to be necessarily broad in nature. Subject to the observance of these generic guidelines, the initiation, authorization, procurement and execution of Goods Contracts undertaken by a particular Department shall be regulated by detailed rules and orders contained in the respective Departmental regulations and by other special orders applicable to them. 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.

For procurements financed by loans/Grants extended by international agencies:

The Articles of Agreement with the International Agencies, like the World Bank, Asian Development Bank etc. stipulate specific procurement procedures to be followed by the borrowers. The procurement procedures, as finalized and incorporated in the Agreements after consideration and approval of the concerned Department are to be followed accordingly.

1.4 Authorities competent to purchase goods and their Purchase Powers

A Competent authority which is competent to incur expenditure may sanction the purchase of goods required for use in public service in accordance with the Delegation of Financial Powers Rules, Tripura by following the 'Procurement Guidelines' described in this Manual (Rule 145 of GFR 2017) .

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

In every procurement, public or private, the basic aim is to achieve just the right balance between costs and requirements concerning the following five parameters called the Five R's of procurement. The entire process of procurement (from the time the need for an item, facility or services is identified till the need is satisfied) is designed to achieve such a right balance. The word 'right' is used in the sense of 'optimal balance'.

i. Right Quality

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



ii. Right Quantity

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

iii. Right Price

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

iv. Right Time and Place

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

v. Right source

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

1.6 Fundamental Principles of Public Procurement

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

i) Transparency Principle

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



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

ii) Professionalism Principle

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

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

Rule 144. Fundamental principles of public buying (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 Departments shall prepare broad Annual Procurement Plan before the commencement of the year and the same may be placed on the their website.

iii) Broader Obligations Principle

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

- a) Preferential procurement from backward regions, weaker sections and local industrial unit, locally manufactured goods or services, to the extent specifically included in the 'Procurement Guidelines';



- b) Reservation of procurement of specified class of goods if any 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.

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 Amendments; and
- i) complaint handling, correspondences with clients, consultants, banks.

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:-

- a) 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.
- b) The expenditure should not be prima facie more than the occasion demands.
- c) No authority should exercise its powers of sanctioning expenditure to pass an order which will be directly or indirectly to its own advantage.
- d) Expenditure from public moneys should not be incurred for the benefit of a particular person or a section of the people, unless –



- i. a claim for the amount could be enforced in a Court of Law, or
 - ii. the expenditure is in pursuance of a recognized policy or custom.
- e) 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.
- f) 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 Product reservation if any and Preferential / Mandatory Purchase from certain sources

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

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

1.9 Public Procurement Policy for local industrial unit:-

Procurement policy for local industrial unit should be as per TIIPS. EMD / SD exemption for local industrial unit will also be as per TIIPS.

1.10 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 15th April, 2013.. 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 (and 05th March 2012) 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. In case of procurements made through DGS&D Rate Contracts or through nominated Government agencies, only award details need to be published....”

1.11 Public Procurement Cycle

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

- i) **Need Assessment:** Need assessment, formulation of Specifications and Procurement Planning;
- ii) **Bid Invitation:** Preparing bid documents, publication, receipt and opening of bids;
- iii) **Bid Evaluation:** Evaluation of bids and award of contract; and
- iv) **Contract Execution:** Contract management and closure;
- v) **Disposal of Scrap:** Disposal of Scrap through various modes of disposal.

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



NEED ASSESSMENT, FORMULATION OF SPECIFICATIONS AND PROCUREMENT PLANNING

2.1 Need Assessment

2.1.1 Procurements should be initiated only based on yearly requirement except under special circumstances / indent of the implementing agencies. The authority initiating the requirement for procurement shall first determine the need (including anticipated requirement and pending liabilities) for the subject matter of the procurement. Description and specification of need assessment is of fundamental importance in ensuring transparency, competition and level playing field in procurement. The Department shall maintain all documents relating to the determination of the need for procurement. During need assessments, the following matters are decided to comply with the 'Procurement Guidelines':

- i. **The expression/ description of the need** is to ensure wide competition. Therefore to the extent practicable it should be:
 - a) Unambiguous, complete, using common terminology prevalent in relevant trade;
 - b) In accordance with the guidelines prescribed if any in this regard;
 - c) Except in case of proprietary purchase from a selected single source, reference to brand names, catalogue numbers or other details that limit any materials or items to specific manufacturer(s) should be avoided as far as possible. Where unavoidable, such item descriptions should always be followed by the words "or substantially equivalent".
- ii. **The quantity of the subject matter of procurement, commensurate with economy:**
 - a) Care should be taken not to make unnecessary procurements much in advance of actual requirements, if such procurement is likely to be unprofitable to the Government, coupled with unwarranted inventory-carrying cost. Where sales, consumption or usage limits of requirements have been laid down by the Competent Authority (CA), the officer signing the indent / requirement should also certify that the prescribed scales or limits are not exceeded. The authority preparing the indent shall neither package nor divide its procurement or take any other action so as to limit competition among potential bidders or to avoid its obligations under 'Procurement Guidelines'. Provided that in the interest of efficiency, economy, timely completion or supply, wider competition or access to local industrial unit, a indenting or procuring authority may, for reasons to be recorded in writing, divide its procurement into appropriate packages, or club requirements of other



users for procurement. Some requirements e.g. IT Systems may have elements of Goods, Works and Services. It could be either sliced into of Goods, Works and Services elements or combined into a package. It is also necessary to round off the calculated quantity to the nearest wagon load/truck load/package to economize on transportation; and

- b) Units of quantity are a very important parameter. Some items may be manufactured in metric tons but may be used in units of numbers or units of lengths (for example, steel sheets/structural). For the sake of transparency, it is important to buy an item in units of manufacture. For example, it is better to buy steel/structural in units of weight since it has a tolerance in weight per unit of length; this usually works to the disadvantage of the buyer if it is bought in units of length. The buying and issuing units of an item may be different – but should be standardised.
- c) **Time-schedule and place** of product/work/service delivery: Need assessment and generation of indent / requirement for procurement should be done sufficiently in advance of the time when goods are required. Delays in need assessment have adverse impact on the transparency. Great care is required to be exercised in filling up realistic dates for the requirement of material. The Procuring Entity should be allowed time in accordance with the establishment lead times. In urgent cases, the Procuring Entity may entertain indents / requirement providing shorter periods but such urgencies should be approved by the authority empowered to grant administrative approval for the indent and must be accompanied by proper justification.
- d) **Formulation of specification** to ensure transparency and ensuring widest competition. This is further detailed in subsequent para.
- e) **Estimation of cost:**
 - 1) The estimated cost / Financial involvement in the indent is a vital element in various procurement processes, approvals and establishing reasonableness of prices at the time of evaluation of the bids. Therefore, it should be worked out in a realistic and objective manner. The prevailing market price ascertained through a market survey or budgetary quotations from one or more prospective suppliers or published catalogues/ Maximum Retail Price (MRP) printed on the item is the main source for establishing the estimated cost of items for which there no historic data available. It may be noted that MRPs usually include significant margins for distributors, wholesalers and retailers;



- 2) In addition, wherever they are available Directorate General of Supplies and Disposals (DGS&D) rates / GeM should be considered. Likewise rates should be compared with recent orders/purchases of similar equipment by other states/ Departments. Other methods for establishing the estimated cost in the indent/ requirement and tender evaluation are:
- Estimated rate in past indents of the same goods;
 - Last purchase price of this or similar or nearly equivalent requirements;
 - Costing analysis based on costs of various components/raw materials of the item;
 - Rough assessment from the price of the assembly/machine of which the item is a part or vice versa;
 - Through the internal or external expert costing agencies; and
- iii. These methods are not mutually exclusive and can be supplemented with escalations to cater for inflation, price increases of raw materials, labour, energy, statutory changes, price indices, and so on, to make them usable in conditions prevailing currently. In case of foreign currencies, the rate should be reduced to a common denomination of Indian Rupees. Price indices can be obtained from the following websites. Some may require prior free registration and some paid subscription:
- For price indices of indigenous items:
<http://www.eaindustry.nic.in/home.asp.in> (Ministry of Industry);
 - For metals and other minerals: <http://www.mmronline.com/or>
<http://www.metalprices.com/index.asp> or <http://www.asianmetal.com/>;
 - For price trends of nonferrous details; London Metal Exchange -
<https://www.lme.com/gives> price trends of nonferrous details, which often show volatile trends;
 - Other useful sites: <http://www.tradeintelligence.com/and>
<http://www.cmie.com/>. (Centre for Monitoring Indian Economy);
 - For price trends of different countries:
<http://www.imf.org/external/pubs/ft/weo/2015/01/>(International Monetary Fund); and
 - For organisation/chambers of commerce such as the (Indian Electrical and Electronics Manufacturer's Association): www.ieema.org;

2.2 Formulation of Technical specifications (Ts)

2.2.1 The procuring authority should ensure that specifications are developed to ensure wide competition in procurement (Rule 173 (ix) of GFR 2017). The TS constitute the benchmarks against which the Procuring Entity will verify the technical responsiveness of bids and, subsequently, evaluate the bids. Therefore, well-defined



TS will facilitate the preparation of responsive bids by bidders as well as examination, evaluation and comparison of the bids by the Procuring Entity. It would also help in ensuring the quality of the supplied goods. The procuring authority should ensure that the specification should:

- i. Ensures the widest competition;
- ii. Be unambiguous, precise, objective, functional, broad based/generic, standardized (for items procured repeatedly) and measurable. TS should be broad enough to avoid restrictions on workmanship, materials and equipment commonly used in manufacturing similar kinds of goods;
- iii. Set out the required technical, qualitative and performance characteristics to meet just the bare essential needs of the Procuring Entity without including superfluous and non-essential features, which may result in unwarranted expenditure;
- iv. Normally be based on standards set by the Bureau of Indian Standards (BIS), wherever such standards exist. Preference should be given to procure the goods which carry the BIS mark. In the absence of BIS standards, TS may be based on the relevant International standards. For any deviations from Indian standards or for any additional parameters for better performance, specific reasons for deviations/ modifications should be duly recorded with the approval of the CA. Where the technical parameters are only marginally different, Indian standards may be specified and the Departmental specifications could cover only such additional details as packing, marking, inspection, and so on, as are specially required to be complied for a particular end use;
- v. All dimensions incorporated in the specifications shall be indicated in metric units. If due to some unavoidable reasons, dimensions in FPS units are to be mentioned, the corresponding equivalents in the metric system must also be indicated;
- vi. Comply with sustainability criteria and legal requirements of environment or pollution control and other mandatory and statutory regulations, or internal guidelines, if any, applicable to the goods to be purchased;
- vii. Make use of best practices. examples of specifications from successful similar procurements in the other organizations or sector may provide a sound basis for drafting the TS;
- viii. Should have emphasis on factors such as efficiency, optimum fuel/ power consumption, use of environmental-friendly materials, reduced noise and emission levels, low maintenance cost, and so on. Government of India has set up the Bureau of Energy Efficiency (BEE) (<http://www.bee-india.nic.in>) on 01st March, 2002 under the provisions of the Energy Conservation Act, 2001, with the primary objective of reducing the energy intensity of the Indian economy. The Bureau initiated the Standards & Labeling Programme for equipment and appliances in 2006 to provide the consumer an informed choice about the



energy saving and thereby the cost saving potential of the relevant marketed product. The scheme is invoked for 21 equipment/appliances, i.e. Room Air Conditioners, RAC(Cassette, Floor Standing Tower, Ceiling, Corner AC), Tubular Fluorescent Tube Lights, Frost Free Refrigerators, Distribution Transformers, Direct Cool Refrigerator, Electric storage type geyser, Color TVs, Induction Motors, Ceiling fans, Agricultural pump sets, LPG stoves, Washing machine, Laptops, Ballast, Office automation products, Solid State Inverter, Diesel Engine Driven Monoset Pumps for Agricultural Purposes, Diesel Generator, Inverter AC and LED Lamps. Of which the first 8 products have been notified under mandatory labelling since 7th January, 2010. The other appliances are presently under voluntary labelling phase. The energy efficiency labelling programs under BEE are intended to reduce the energy consumption of appliance without diminishing the services it provides to consumers. More the stars higher the efficient is the appliance. The threshold ratings prescribed by the Ministry of Finance are:

Appliance	Threshold Star Rating
Split Air conditioners	5 Star (under normal conditions where annual usages are expected to be more than 1000 Hrs) 3 Star (where usage of AC is limited e.g. in conference rooms)
Frost Free Refrigerators	4 Star
Ceiling Fans	5 Star
Water Heaters	5 Star

We should try to build either the BEE Star rating where applicable and minimum energy efficiency where such star ratings are not yet available, into the TS (in accordance with Rule 173 (xvii) of GFR 2017). Such benchmarking illustrates use of neutral and dependable benchmarking in procurement of sustainable environmentally favourable goods by way of appropriately formulated Technical Specifications. In a similar fashion, other Type III Eco-labels as per ISO 14020 or voluntary Environmental Standard can be used for specifying environmental sustainability criteria.

- ix. **Discourage procurement involving evaluation of samples:** According to the existing guidelines on public procurement of goods, purchase in accordance with a sample should not be usually undertaken. Calling for a sample along with the tender and deciding on the basis of evaluation of the sample may NOT be done. In certain specifications, there may be a built-in sample clause. Usually such clauses are stipulated to illustrate indeterminable characteristics such as shade/ tone, make-up, feel, finish and workmanship, and so on. In some specifications, there may not be a sample clause but such indeterminable characteristics are left to be agreed to between the seller and buyer. One way to procure/ indigenise certain spares whose



drawings/specifications are not available is to procure in accordance with an available sample of the part. In such cases, supply must be in conformity with an agreed reference sample in such respects only, whereas for the remaining characteristics it must be in conformity with the laid down drawings/specifications. Procurement of such items should be decided on the basis of detailed specifications/ drawings and no sample should be called for or evaluated along with the bids. If desired, a purchaser's reference sample may be displayed for prospective tenderers to illustrate the desired indeterminable characteristics, which final supplies from successful bidder(s) will have to meet in addition to the specifications/ drawings. If required, in addition to the purchaser's reference sample, the provision for the submission of a pre-production sample matching the purchaser's sample by successful bidder(s) may be stipulated for indeterminable characteristics, before giving clearance for bulk production of the supply. The Indent for items which are to be procured in accordance with a sample must be accompanied with three sealed samples as far as possible;

2.2.2 Essential Technical particulars

The essential Technical particulars to be specified in the tender document shall include the following to the extent applicable for a particular purchase:

- i. Scope of supply and, also, end use of the required goods;
- ii. All essential technical, qualitative, functional, environmental and performance characteristics and requirements (such as material composition, physical, dimensions and tolerances, workmanship and manufacturing process wherever applicable; test schedule; if any), including guaranteed or acceptable maximum or minimum values, as appropriate. Whenever necessary, the user may include an additional format for guaranteed technical parameters (as an attachment to the bid submission sheet), where the bidder shall provide detailed information on such technical performance characteristics in reference to the corresponding acceptable or guaranteed values;
- iii. Drawings;
- iv. Requirement of the BIS mark, where applicable, mentioning all parameters where such a specification provides options;
- v. Requirement of an advance sample, if any, at the post contract stage before bulk production;
- vi. Special requirements of preservation, packing and marking, if any;
- vii. Inspection procedure for goods ordered and criteria of conformity;
- viii. Requirements of special tests or type test certificate or type approval for compliance of statutory requirements with reference to pollution, emission, noise, if any; -
- ix. Other additional work and/or related services required to achieve full delivery/



- completion, installation, commissioning, training, technical support, after-sales service and Annual Maintenance Contract (AMC) requirements, if any;
- x. Warranty requirements;
 - xi. Qualification criteria of the bidders, if any; and
 - xii. Any other aspects peculiar to the goods in question such as shelf life of the equipment, and so on.

2.3 Obtaining Technical, administrative and budgetary sanctions / approvals and signing of indents

For technical, administrative and budgetary approval concerned DFPRT should be followed. The indenting authority may submit an indent in form of a Purchase Requisition (Annexure 1) to the Procuring Entity, giving it adequate time for procurement. Indenters should monitor the progress of the Indents submitted by them. For this purpose, a register may be maintained in the format provided in Annexure 2 by indenters. Progress of such Indents may be monitored for which a register may be maintained in the format provided in Annexure 3 by procuring authority .

2.4 Procurement Planning

2.4.1 After receipt of the Indent / consolidated requirement, the Procuring Entity should take following decisions to initiate procurement, to ensure conformity to the Procurement Guidelines:

- i. Within 10 (Ten) working days of receipt of the indent / requirement from the implementing agency, the procuring authorities should critically review the description and TS enclosed with the indent for approvals of floating of tender and seek clarifications from the indenting officer, if needed, before initiating such procurement;
- ii. **Reassessment of the quantity and appropriate aggregation of quantities of various users:** The procuring authority shall normally neither package nor divide its procurement or take any other action so as to limit competition among bidders or to avoid the necessity of obtaining the sanction of higher authority required with reference to the estimated value of the total demand (Rule 157 of GFR 2017). Provided that in the interest of efficiency, economy, timely completion or supply, wider competition or access to local industrial units, a procuring authority may, for reasons to be recorded in writing, divide its procurement into appropriate packages, or club requirements of other users for procurement. Packaging of the contract and procurement planning should be done keeping in view the availability and possibility of eliciting the interest of the qualified firms; effective competition for the type and size of the contract; and access to local industrial units. For example for a particular contract, material to be procured may constitute more than 50 (fifty) per cent of the total cost of works or there are services which are a mix of



consultancy services with substantial element of goods, such as procurement of an IT system. Such procurement could be done as a single composite contract comprising all components or divided into separate contracts for each category of procurement. In all such situations, the dominant aspect of the requirement and value for money aspects of a composite all-inclusive contract versus dividing the contract into respective categories should be carefully examined at the time of Need assessment/Procurement Planning.

- iii. Determine and declare in documents, any limitation on participation of bidders as per the Government's procurement policy regarding preference to certain sections of industry, if any. The Procuring Entity shall not establish any requirement aimed at limiting participation of bidders in the procurement process that discriminates against or amongst bidders or against any category thereof except to lay down a reasonable and justifiable eligibility or pre-qualification criteria for the bidders;
- iv. Selection of a system of bidding (single/two stage; single/two bids; suitability for e-Procurement);
- v. Decisions on the time frame for completing various stages of procurement, which should be declared in the bidding documents. The Procuring Entity should endeavour to adhere to the time limit so decided and record reasons for any modification of such limits; and
- vi. Integrated procurement plan should be prepared for goods, works and services for the ensuing financial year based on the latest cost estimates, and realistic time schedule for procurement activities and contract implementation and thus schedule and stagger the procurements over the year with a view to ensure an even load on the Procuring Entity and the market and also to co-ordinate matching procurements of Goods, Works and Services for a project.

2.4.2 The Procuring Entity may publish information regarding the planned procurement activities for the forthcoming year or years on the website of concerned Department / state e- Procurement portal used by the Procuring Entity with a caveat that such publication shall not be construed as initiation of a procurement process and cast any obligation on the Procuring Entity to issue the bidding document or confer any right on prospective bidders.



MODES OF PROCUREMENT AND BIDDING SYSTEMS

3.1 Modes of Procurement

Offers from prospective bidders in public procurement must be invited according to a procedure that achieves a balance between the need for the widest competition, on one hand, and complexity of the procedure, on the other hand. Different modes of procurement and bidding systems are used to suit various procurement circumstances to achieve this balance. There are laid down procedures for delegation of powers of procurement to various competent authorities under different modes as shown in DFPRT. All public procurement should be made as per provisions laid in the DFPRT.

3.2 Open Tender Enquiry (OTE)

3.2.1 In OTE, an attempt is made to attract the widest possible competition by publishing the NIT simultaneously on the designated websites. This is the default mode of procurement and gives the best value for money but the procedure is relatively complex and prolonged. *The systemic cost of this procedure may be high enough to be unviable for smaller value procurements.* OTE procedures through e-Procurement or through traditional tendering should be adopted in the following situations:

- i. All common use requirements with clear technical specifications;
- ii. For requirements that are ordinarily available in the open market but it is necessary to evaluate competitive offers to decide the most suitable and economical option available; and
- iii. When requirements are not available from known sources or sources are presently limited and need to be broad based.

3.2.2 Terms and conditions

- i. Advertisement in such cases should be given on Public Procurement Portal, local newspaper & national newspaper through ICA department. An organisation having its own web site should also publish all its advertised tender enquiries on the web site. The Procuring Entity should also post the complete bidding document in its web site and on website to enable prospective bidders to make use of the document by downloading from the web site. The advertisements for invitation of tenders should give the complete web address from where the bidding documents can be downloaded. Cost of tender document to be submitted by all bidders. However SAIL / BSNL and other Government undertakings may be exempted to deposit cost of tender document.



- ii. The sale/ availability for downloading of tender documents against NIT should not be restricted and should be available freely. Tender documents should preferably be available for download upto the date of opening of tenders;
- iii. The tender documents should be prepared on the basis of the relevant approved SBD for the category of procurement. Further details on preparing tender documents are provided in Chapter 6;
- iv. The Procuring Entity shall maintain proper records about the number of tender documents sold, list of parties to whom sold, details of the amount received through sale and, also, the number of unsold tender documents, which are to be cancelled after the opening of the tenders.

3.3 Global Tender enquiry (GTE)

3.3.1 GTE is similar to OTE but, through appropriate advertising and provision for payment in Foreign Currencies through Letter of Credit, it is aimed at inviting the participation of inter-alia foreign firms. *Development of local industry also needs to be kept in mind. Hence, it may be viable only in following situations:*

- i. Where Goods of required specifications/quality are not available within the country and alternatives available in the country are not suitable for the purpose;
- ii. Non-existence of importer of the global principal of the manufacturer/vendors/ contractors;
- iii. Requirement for compliance to specific international standards in technical specifications; and
- iv. Absence of a sufficient number of competent domestic bidders likely to comply with the required technical specifications, and in case of suspected cartel formation among indigenous bidders.

3.3.2 Terms and conditions

- i. Advertisement in such cases should be given on Public Procurement Portal , website of concerned department, www.tenders.gov.in . An organisation having its own web site should also publish all its advertised tender enquiries on the web site. The Procuring Entity should also post the complete bidding document in its web site and on PPP to enable prospective bidders to make use of the document by downloading from the web site. The advertisements for invitation of tenders should give the complete web address from where the bidding documents can be downloaded. Cost of tender document to be submitted by all bidders. However SAIL / BSNL and other Government undertakings may be exempted to deposit cost of tender document.
- ii. The sale/availability for downloading of tender documents against NIT should not be restricted and should be available freely. Tender documents should preferably be available for download upto the date of opening of tenders;



- iii. The tender documents, shall be priced minimally keeping in view the value of the tender as also the cost of preparation and publicity of the tender documents;
- iv. GTE tender documents must be in English and the price should be asked in Indian Rupees or US Dollars or Euros or Pound Sterling or Yen or in currencies under the Reserve Bank of India's notified basket of currencies;
- v. GTE tender documents must contain technical specifications which are in accordance with national requirements or else based on an international trade standard;
- vi. In such cases e-Procurement may not be mandatorily insisted upon;
- vii. The due date fixed for opening of the tender shall be minimum four weeks from the date of advertisement which may vary taking into account the nature of material called for as well as the time required to prepare the bids. The due date may be subsequently extended with the approval of the CA only to promote better competition and also considering account delivery requirement;

3.4 Proprietary article certificate

3.4 1 In procurement of goods, certain items are procured only from Original Equipment Manufacturers (OEMs) or manufacturers having proprietary rights (or their authorised dealers/ stockists) against a PAC certificate (Annexure 4) signed by the appropriate authority.

3.4.2 Terms and conditions

- i. Users should enclose, with their Indent, a PAC certificate indicating the justification and approval at the appropriate level as per DPFRT for sourcing an item from OEM or PAC firms or their authorised agents;
- ii. Proprietary items shall be purchased only from a nominated manufacturer or its authorized dealer as recorded in the PAC certificate;
- iii. In certain unavoidable cases, the procuring authority may have no alternative but to waive payment of EMD/SD for procurement on a proprietary basis;
- iv. To the extent feasible, the firm may be asked to certify that the rates quoted by them are the same and not higher than those quoted with other Government, public sector or private organizations;
- v. In case of PAC/single tender procurements:
 - a) Reports relating to such awards should be submitted to the Ministry every quarter;
 - b) Internal audit may be required to check at least 10 (ten) per cent of such cases; and



- c) Details of such contracts should be published on the website of the Procuring Entity.

3.5 Single Tender Enquiry (STE) without a PAC

3.5.1 A tender invitation to one firm only without a PAC certificate is called a single tender. This mode may be shortest but since it may provide lesser VfM as compared to LTE/OTE and may also strain the transparency principle, it should be resorted to only under following conditions:

- i. In a case of existing or prospective emergency relating to operational or technical requirements to be certified by the indenter, the required goods are necessarily to be purchased from a particular source subject to the reason for such decision being recorded and approval of the competent authority obtained.
- ii. For standardization of machinery or components or spare parts to be compatible to the existing sets of machinery/equipment (on the advice of a competent technical expert and approved by the competent authority), the required goods are to be purchased only from a selected firm. (Rule 166 of GFR 2017)

3.5.2 Terms and conditions

- i. The reasons for a STE and selection of a particular firm must be recorded and approved by the CA as per the delegation of powers laid down at in DFPRT prior to single tendering. Unlike in PAC, powers of procurement of STE are more restricted; and
- ii. Other terms and conditions of PAC procurement mentioned above would also apply in this case.

3.6 Direct Procurement without Quotation

3.6.1 Direct procurement of goods without formal quotations is normally done for the smallest value procurements. This is also called petty purchase. It should be used for off-the-shelf goods of simple and standard specifications. It is suitable only in very low value, urgent and simple requirements in the following situations:

- i. Procurements do not exceed the threshold (for each requirement) of Rs. 25,000 (Rupees Twenty-Five thousand) for each case;
- ii. The requirement is urgent but was not covered in the procurement plan; and
- iii. The requirement is for off-the-shelf goods of simple and standard specifications. Examples of procurement are day-to-day needs of the office and field units, and so on. (Rule 154 of GFR 2017)



3.6.2 Terms and conditions

- i. The competent officer of the Procuring Entity can initiate and complete this purchase after diligent enquiries from the market and filling the certificate prescribed (Annexure 5). Such powers to a limited extent can also be given to various user sections for operational needs;
- ii. In a summary form, records should be kept of the vendors/contractors approached and prices indicated by them;
- iii. Selection of seller by diligent market enquiry is of essence of this mode of procurement;
- iv. In larger cities, the presence of reputed Shopping Malls may also be included in the market survey. Reputed internet shopping portals may also be explored.

3.7 Bidding Systems

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

3.8 Single Stage Bidding System

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

3.8.1 Single stage single envelop system:

Where qualitative requirements and technical specifications are clear, capability of source of supply isn't critical and value of procurement is low or moderate, the single envelop system, where eligibility, technical/commercial and financial details are submitted together in the same envelop may be followed. This is the simplest and the quickest bidding system and should be the default system of bidding. The lowest responsive priced bid that meets the eligibility criteria, technical and commercial requirements laid down in the bid documents is declared as successful.



3.8.2 Single stage Two envelops system (Two bid system) (Rule 163 of GFR 2017):

In technically complex requirements but where capability of source of supply is still not crucial and value of procurement is not low, a two envelop system may be followed. The tenderers should be asked to bifurcate their quotations in two envelops. The first envelop, called the techno-commercial bid, contains the eligibility, technical quality and performance aspects, commercial terms and conditions and documents sought in the tender, except the price and relevant financial details. In the second envelop, called the financial bid, the price quotation along with other financial details are submitted. Both the envelops are to be submitted together in a sealed outer envelope;

If required, Technical specification and techno-commercial conditions should be modified, in a pre-bid conference in the two envelop tender. The techno-commercial bids are to be opened in the first instance on the bid opening date and time, and scrutinised and evaluated with reference to parameters prescribed in the tender documents and responsive, eligible and technically compliant bidders are decided;

Thereafter, in the second instance, the financial bids of only the techno-commercially compliant offers (as decided in the first instance above) are to be opened on a pre-announced date and time for further scrutiny, evaluation, ranking and placement of contract. The financial bids of technically non-compliant bidders should be returned unopened to the respective bidders by registered acknowledgement due/ reliable courier or any other mode with proof of delivery. In e-Procurement, financial bids of technically non-compliant offers would not get opened.

3.8.3 Single stage Two envelops system (Two bid system) for critical items:

In complex technical requirements where capability of source of supply is crucial (for example in procurement of complex machinery, equipments, critical & highly valued product etc), for the successful performance of the contract, besides considering techno-commercial suitability, it is necessary to ensure that competition is only among bidders with requisite capabilities matching the challenges of the task. In case bidders with inadequate capability are allowed to compete, the better qualified bidders would be eliminated since their bid price is likely to be higher commensurate with their higher capability infrastructure. Such situations a clear-cut, fail-pass criteria to be considered during technical bid. Supporting documents required need to be clearly mentioned. An example is shown in Table 1. However, appropriate criteria have to be designed, keeping in mind the specific objectives of the tendered store.

Table- An example is given below



Criteria	Sub-criteria	Weightage*	Break-up of
Past experience of the firm with		A*	
Financial strength of the vendor		B*	
	Turnover figures of the last three years		B1*
	Net profit figures of the last three years		B2*
Quality accreditations, licensing requirements		C*	
Manufacturing capabilities/tie-ups		D*	
After-sales support infrastructure		E*	
Product support		F*	

*Weightage (out of 100) should be pre-decided and declared in tender documents. The marking/grading scheme for allotting marks (out of 100) for various parameters should also be laid down. The bidder must secure at least 75% (seventy five percent) marks during technical evaluation to become eligible for financial bid.

3.9 Electronic Procurement (e-Procurement)

It is mandatory for all Departments to receive all bids through e-Procurement portals in respect of procurement exceeding Rs.3.00 lakh . 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 provided so far may use e-Procurement solution developed by NIC. Other Departments may either use e-Procurement solution developed by NIC or engage any other service provider following due process. These instructions will not apply to procurements made by Departments through DGS&D rate contracts. In individual cases where national security and strategic considerations demands confidentiality, Departments may exempt such cases from e-Procurement after seeking approval of concerned Secretary and with concurrence of Financial Advisers. In case of tenders floated by Indian Missions Abroad, Competent Authority to decide the tender may exempt such case from e-Procurement. National Informatics Centre (NIC) has an e-Procurement portal called Government e-Procurement of NIC (GePNIC). There are other service providers in Public Sector (e.g. MSTC) and Private sector which can be utilized for e-Procurement. Details about the process of e-Procurement are available from the service providers. *Appendix 2 also gives such generic details of the e-Procurement process.* (Rule 160 of GFR 2017)



3.10 One stop Government e-marketplace (Gem) by DGS&D

3.10.1 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.

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

3.10.3 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, Aadhar authentication etc. The suppliers will offer their products on GeM and the Government buyer will be able to view all the products 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.

3.10.4 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.

3.10.5 Authority of procurement through Gem:

Procurement through GeM has been authorised as per GFR, 2017 Rule 149:-



Government e-Market Place (GeM): DGS&D or any other agency authorized by the Government will host an online Government e-Marketplace (GeM) for common use Goods and Services. DGS&D 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 Departments will be mandatory for Goods or Services available on GeM.** The credentials of suppliers on GeM shall be certified by DGS&D. 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:-

- i. Up to Rs.50,000/- (Rupees Fifty thousand) through any of the available suppliers on the GeM, meeting the requisite quality, specification and delivery period;
- ii. Above Rs.50,000/- (Rupees Fifty thousand) and up to Rs.30,00,000/- (Rupees thirty lakh) through the GeM Seller having lowest price amongst the available sellers, of at least three different manufacturers, on GeM, meeting the requisite quality, specification and delivery period. The tools for online bidding and online reverse auction available on GeM can be used by the Buyer if decided by the competent authority;
- iii. Above Rs.30,00,000/- (Rupees Thirty Lakh) 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;
- 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 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.
- vii. 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.

It may be noted that unlike Rate Contracts, the responsibility of reasonableness of rate for procurements from GeM portal does not lie with DGS&D. It is the responsibility of the Procuring Entity to do due diligence for ensuring reasonableness of rates. Further for procurement through GeM, all formalities as per DFPRT to be followed.



3.10.6 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.

3.10.7 Payment Procedure in Gem: The payment procedure in GeM is governed by O.M. No. F.26/4/2016-PPD dated 26th May, 2016 issued by D/o. Expenditure, M/o. Finance, New Delhi. The salient feature of this O.M. is that it is obligatory to make payments without any delay for purchases made on GeM. The consignee is required to issue an online digitally signed consignee receipt and acceptance certificate after receipt of goods within ten days. Thereafter, the payments are to be released maximum within ten days. The timelines after Consignee Receipt and Acceptance Certificate (CRAC) issued online and digitally 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/Government Financial System/Banks for crediting to the supplier's account. 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 (Twenty-Four) hours in the entire process, payments should not exceed ten days including holidays.



PREPARING BID DOCUMENTS, PUBLICATION, RECEIPT AND OPENING OF BIDS

4.1 Preparation of Bid Documents

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

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

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

- i. Description of the subject matter of procurement, its specifications including the nature, quantity, time and place or places of delivery;
- ii. Limitation or preference for participation by bidders in terms of the Government policies;
- iii. The criteria for eligibility and qualification (wherever applicable) to be met by the bidder (the eligibility criteria should take care of the supplier's eligibility to receive such a Government contract. The qualification criteria (wherever applicable) should take care of the supplier's past performance, experience, technical competence and production capacity of the subject goods, financial strength to handle the contract successfully, compliance with environmental protection regulations/ Environment Management System and so on);
- iv. There are no such qualifications for the bidders that would be advantageous to the Foreign manufactured goods at the cost of domestically manufactured goods;
- v. The procedure as well as date, time and place for obtaining, submitting and opening of the bids;



- vi. Terms of delivery/completion;
- vii. Suitable provisions for enabling a bidder to question the bidding conditions, bidding process and/or rejection of its bid. These provisions should include a time frame in which Procuring Entity will address the bidder's questions; (Rule 173 (iv) of GFR 2017).
- viii. Criteria for determining the responsiveness of bids, criteria as well as factors to be taken into account for evaluating the bids on a common platform and the criteria for awarding the contract to the responsive, most advantageous (lowest/highest as the case may be) bidder should be clearly indicated in the bidding documents. SBDs should include a clause that "if a firm quotes NIL charges/consideration, the bid shall be treated as unresponsive and will not be considered";
- ix. Suitable provision for settlement of disputes, if any, emanating from the resultant contract, should be kept in the bidding document; (Rule 173 (v) of GFR 2017) and
- x. Essential terms of the procurement contract including a suitable clause mentioning that the resultant contract will be interpreted under Indian laws (Rule 173 (vi) of GFR 2017)

4.1.2 Contents of Tender Documents (Rule 168 of GFR 017) The main sections of the SBD are:

- i. Notice Inviting Tender (NIT);
- ii. Instructions to Bidders (ITB);
- iii. Appendix to Instructions to Bidders (AITB) (instead of modifying ITB, it is better to have information specific to a procurement as a separate section);
- iv. Eligibility and qualification criteria;
- v. Schedule of requirements;
- vi. Technical specifications (including Drawings) and Quality Assurance (Inspections and Tests);
- vii. General Conditions of Contract (GCC);
- viii. Special Conditions of Contract (SCC) (instead of modifying GCC every time, it is better to have it as a separate section); and
- ix. Standard formats, including Bid Cover letter, Check list, Declaration, price schedules, bank guarantees and contract format.

A reading of the sections of the tender document will make the purpose and instructions clear. However, some broad guidelines for preparing bid documents are provided in the subsequent paragraphs.



4.1.3 Notice Inviting Tender

The model NIT format in SBD should be used for publishing the tender notice. To ensure competition, attention of all likely tenderers, for example, past suppliers and other known potential suppliers, should be invited to the NIT through email/SMSs/letters. In e-Procurement, the website may be programmed to generate these alerts automatically.

The Notice Inviting Tender (NIT) is crucial for attracting wide competition in the tender. The model NIT format in SBD should be used for publishing the tender notice. The NIT should be brief but must contain sufficient detail for a prospective bidder to decide whether to participate in the tender or not and, if he decides to participate, how to go about it. NIT should be published as per the current policy of state Government / Procuring Entity in this regard (Please refer to chapter 4 for details).

Printouts of the tenders published on the website should be collected and kept on record as a proof of publicity. The complete details of the dates, on which advertisements actually appeared on the website, should be indicated while sending cases to higher authorities.

4.1.4 Information to Bidders (ITB) and AITB

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

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

i. Purchase Preference Policies

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

ii. Clarification of Tender Documents



A prospective bidder requiring clarification on the tender documents may notify to Procuring Entity in writing, well before the due date of submission of bids, and a response will be sent in writing to the clarifications sought prior to the date of opening of the tenders. Copies of the query and clarification shall be sent to all prospective bidders who have received the tender documents.

iii. **Amendment of Tender Documents** (Rule 173 (iii) of GFR 2017)

At any time prior to the date of submission of bids, the purchaser may, whether at his own initiative or in response to a clarification sought by a prospective bidder, amend bid documents by issuing a corrigendum. The corrigendum shall be notified in writing by registered post/ speed post/ courier/email to all known prospective bidders. Copies of such amendments are also to be prominently attached in the unsold sets of the tender documents (which are available for sale), including the tender documents uploaded on the website. When the amendment/modification changes the requirement significantly and /or when there is not much time left for the tenderers to respond to such amendments, and prepare a revised tender, the time and date of submission of tenders are also to be extended suitably, along with suitable changes in the corresponding timeframes for receipt of the tender, tender validity period, and so on, and validity period of the corresponding EMD/bid security. Depending on the situation, such an amendment may also need fresh publication adopting the same procedure as for publication of the original tender enquiry.

iv. **Bid Validity**

A bid shall remain valid for the period mentioned in the ITB/AITB (normally 90 (ninety) days). In exceptional circumstances, the consent of the bidder may be requested in writing for an extension to the period of bid validity. Such requests should preferably be made much before the expiry of the bid validity. The bid security provided shall also be suitably extended. A bidder accepting the request and granting extension shall not be permitted to modify his bid.

v. **Sealing and Marking of Tenders**

Address of the tendering authority & bidder, technical / financial bid (in case of two bid system), and the tender reference number must be mentioned on the envelopes by bidder. Further, the sentence "NOT TO BE OPENED" before (due date and time of tender opening) is also to be printed on these envelopes. The



inner envelopes are then to be put inside a bigger outer envelope, which will also be duly sealed marked, and so on, as above. If the outer envelope is not sealed and marked properly as above, the purchaser will not assume any responsibility for its misplacement, premature opening, late opening, and so on. All the above instructions are to be suitably incorporated in the tender documents.

vi. Withdrawal, Substitution and Modification of Tenders

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

vii. Eligibility / Evaluation/Qualification criteria

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

The condition of prior turnover and prior experience may be relaxed for Startups (as defined by Department of Industrial Policy and Promotion) subject to meeting of quality & technical specifications and making suitable provisions in the bidding document (Rule 173 (i) of GFR 2017)

viii. OEM / Authorised Dealer/Agents of supplier

Except in case of Commercially-Off-the-Shelf (COTS) items, when a firm sends quotation for an item manufactured by some different company, the firm is also required to attach, in its quotation, the manufacturer's authorisation certificate and also manufacturer's confirmation of extending the required warranty for that product as per formats given in SBD. This is necessary to ensure quotation from a responsible party offering genuine product, also backed by a warranty obligation from the concerned manufacturer. In the tender, either the manufacturer or its authorised dealer can be considered as valid bidders.



In case of large contracts, especially capital equipment, the manufacturer's authorisation must be insisted upon on a tender specific basis, not general authorisation/ dealership, by so declaring in the bid documents clearly.

In cases where the manufacturer has submitted the bid, the bids of its authorised dealer will not be considered and EMD will be returned.

And in case of violations, both infringing bids will be rejected.

ix. Conflict of interest among Bidders/agents

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

- a) they have controlling partner (s) in common; or
- b) they receive or have received any direct or indirect subsidy/financial stake from any of them; or
- c) they have the same legal representative/agent for purposes of this bid; or
- d) they have relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on the bid of another bidder; or
- e) bidder participates in more than one bid in this bidding process. Participation by a bidder in more than one Bid will result in the disqualification of all bids in which the parties are involved. However, this does not limit the inclusion of the components/sub-assembly/assemblies from one bidding manufacturer in more than one bid.
- f) in cases of agents quoting in offshore procurements, on behalf of their principal manufacturers, one agent cannot represent two manufacturers or quote on their behalf in a particular tender enquiry. One manufacturer can also authorise only one agent/dealer. There can be only one bid from the following:
 - 1) The principal manufacturer directly or through one Indian agent on his behalf; and
 - 2) Indian/foreign agent on behalf of only one principal.
- g) a Bidder or any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the contract that is the subject of the Bid;



h) in case of a holding company having more than one independently manufacturing units, or more than one unit having common business ownership/management, only one unit should quote. Similar restrictions would apply to closely related sister companies. Bidders must proactively declare such sister/common business/ management units in same/similar line of business.

x. Schedule of Requirements

This section comprises the list of goods and delivery schedule. If there is no separate TS, then TS, quality assurance and inspections may also be included here. If the tender contains a number of schedules of requirements, it must be clarified, whether evaluation of eligibility/qualifications/financial bids would be on a schedule by schedule basis or on the basis of a total of all schedules put together.

xi. Quotation received from dealers/agents for items not manufactured by Them

When a firm sends a quotation for an item manufactured by a different company, the firm is also required to attach in its quotation that manufacturer's authorisation certificate and also manufacturer's confirmation of extending the required warranty for that product (in addition to the tenderers' confirmation to the required warranty). If the firm is an authorised agent/dealer of that manufacturer, certified documentary evidence to this effect is to be attached along with the quotation. This is necessary to ensure a quotation from a responsible party offering the genuine product, also backed by a warranty obligation from the concerned manufacturer.

xii. Special Conditions in GTE Procurements

- a. **Currency of Bidding:** In GTE tenders, the Foreign Bidders are allowed to quote price (and get paid) in RBI's notified basket of foreign currencies - US Dollar or Euro or Pound Sterling or Yen etc., in addition to the Indian Rupees - except for expenditure incurred in India (including agency commission if any) which should be stated in Indian Rupees. Indian Bidders are to quote in INR only.
- b. **Agency Commission:** The amount of Agency Commission, (normally not exceeding five percent) payable to the Indian Agent should not be more than what is specified in the Agency agreement (a certified copy



should be submitted along with the bid) between the bidder and the Indian Agent. The Indian Agent will be required to submit a certificate along with their Agency Commission bill, confirming that the amount claimed as Agency Commission in the bill has been spent/will be spent, strictly to render services to the foreign Principal, in terms of the Agency Agreement. The Purchaser or their authorized agencies and/or any other authority of the Government of India shall have rights to examine the books of the Indian Agent and defects or misrepresentations in respect of the afore indicated confirmation coming to light during such examinations will make the foreign Principal (i.e. the Contractor) and their Indian Agent liable to be banned/ suspended from having business dealings with the Purchaser, following laid down procedures for such banning/suspension of business dealings.

- c. **Delivery Terms:** The delivery terms are to be expressed in terms of Incoterms. As per the revised policy of the Government, all Public Procurement import contracts involving (ocean freight of dry or liquid bulk cargoes) are to be finalized only on FOB (Free on Board)/FAS(Free Alongside Ship) basis and in case of any departure there-from, prior approval of the concerned administrative Ministry/ Department may be obtained. However imports involving ocean freight of general liner: cargoes, project cargoes, heavy lift, container, break bulk cargoes etc. can now be made on FOB (Free on Board)/FAS (Free Alongside Ship) or CFR (Cost & Freight)/CIF (Cost, Insurance & Freight) basis. All importing Government Departments/PSUs are now allowed to make their own shipping arrangements without needing to route their requirements through Chartering Wing of Ministry of Shipping. As per the extant directive of the Government, airlifting of imported goods from abroad will be done only through the national carrier, that is, Air India, wherever applicable. However, before processing any contract involving import of goods through air, contemporary instructions in this regard may be ascertained and followed; and
- d) **Insurance:** Wherever necessary, the goods supplied under the contract shall be fully insured in a freely convertible currency against loss or damage incidental to manufacture or acquisition, transportation, storage and delivery in the manner specified in the contract. If considered necessary, the insurance may be done for coverage on an “all risks” basis including war risks and strike clauses. The amount to be covered under insurance should be sufficient to take care of the overall expenditure to be incurred by the purchaser for receiving the



goods at the destination. Insurance of imported goods/equipment would need to be arranged on a very selective basis and only for cases where the value of individual shipment is expected to be in excess of Rupees Five crore. Procuring Entities who are entering into large number of imports contracts, may enter into annual Insurance arrangements for all imports during the year with Insurance Companies, instead of insurance for each individual imports separately on the basis of “Open Cover (all Risk)”. Where delivery of imported goods is required by the purchaser on Cost Insurance and Freight/Carriage and Insurance Paid (CIF/CIP) basis, the supplier shall arrange and pay for marine/air insurance, making the purchaser the beneficiary. Where delivery is on Free On Board/Free Alongside Ship (FOB/ FAS) basis, marine/air insurance shall be the responsibility of the purchaser. Delivery point (go-down / worksite) must be written in the tender document.

4.1.5 General and special conditions of the contract

The GCC to be used for contracting for procurement are provided in Procuring Entity's SBD. GCC covers all information on aspects after the announcement of the tender award till the closure of the contract and dispute resolution. It should not cover any aspect up to announcement of award. Instead of modifying the GCC every time, any changes warranted by special circumstances may be indicated in a separate SCC with the prior approval of the CA and GCC may be included unchanged in every tender document. It is also to be indicated therein that the provisions in the SCC will supersede the corresponding provisions in the GCC.

4.1.6 Submission Formats

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

4.1.7 Mandatory e-Publishing of Tenders (Rule 159 of GFR 2017)

It is mandatory for all Departments of the state Government, their attached and subordinate offices and autonomous/statutory bodies to publish their tender enquiries, corrigenda thereon and details of bid awards on the state e-Procurement Portal. These instructions apply to all Tender Enquiries, Requests for Proposals, or any other notice inviting bids or proposals in any form whether they are advertised. These instructions would not apply to Purchase of goods without quotations.



Individual cases where confidentiality is required, for reasons of national security, would be exempted from the mandatory e-publishing requirement. The decisions to exempt any case on the said grounds should be approved by the administrative Department. In the case of autonomous bodies and Statutory bodies' approval of the head of the body with the concurrence of the head of the finance should be obtained in each such case. Statistical information on the number of cases in which exemption was granted and the value of the concerned contract may be intimated on a Quarterly basis to the Finance Department, Government of Tripura.

4.2 Receipt and Custody of Tenders

4.2.1 Cost and Availability of Tender documents

Tender documents should preferably be available for download up to date of opening of tender. Last date of selling of tender document should be clearly indicated in the tender documents. The organisation should also Post the complete tender document in the website and permit prospective tenderers to make use of the document downloaded from the website.

The tender document fee should be as low as possible considering the cost/effort of preparing documents. Cost of tender document to be submitted by all bidders. However SAIL / BSNL and other Government undertakings may be exempted to deposit cost of tender document. The Procuring Entity may decide not to take any charges for the tender documents, in view of prevalence of e-publishing/downloading of tender documents. The cost of the tender document is to be submitted to the authority nominated therein by the prospective tenderer in the form of a demand draft /banker's cheque/pay order. Firms that are eligible for exemption from the tender document fee have to submit/upload scanned copy of documents in support of this exemption. Although the Procuring Entity is the best judge to decide or waive the document cost, following table could be used as a starting point:

Suggested Cost of Tender Documents in OTE, GTE Tenders (Normally in STE/PAC/LTE, no	
Estimated Value of Tender	Tender Document Cost
Below Rs 25 lakh	Rs. 500
Rs 25 Lakh to Rs 2 crore	Rs. 1,500
Rs 2 crore to Rs. 25 crore	Rs. 2,500
Rs 25 crore to Rs. 50 crore	Rs. 5,000
Above Rs 50 crore	To be decided on case to case basis



4.2.2 Pre-bid Conference (Rule 173 (x) of GFR 2017)

In case of turnkey contract (s) and facilities of a special nature for procurement of sophisticated and costly equipment, large works and complex consultancy assignments, a suitable provision is to be kept in the bidding documents for pre-bid conference for clarifying issues/ clearing doubts, if any, about the specifications and other allied technical/commercial details of the plant, equipment and machinery projected in the bidding document and for ensuring that the technical requirements provide a level playing field. The date, time and place of the pre-bid conference should be indicated in the tender enquiry document. Bidders should be asked to submit written queries in advance of the conference. After the conference, the techno-commercial requirements may be revised if considered necessary by way of issue of a formal corrigendum (mere minutes of the meeting of pre-bid conference would not suffice) and shared with all the bidders who purchase or have purchased the bid documents.

4.2.3 Extension of Tender Opening Date

Sometimes, situations may arise necessitating modification of the tender documents already put on sale. Also, after receiving the documents, a tenderer may point out some genuine mistakes necessitating amendment in the tender documents. In such situations, it is necessary to amend/modify the tender documents suitably prior to the date of submission of bids. In case of OTE, the copies of such amendment/modification are to be simultaneously despatched, free of cost, by registered/speed post/courier/e-mail, to all the parties who have already purchased the tender documents and copies of such amendments are also to be prominently attached in the unsold sets of the tender documents (which are available for sale), including the tender documents for downloading put on the public procurement website and Procuring Entity's own website.

When the amendment/modification changes the requirement significantly and/or when there is not much time left for the tenderers to respond to such amendments, and prepare revised tender, the time and date of submission of tenders are also to be extended suitably, along with suitable changes in the corresponding time-frames for receipt of tender, tender validity period etc and validity period of the corresponding EMD/bid security. Depending on the situation, such an amendment may also need fresh publication adopting the same procedure as for publication of the original tender enquiry.

4.2.4 Submission, receipt and custody of Tenders

In e-Procurement, all tenders uploaded by tenderers are received, safeguarded and opened online on the portal. In offline tenders, receipt and custody of bids shall be done



in a transparent manner to maintain the credibility of the process. The following guidelines should be adhered to for receipt and custody of bids:

- i. The Procuring Entity shall maintain tender boxes for receiving the bids at suitable locations which would facilitate security and easy access to bidders. The tender box may have two locks. Key of one lock will be with the head of the office and the other key with the official nominated by him;
- ii. Bids received by courier shall be deposited in the tender box by the Dispatch Section till the date and time of bid opening. Bids sent by telex, cable or facsimile are to be ignored and rejected.; and
- iii. For bulky/oversized bids which cannot be dropped into tender boxes, the officials authorised to receive such bids shall maintain proper records and provide a signed receipt with date and time to the bearer of the bid. He will also sign on the cover, duly indicating the date and time of receipt of the tender(s). Names and designations of at least two such authorised officers should be mentioned in the bid documents

4.2.5 Withdraw/ Amendments/ Modifications to Bids by Bidders

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

4.3 Procedures to be followed during bid opening

Immediately after the deadline for bid submission, Procuring Entity shall proceed to the bid opening. In e-Procurement, bids are opened online as detailed in Appendix 3.

- i. The authorised representatives of bidders, who intend to attend the tender opening are to bring with them letters of authority from the corresponding bidder. The prescribed format for the letter of authority for attending the bid opening should be given in the bidding document. All bid-opening activities should be carried out demonstrably before such a gathering. The prescribed format for the bid opening attendance sheet and report are given at Annexure 6; Bid opening register also to be maintained where name of bidder, address of bidder, details of cost of tender fee, details of EMD along with signature of bidder present during opening, signature of officers present during opening to be recorded.



- ii. At a prescheduled date and time, the tendering authority / BOC of the day should get the particular tender box opened, after ensuring and demonstrating that the seal on the box has not been tampered with. All bids should be collected from the tender box. Bids for tenders not opening on that day should be put back into the box and the box resealed. Sometimes, there would be tenders dropped wrongly into this tender box. Such wrongly dropped tenders with appropriate endorsement should be put into the appropriate box or sent to the tendering authority / Tender Committee (TC) concerned, if the date of opening is over. The bids for different tenders opening on the day (including oversized bids, which were submitted to designated officers) should be sorted, and a count for each tender should be announced and recorded, particularly noting any modifying/altering/withdrawal of bids. Tendering authority / BOC should ensure and demonstrate that bid envelopes are duly sealed and untampered. Late bids should be separately counted but kept aside and not opened. Late bids (that is, bids received after the specified date and time for receipt of bids) should not be considered (Rule 165 of GFR 2017);
- iii. After opening, every tender shall be numbered serially (say 3/14 – if it is the third bid out of 14 total), initialled, and dated on the first page by the tendering authority / BOC. Each page of the price schedule or letter attached to it shall also be similarly initialled, particularly the prices, delivery period, and so on, which shall also be circled and initialled along with the date. Any other page containing significant information should also be dealt with similarly. Blank tenders, if any, should be marked accordingly by the tendering authority / BOC.
- iv. Erasure/cutting/overwriting/use of whitener/columns left unfilled in tenders, if any, shall be initialled along with date and time and numbered by the officials opening the tenders and total number of such noticed alterations (or the absence of any alteration) should be explicitly marked on the first page of the bid. Wherever quantity/amount is written only in figures, the tendering authority / BOC should write them in words. All rebates/discounts should be similarly circled, numbered and signed. In the absence of any alteration/overwriting/whitener/ blanks, the remark “no corrections noted” should be written. Similarly, the absence of discounts should be marked with “no discounts noted;”
- v. The tendering authority / BOC is to announce the salient features of the tenders such as description and specification of the goods, quoted price, terms of delivery, delivery period, discount, if any, whether EMD furnished or



- not, and any other special feature of the tender for the information of the representatives attending the tender opening. No clarifications by tenderers should be entertained or allowed to be recorded during the bid opening.
- vi. Proper sealing and codification need to be done on samples as well for samples which accompany the bid. These should be kept for reference under lock and key. Details should be recorded in the sample register maintained in the opening section. Documents related to money should be noted in the bid opening report/register and handed over to the account Section for safe custody and monitoring; and
- vii. A bid opening report / register containing the names of the tenderers (serial number wise), salient features of the tenders, as read out during the public opening of tenders, will be prepared by the tender opening officers, and duly signed by them along with the date and time.



FORMS OF SECURITIES, PAYMENT TERMS AND PRICE VARIATIONS

5.1 Forms of security

5.1.1 Bid Security / EMD (Rule 170 of GFR 2017)

To safeguard against a bidder's withdrawing or altering its/his bid during the bid validity period, Bid Security (also known as Earnest Money Deposit (EMD)) is to be obtained from the bidders along with their bids except from bidders who are exempted from paying Bid Security. The amount of Bid Security should generally be between two to five per cent of the estimated value of the goods to be procured. The exact amount of Bid Security, rounded off to the nearest thousands of Rupees, as determined by the Procuring Entity, is to be indicated in the bidding documents. The Bid Security may be obtained in the form of an account payee demand draft, fixed deposit receipt, or banker's cheque. However, in case the Bid Security is more than a threshold (Rupees five lakh) and in case of foreign bidders in GTE tenders it may also be allowed in the form of a bank guarantee (in equivalent Foreign Exchange amount, in case of GTE) issued/confirmed from any of the scheduled commercial bank in India in an acceptable form, and so on, safe guarding 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.

SAIL/BSNL and other Government undertakings may be exempted to deposit EMD and SD.

Local industrials unit are exempted to deposit part amount of EMD / SD as per TIIPS (Tripura Industrial Investment Promotion Incentives Scheme) . Local industrials unit should submit/ upload such exemption certificate along with tender.

A bidder's Bid Security will be forfeited if the bidder withdraws or amends its/his tender or impairs or derogates from the tender in any respect within the period of validity of the tender or if the successful bidder fails to furnish the required Performance Security within the specified period.

Bid securities of the unsuccessful bidders should be returned to them at the earliest after expiry of the final bid validity period and latest by the 30th day after the award of the contract. Bid Security should be refunded to the successful bidder on receipt of a performance security.



5.1.2 Performance Security / SD (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. Unlike contracts of Works and Plants, in case of contracts for Goods, the need for the Performance Security depends on the market conditions and commercial practice for the particular kind of goods. Performance Security should be for an amount of five to ten per cent of the value of the contract as specified in the bid documents. Performance Security may be furnished in the form of an account payee demand draft, fixed deposit receipt from a commercial bank, bank guarantee issued/confirmed from any of the commercial bank in India 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 securities²⁴. Unlike, Procurement of Works, in Procurement of Goods, the concept of taking part of Performance Guarantee as money retained from first or progressive bills of the supplier is not acceptable. Submission of Performance Security is not necessary for a contract value upto Rupees 1 (One) lakh.

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.

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, to make the process transparent and visible.

5.1.3 Warranty Bank Guarantee

In case of works and capital equipment, there is usually a defect liability/warranty clause against defects arising from design, material, workmanship or any omission on part of the vendor/ contractor during a specified period of months from the date of commissioning or from the date of dispatch in case of goods – whichever is earlier. In such cases, the Performance Guarantee is to be valid upto 60 (sixty) days beyond the



warranty period. It is normally permissible in such a situation to allow Performance Guarantee to be valid upto 60 (sixty) days beyond delivery/ commissioning period and the contractor may be allowed to submit a fresh Warranty Bank Guarantee of 10 (ten) per cent of the value of the goods in the currency of the contract valid upto 60 (sixty) days beyond the Warranty period. In such cases, the Performance Guarantee is to be returned only after satisfactory delivery/commissioning and receipt of such a Warranty Bank Guarantee. In procurement of other than Capital Equipment Goods (and in case of low value Capital Goods – say upto Rupees one Lakh), Warranty Clause is not called for.

5.1.4 Verification of bank Guarantees

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

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



5.1.5 Safe custody and monitoring of EMDs, Performance securities and other instruments

A suitable mechanism for safe custody and monitoring of EMDs and performance securities and other instruments should be evolved and implemented by each Department. The Departments shall also make institutional arrangements for taking all necessary actions on time for extension or encashment or refund of EMDs and Performance securities, as the case may be. Monitoring should also include a monthly review of all bank guarantees and other instruments expiring in next three months, along with a review of the progress of the corresponding contracts. Extension of bank guarantees and other instruments, where warranted, should be sought immediately and implemented within their validity period. Bank Guarantee should never be handed over to the supplier for propose of extension of validity. Such a system of monitoring of securities and other instruments may be considered to be computerised with automatic alerts about lapse of validity etc.

5.2 Payment Clause

The elements of price included in the quotation / tender of a tenderer depend on the nature of the goods to be supplied and the allied services to be performed, location of the supplier, location of the user, terms of delivery, extant rules and regulations about taxes, duties, and so on, of the seller's country and the buyer's country.

In case of both indigenous and imported goods, rate should be quoted including all taxes and charges upto to destination (go-down/ worksite which will be mentioned in the tender document). Further, depending on the nature of the goods (whether domestic or imported), there may be cost elements towards installation and commissioning, operator's training, and so on as per terms and conditions of tender documents.

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

While claiming the payment, the supplier should also certify in the bill that the payment being claimed is strictly in terms of the contract and all obligations on the part of the supplier for claiming this payment have been fulfilled as required under the contract. There should also be a suitable provision for verification of the authenticity of the person signing the invoice, and so on, to claim the payment.



i. **Elements of Price:**

Where the price has several components such as the price of the goods, cost of installation and commissioning, operators' training, and so on, bidders should be asked to furnish a cost break-up indicating the applicable prices and taxes for each of such components along with the overall price. The payment schedule and terms will be linked to this cost break-up.

ii. **Currency:**

The tender documents are to specify the currency (currencies) in which the tenders are to be priced. As a general rule, domestic tenderers are to quote and accept their payment in Indian currency; Indian agents of foreign suppliers are to receive their agency commission in Indian currency; costs of imported goods, which are directly imported against the contract, may be quoted in foreign currency (currencies) and paid accordingly in that currency; and the portion of the allied work and services, which are to be undertaken in India (like installation and commissioning of equipment) are to be quoted and paid in Indian currency.

iii. **Payment to Suppliers:**

In a supply contract, delivery of goods is the essence of the contract for the purchaser. Similarly, receiving timely payment for the supplies is the essence of the contract for the seller. A healthy buyer-supplier relationship is based on the twin foundation of timely and quality supply, on the one hand, and prompt and full payment to the supplier, on the other. It should be ensured that all payments due to the firm, including release of the performance security, are made on a priority basis without avoidable delay as per the tender/contract conditions :

- a) Running bill may be entertained. But in no circumstance, reason of delay to supply ordered stores be attributed by the supplier to non-receipt of payment against supplied stores.
- b) Prompt and timely provision of statutory certificates to the seller for taxes deducted at source, are as much a part of payment as the amount actually released. A detailed payment advice showing the calculations and reasons for the amounts disallowed and taxes deducted may be issued to the supplier along with payment. As soon as possible, but not later than the date of submission of Tax returns, the Procuring Entity must provide the statutory certificates for the taxes deducted to the Supplier, so that he is able to claim set-offs and refunds from the concerned authorities;
- c) Release of payment and settlement of the final bill should be processed through the Associated/integrated Finance section as per the terms and conditions of the contract;



- d) No payments to contractors by way of compensation or otherwise outside the strict terms of the contract or in excess of the contract rates should be allowed.
- iv. Before the payment is made, the invoice should be cross-checked with the actual receipt of material/assets/services to ensure that the payment matches the actual performance;
- v. While claiming the payment, the contractor must certify on the bill that the payment being claimed is strictly within terms of the contract and all the obligations on his part for claiming this payment have been fulfilled as required under the contract. There should also be a suitable provision for verification of the authenticity of the person signing the invoice, and so on, to claim the payment.

5.3 Terms of Payment for domestic Goods

Where the terms of delivery are FOR dispatching station, the payment terms, depending on the value and nature of the goods, mode of transportation, and so on, may be 60 to 90 (sixty to ninety) per cent on proof of dispatch and other related documents and balance on receipt at site and acceptance by the consignee.

Where the terms of delivery is FOR destination/delivery at site, the usual payment term is 100 (hundred) per cent on receipt and acceptance of goods by the consignee and on production of all required documents by the supplier.

Where goods to be supplied also need installation and commissioning by the supplier, the payment terms are generally:

- i. For a contract with terms of delivery as FOR dispatching station -- 60 (sixty) per cent on proof of dispatch along with other specified documents, 30 (thirty) per cent on receipt of the goods at site by the consignee and balance 10 (ten) per cent on successful installation and commissioning and acceptance by the consignee; and
- ii. For a contract with terms of delivery as FOR destination/delivery at site -- 75 (seventy five) per cent on receipt and acceptance of goods by the consignee at destination and on production of all required documents by the supplier and balance 25 (twenty five) per cent on successful installation and commissioning and acceptance by the consignee.

Note: Generally (especially for goods requiring installation and commissioning at site by the supplier), the desirable terms of delivery are FOR destination/delivery at site, so that the supplier remains responsible for safe arrival of the ordered goods at the site.



5.3.1 Modes of Payment for Domestic Goods

Payments to domestic suppliers are usually made by cheque/demand draft drawn on a branch of RBI or any Scheduled Commercial Bank authorised by RBI for transacting Government business. However procuring entities should switch over to more transparent electronic payment systems like Electronic Clearance System (ECS), Real-Time Gross Settlement Systems (RTGS) National Electronic Funds Transfer (NEFT) or Electronic Payment Gateways.

5.3.2 Documents for Payment for Domestic Goods

- i. Supplier's Invoice indicating, *inter alia* description and specification of the goods, quantity, unit price, total value;
- ii. Packing list;
- iii. Railway receipt/consignment note;
- iv. Manufacturer's guarantee certificate and in-house inspection certificate;
- v. Inspection certificate issued by purchaser's inspector; and
- vi. Any other document(s) as and if required in terms of the contract.

5.4 Terms of Payment for imported Goods

5.4.1 Usual payment terms, unless otherwise directed by CA, are indicated below:

- i. Cases where installation, erection and commissioning (if applicable) **are not the responsibility of the supplier** -- 100 (Hundred) per cent net price after receipt of materials in the destination is to be paid on receipt of bill along with invoice, shipping documents, inspection certificate (where applicable), manufacturers' test certificate, and so on;
- ii. Cases where installation, erection and commissioning are the responsibility of the supplier -- 75 (seventy five) per cent price after receipt of materials in the destination on receipt of bill against the invoice, inspection certificate (where applicable), shipping documents, and so on, and balance within 30 (thirty) days of successful installation and commissioning at the consignee's premises and acceptance by the consignee; and
- iii. Payment of agency commission, if payable, as per contract – the entire 100 (Hundred) per cent agency commission is generally paid (in non-convertible Indian Rupees on the basis of BC selling rate of exchange) after all other payments have been made to the supplier in terms of the contract.

5.4.2 Modes of Payment for Imported Goods

It should be ensured that the imports into India are in conformity with the export-import policy in force: FEMA; FEMA (Current Account Transactions) Rules, 2000 framed by Procuring Entity; and directions issued by RBI under FEMA from time to time.



For imported goods, payment usually happens through the Letter of Credit (LC) opened by the State Bank of India or any other scheduled/authorised bank as decided by the Procuring Entity. The amount of LC should be equal to the total payable amount, and be released as per the clauses mentioned above. Provisions of Uniform Customs and Practices for Documentary Credits should be adhered to while opening the LC for import into India. If the LC is not opened, payment can also be made to the seller through a direct bank transfer for which the buyer has to ensure that payment is released only after the receipt of prescribed documents.

5.4.3 Documents for Payment for Imported Goods

The documents, which are needed from the supplier for release of payment, are to be clearly specified in the contract. The paying authority is also to verify the documents received from the supplier with corresponding stipulations made in the contract before releasing the payment. Documents, which the supplier is to furnish while claiming payment, are specified in the Letter of Credit, but usually are:

- i. Supplier's original invoice giving full details of the goods including quantity, value, and so on;
- ii. Packing list;
- iii. Certificate of country of origin of the goods to be given by the seller or a recognised chamber of commerce or another agency designated by the local Government for this purpose;
- iv. Certificate of pre-dispatch inspection by the purchaser's representative;
- v. Manufacturer's test certificate and guarantee;
- vi. Certificate of insurance;
- vii. Bill of lading/airway bill/rail receipt or any other dispatch document, issued by a Government agency (like the Department of Posts) or an agency duly authorised by the concerned Ministry/Department, indicating:
 - a) Name of the vessel/carrier;
 - b) Bill of lading/airway bill;
 - c) Port of loading;
 - d) Date of shipment;
 - e) Port of discharge and expected date of arrival of goods; and

Any other document(s) as and if required in terms of the contract.

5.4.4 Air Freight Charges

Goods that are required to be airlifted are to be dispatched on a 'charge forward basis'. All air freight charges, which are shown on the relevant consignment note as chargeable to the consignee, are to be paid to the Airline in Rupees. Some organizations need to import sophisticated instruments, tools and kindred goods. These are usually small in size and very delicate/fragile in nature. Such goods,



invariably, need to be airlifted. But, quite naturally, form a small part of the Air Cargo carried by an Aircraft. For such imports, procuring entities may engage Air Freight Consolidators who consolidate the small Air Cargos of different customers, to be airlifted from one Airport to another. Hiring of services of Airfreight Consolidators should be done in a transparent manner, following standard principles of Public Procurement.

5.4.5 Letter of Credit (LC)

Two banks are involved in payment to the supplier by LC, the purchaser's bank and supplier's bank. The purchaser is to forward the request to its bank in the prescribed format as formulated by the Bank, along with all relevant details including an authenticated copy of the contract. Based on this, the purchaser's bank opens the LC on behalf of the purchaser for transacting payment to the supplier through the supplier's bank. Care should be taken to ensure that the payment terms and documents to be produced for receiving payments through LC are identical with those shown in the contract. Generally, the irrevocable LC is opened so that the supplier is fully assured of his payment on fulfilling his obligations in terms of the contract. In case the delivery date of the contract is extended to take care of delay in supply, for which the supplier is responsible, the tenure of the LC is also to be extended, but the expense incurred for such an extension (of LC) is to be borne by the supplier. Provisions of Uniform Customs and Practices for Documentary Credits (UCP 600) should be adhered to the while opening the LC for import into India.

5.5 Advance Payment

5.5.1 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 in the following types of cases:

- i. Advance payment demanded by firms holding maintenance contracts for servicing of air-conditioners, computers, other costly equipment; etc.
- ii. Advance payment demanded by firms against fabrication contracts, turn-key contracts; and so on; Such advance payments should not exceed the following limits except in case of procurement of arms and ammunitions from ordinance factories:
 - a) Ten per cent of the contract value to private firms;
 - b) Forty per cent (as deem fit by department) of the contract value to a state or central Government agency or PSU; or
 - c) In case of the maintenance contract, the amount should not exceed the amount payable for six months under the contract;



5.5.2 Documents for Advance Payments

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

5.5.3 Insurance

In every case where advance payment or payment against dispatch documents is to be made or LC is to be opened, the condition of insurance should invariably be incorporated in the terms and conditions. Wherever necessary, the goods supplied under the contract, shall be fully insured in a freely convertible currency against loss or damage incidental to manufacture or acquisition, transportation, storage and delivery in the manner specified in the contract. If considered necessary, insurance may cover “all risks” including war risks and strike clauses. The amount to be covered under insurance should be sufficient to take care of the overall expenditure to be incurred by the Procuring Entity for receiving the goods at the destination. Where delivery of imported goods is required by the purchaser on CIF/CIP basis, the supplier shall arrange and pay for marine/air insurance, making the purchaser the beneficiary. Where delivery is on FOB/FAS basis, marine/air insurance shall be the responsibility of the purchaser. (Rule 172 of GFR 2017)

5.6 Firm Price vis-à-vis Variable Price

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 Variation Clause (PVC) may be stipulated for items with non-ferrous and other raw materials prone to short-term price volatility - especially for critical or high value items – otherwise there is a possibility of the contract failing or the purchaser having to pay a higher price if prices fall. For high value (more than Rupees three crore) tenders with deliveries longer than 18 (eighteen) months, PVC may be provided to protect the purchaser’s interests also.

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 labour in the price variation formula. If the production of goods needs more than one raw material, the input cost of material may be further sub-divided for different categories of material, for which cost indices are published.

The following are important elements of PVC:

- i. 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. The raw materials used in manufacture are procured some weeks before the goods' submission for inspection. This period is called the time lag for price variation. It applies both for base date and date of supply. This time lag at both ends must be specified;
- ii. 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);
- iii. 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;
- iv. Where advance or stage payments are made there should be a further stipulation that no price variations will be admissible on such portions of the price, after the dates of such payment;
- v. Where deliveries are accepted beyond the scheduled delivery date subject to levy of liquidated damages as provided in the contract. The LD (if a percentage of the price) will be applicable on the price as varied by the operation of the PVC;
- vi. 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;
- vii. 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;
- viii. Where contracts are for supply of equipment, goods, and so on, imported (subject to customs duty and foreign exchange fluctuations) and/or locally manufactured (subject to GST 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;



- ix. The clause should also contain the mode and terms of payment of the price variation admissible; and
- x. 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;
- xi. An illustrative PVC clause is available in Annexure 11;
- xii. 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.”
- xiii. 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.

5.7 Exchange rate Variation

5.7.1 In case of a contract involving substantial import content(s) and having a long delivery period (exceeding one year from the date of contract), an appropriate Foreign Exchange Variation clause may be formulated by the Procuring Entity in consultation with its Associated/ integrated Finance, as needed, and incorporated in the tender enquiry document. In that clause, the tenderers are to be asked to indicate import content(s) and the currency (ies) used for calculating the value of import content(s) in their total quoted price, which (that is, the total quoted price) will be in Indian Rupees. The tenderers may be asked to indicate the Base Exchange rate for each such foreign currency used for converting the foreign exchange content into Indian Rupees and the extent of foreign Exchange Rate Variation (ERV) risk they are willing to bear.

To work out the variation due to changes (if any) in the exchange rate(s), the base date for this purpose will be the due date of opening of tenders/seven days prior to the due date of opening of tenders (the purchase organisation is to decide and adopt a suitable date). The variation may be allowed between the above base date and date of remittance to the foreign principal/ mid-point of manufacture of the foreign



component (the purchase organization is to choose the appropriate date). The applicable exchange rates as above will be according to the TT selling rates of exchange as quoted by authorised exchange bankers approved by RBI on the dates in question. No variation in price in this regard will be allowed if the variation in the rate of exchange remains within the limit of plus/minus ___per cent (the purchase organisation is to decide the limit, say plus/minus band of 2.5% (Two point Five percent)).

Any increase or decrease in the customs duty by reason of the variation in the rate of exchange in terms of the contract will be to the buyer's account. In case the delivery period is revised/ extended, ERV will not be admissible, if this is due to the supplier's default; however, ERV benefits arising out of downward trends should be passed on to Procuring Entity. The Procuring Entity may formulate an appropriate ERV clause on similar lines as above in consultation with their Finance Wing.

5.7.2 Documents for claiming ERV

- i. A bill of ERV claim enclosing the working sheet;
- ii. Banker's certificate/debit advice detailing the foreign exchange paid and exchange rate;
- iii. Copies of the import order placed on the supplier; and
- iv. Supplier's invoice for the relevant import order.

5.8 Taxes, Duties and Levies

Prevailing rules of state Government will be in force

5.9 Incoterms Terms of delivery

Incoterms rules mainly describe the tasks, costs and risks involved in the delivery of goods from the seller to the buyer. The risk to goods (damage, loss, shortage, and so on) is the responsibility of the person who holds the 'title of goods' at that point of time. This may be different from actual physical possession of such goods. Normally, unless otherwise defined, the title of goods passes from the supplier to the purchaser in accordance with the terms of delivery (FOR, CFR, among others). The terms of delivery, therefore, specify when the ownership and title of goods pass from the seller to buyer, along with the associated risks. Incoterms as described by the International Chamber of Commerce are an internationally accepted interpretation of the terms of delivery. These terms of delivery allocate responsibilities to the buyer and seller, with respect to:



Table: Incoterms and their applications

INCOTERMS Options	Applicable to
Ex-Group of Terms	Buyer takes full responsibility from point of departure
EXW – Ex-Works	Any mode of transport
Free Group of Terms	freight is not paid by the seller
FCA – Free Carrier	Any mode of transport
FAS – Free Alongside Ship	Sea and inland waterway transport only
FOB – Free On Board	
C Group of Terms	Freight is paid by the seller
CPT – Carriage Paid To	Any mode of transport
CIP – Carriage and Insurance Paid to	Any mode of transport
CFR – Cost and Freight	Sea and inland waterway transport only
CIF – Cost, Insurance and Freight	
Delivered Group of Terms	Seller takes responsibility from an intermediate point onwards
DAT – Delivered At Terminal	Any mode of transport
DAP – Delivered At Place	Any mode of transport
DDP – Delivered Duty Paid	Any mode of transport

- i. Control and care of the goods while in transit;
- ii. Carrier selection, transfers and related issues;
- iii. Costs of freight, insurance, taxes, duties and forwarding fees; and
- iv. Documentation, problem resolution and other related issues.

In use since 1936, Incoterms have been revised in 2010. Out of the 11 Incoterms options, seven apply to all modes of transportation whereas four apply only to water transportation.

The options range from one extreme – the buyer takes full responsibility from point of departure – to the other extreme: the seller is responsible all the way through delivery to the buyer's location. It is easiest to understand terms as per their nomenclature groupings: 'ex' group of terms where the buyer takes full responsibility from point of departure; 'free' group of terms in which the freight is not paid by the seller; 'C' group of terms in which the freight is paid by the seller; and 'delivered' group of terms where the seller takes full responsibility from an intermediate point to an arrival point (Annexure 16).



Within national transportation, certain terms have assumed acceptance due to usage. FOR has two versions: FOR/dispatching and FOR/destination (the buyer is responsible from the nominated point mentioned till arrival point, as in Delivery at Terminal). Infrequently, it is also used in road transport as FOT.

5.10 e-Payment

e-Banking and e-payments are now used by various banks by adopting Electronic Clearing System (ECS) and Electronic Fund Transfer (NEFT/RTGS) procedure. Payments to suppliers may be made through such mechanism where such facilities are available. As per RBI guidelines, ECS mandate in RBI's format may be obtained at the time of registration of suppliers and in the bid document. The Format is available with all Banks.

5.11 Deduction of Income Tax, Service Tax, and so on, at source from Payments to suppliers

This will be done as per the prevailing rate which will be in force during the currency of the contract.

5.12 Recovery of Public Money from supplier's bill

Sometimes, requests are received from a different Department for withholding some payment of a supplier out of the payment due to it against a contract. Such requests are to be examined by the Department (which has received the request) on the merits of the case for further action. It will, however, be the responsibility of the Department asking for withholding of payment to defend the Government against any legal procedure arising out of such withholding as also for payment of any interest thereof.

5.13 Payment against Time Barred Claims

Ordinarily, all claims against the Government are time barred after a period of three years calculated from the date when the payment falls due unless the payment claim has been under correspondence. However, the limitation is saved if there is an admission of liability to pay, and fresh period of limitation starts from the time such admission is made. The drill to be followed while dealing with time barred claims will be decided by the Department concerned in consultation with the paying authority. The paying authority is to ensure that no payment against such time barred claim is made till a decision has been taken in this regard by the CA.



EVALUATION OF BIDS AND AWARD OF CONTRACT

6.1 Tender Evaluation

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

6.2 Preparation of Comparative Statement

The Procuring Entity should prepare a comparative statement of quotations received in the order in which tenders were opened. In case of techno-commercial bid comparative statement will have information about deciding responsiveness and eligibility of bids and evaluation of technical suitability of offers. In case of Financial bid it would have information about rates quoted (including taxes or otherwise),



discount, if any, and any other information having implications on ranking of bids etc. The comparative statement so prepared should be signed by the concerned officers.

6.3 Preliminary examination

6.3.1 Unresponsive Tenders

Tenders that do not meet the basic requirements specified in the bid documents are to be treated as unresponsive and ignored. All tenders received will first be scrutinised by the TC to see whether the tenders meet the basic requirements as incorporated in the Bid document and to identify unresponsive tenders, if any. Some important points on the basis of which a tender may be declared as unresponsive and be ignored during the initial scrutiny are:

- i. The tender is not in the prescribed format or is unsigned or not signed as per the stipulations in the bid document;
- ii. The required EMD has not been provided or exemption from EMD is claimed without acceptable proof of exemption;
- iii. The bidder is not eligible to participate in the bid as per laid down eligibility criteria
- iv. The tenderer has quoted for goods manufactured by a different firm without the required
- v. authority letter from the proposed manufacturer;
- vi. The bid departs from the essential requirements specified in the bidding document (for example, the tenderer has not agreed to give the required performance security); or
- vii. Against a schedule in the list of requirements in the tender enquiry, the tenderer has not quoted for the entire requirement as specified in that schedule (example: in a schedule, it has been stipulated that the tenderer will supply the equipment, install and commission it and also train the purchaser's operators for operating the equipment. The tenderer has, however, quoted only for supply of the equipment).

6.3.2 Non-conformities between Figures and words

Sometimes, non-conformities/errors are also observed in responsive tenders between the quoted prices in figures and in words. This situation normally does not arise in case of e-Procurement. This should be taken care of in the manner indicated below:

- i. If, in the price structure quoted for the required goods, there is discrepancy between the unit price and total price (which is obtained by multiplying the unit price by the quantity), the unit price shall prevail and the total price corrected accordingly;



- ii. If there is an error in a total corresponding to the addition or subtraction of sub-totals, the sub-totals shall prevail and the total shall be corrected; and
- iii. If there is a discrepancy between words and figures, the amount in words shall prevail;
- iv. Such a discrepancy in an offer should be conveyed to the tenderer asking him to respond by a target date and if the tenderer does not agree to Procuring Entity's observation, the tender is liable to be rejected.

6.3.3 Discrepancies between Original and Scanned Copies of a Tender

In e-Procurement there could be discrepancies between the uploaded scanned copies and the Originals submitted by the bidder. However normally no submission of original documents in physical format (other than Cost of Bid Documents, Bid Security) should be asked for in e-Procurement

6.3.4 Minor Infirmary/ Irregularity/Non-conformity

During the preliminary examination, some minor infirmity and/or irregularity and/or non-conformity may also be found in some tenders. Such minor issues could be a missing pages/ attachment or illegibility in a submitted document; non-submission of requisite number of copies of a document. There have been also cases where the bidder submitted the amendment Bank Guarantee, but omitted to submit the main portion of Bid Document. The court ruled that this is a minor irregularity. Such minor issues may be waived provided they do not constitute any material deviation (please refer to Para 7.4.1 (iv)) and financial impact and, also, do not prejudice or affect the ranking order of the tenderers. Wherever necessary, observations on such 'minor' issues (as mentioned above) may be conveyed to the tenderer by registered letter/ speed post, and so on, asking him to respond by a specified date also mentioning therein that, if the tenderer does not conform Procuring Entity's view or respond by that specified date, his tender will be liable to be rejected. Depending on the outcome, such tenders are to be ignored or considered further.

6.3.5 Clarification of Bids/ Shortfall Documents

During evaluation and comparison of bids, the purchaser may, at his discretion, ask the bidder for clarifications on the bid. The request for clarification shall be given in writing by registered/ speed post, asking the tenderer to respond by a specified date, and also mentioning therein that, if the tenderer does not comply or respond by the date, his tender will be liable to be rejected. Depending on the outcome, such tenders are to be ignored or considered further. No change in prices or substance of the bid shall be sought, offered or permitted. No post-bid clarification at the initiative of the bidder shall be entertained. The shortfall information/ documents should be sought



only in case of historical documents which pre-existed at the time of the tender opening and which have not undergone change since then. These should be called only on basis of the recommendations of the TC. (Example: if the Permanent Account Number, registration with sales tax/VAT has been asked to be submitted and the tenderer has not provided them, these documents may be asked for with a target date as above). So far as the submission of documents is concerned with regard to qualification criteria, after submission of the tender, only related shortfall documents should be asked for and considered. For example, if the bidder has submitted a supply order without its completion/performance certificate, the certificate can be asked for and considered. However, no new supply order should be asked for so as to qualify the bidder.

6.4 Evaluation of Responsive Bids and Decision on Award of Contract

All responsive bids are evaluated by the TC with a view to select the lowest (L1) bidder who meets the qualification criteria and techno-commercial aspects. In case of Single Stage Single Envelop Bidding, the evaluation of qualification of bidders, technical, commercial and financial aspect is done simultaneously. In Single Stage Multiple Envelops, initially only the techno-commercial bids would be opened and evaluated for bids which successfully meet the qualification criteria and techno-commercial aspects. Financial bids of such successful bidders only would be opened for selecting the L1 bidder among these and in case of manual tenders, financial bids of unsuccessful bidders would be returned unopened to them. Evaluation of techno-commercial and financial aspects are, however, discussed separately below. It is of utmost importance that the authenticity, integrity and sanctity of unopened financial bids must be ensured, before their opening. All the financial bids may preferably be put in a large envelop, which may be dated, sealed and signed (including by some of the bidders present), to show that none of the bids were accessed during the custody.

6.4.1 Evaluation of Techno-commercial Bid

In evaluation of the techno-commercial bid, conformity of the eligibility/qualification, technical and commercial conditions of the offered goods to those in the bid document is ascertained. Additional factors, if any, incorporated in the tender documents may also be considered in the manner indicated therein. Evaluation has to be based only on the conditions included in the tender document and any other condition should not form the basis of this evaluation.

- i. **Evaluation of eligibility/ qualification Criteria:** Procuring Entity will determine, to its satisfaction, whether the tenderers are eligible, qualified and capable in all respects to perform the contract satisfactorily. Tenders that do



not meet the required eligibility/ qualification criteria prescribed will be treated as unresponsive and not considered further. This determination will, inter-alia, take into account the tenderer's financial, technical and production capabilities for satisfying all of Procuring Entity's requirements as incorporated in the tender document. Such determination will be based upon scrutiny and examination of all relevant data and details submitted by the tenderer in its/his tender as well as such other allied information as deemed appropriate by Procuring Entity.

- ii. **Evaluation of Technical Suitability:** The description, specifications, drawings and other technical terms and conditions are examined by TC in general and a technical member of the TC in particular. Nobody outside the TC should be allowed to determine this evaluation. The tender document should clearly state whether alternative offers/ makes/models would be considered or not and, in the absence of an express statement to the effect, these should not be allowed. An important document is the exceptions/ deviation form submitted by the tenderer. It is important to judge whether an exception/ deviation is minor or major. Minor exceptions/deviations may be waived provided they do not constitute any material deviation and do not have significant financial impact and, also, would not prejudice or affect the ranking order of the price bid. Exceptions/ deviations should not grant the tenderer any undue advantage vis-à-vis other tenders and Procuring Entity.

- iii. **Evaluation of Commercial Conditions:**

The TC will also evaluate the commercial conditions quoted by the tenderer to confirm that all terms and conditions specified in the GCC/SCC have been accepted without reservations by the tenderer. Only minor deviations may be accepted/allowed, provided these do not constitute material deviations without financial impact and do not grant the tenderer any undue advantage vis-à-vis other tenders and Procuring Entity.

- iv. **Considering Minor Deviations:**

Court has consistently taken a view that Procuring Entity is entitled to consider and allow minor deviations, which do not amount to material deviations. A material deviation, reservation, or omission which should not be waived are those that:

- a) Affects, in any substantial way, the scope, quality or performance of the goods and related services specified in the contract;
- b) Limits, in any substantial way, inconsistent with the tendering documents, the Procuring Entity's rights or the tenderer's obligations under the contract; or



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

v. **Declaration of Successful Bidders:**

If it is a multiple envelop tender, then the TC prepares a recommendation of techno-commercial bid (Annexure 7) to declare successful bidders. In such cases, after the approval of CA, the results of the Techno- commercial bid evaluation are to be announced (including informing the failed Bidders). Price bids are opened in the presence of technically suitable bidders, who are willing to attend the bid opening, at a pre-publicised date, time and place or on the portal in case of e-Procurement. In single envelop/cover tender, TC proceeds to evaluate the price aspects without a reference to CA at this stage.

6.4.2 Right of Bidder to question rejection at Techno-Commercial stage

A tenderer shall have the right to be heard in case he feels that a proper procurement process is not being followed and/or his techno-commercial bid has been rejected wrongly. The tenderer is to be permitted to send his representation in writing. On receipt of representation it may be decided whether to withhold opening of the financial bids and bidder may be expeditiously replied. Certain decisions of the Procuring Entity in accordance with the provision of internal guidelines shall not be subject to review as mentioned in para 7.6.3 below.

6.4.3 Evaluation of Financial bids and Ranking of Tenders in general:

- i. If the price bid is ambiguous so that it may very well lead to two equally valid total price amounts, then the bid should be treated as unresponsive;
- ii. Sometime certain bidders offer suo motu discounts and rebates after opening of the tender(techno-commercial or financial). Such rebates/discounts should not be considered for the purpose of ranking the offer but if such a firm does become L1 at its original offer, such suo motu rebates can be incorporated in the contracts. This also applies to conditional rebates, for example, rebate for faster payments, and so on;
- iii. Unless announced beforehand explicitly in the tender documents, the quoted price should not be loaded on the basis of deviations in the commercial conditions. If it is decided to incorporate such clauses, these should be unambiguous and clear – and thereafter there should be no relaxation during evaluation. Moreover, sometimes, while purchasing sophisticated and costly equipment, machinery,



and so on, the Procuring Entity also gives special importance to factors such as high quality performance, environmental- friendly features, low running cost, low maintenance cost, and so on. To take care of this, relevant details are to be incorporated in the bid document and the criteria adopted to assess the benefit of such features while evaluating the offers are also to be clearly stipulated in the tender enquiry document so that the tenderers are aware of it and quote accordingly. While evaluating such offers, these aspects are also to be taken into account. Such details, whenever considered necessary, should be evolved by the competent technical authority for incorporation in the tender document, so that there is no ambiguity and/or vagueness in them;

- iv. The comparison of rate of the responsive tenders shall be on the basis of total rate including transportation charge & all taxes and charges upto delivery point.
- v. Procurement preference policy to local industrial unit as per prevailing policy of state Government should be taken into consideration while preparing comparative statement.
- vi. In case the list of requirements contains more than one schedule, the responsive, technically suitable tenders will be evaluated and compared separately for each schedule. The tender for a schedule will not be considered if the complete requirements prescribed in that schedule are not included in the tender. However, tenderers have the option to quote for any one or more schedules and offer discounts for combined schedules. Such discounts, wherever applicable, will be taken into account to for deciding the lowest evaluated cost for Procuring Entity in deciding the successful tenderer for each schedule, subject to that tenderer(s) being responsive

GTE Tenders

Special aspects of evaluation of the financial offer in GTE tenders are:

- i. **Currency of Tender**

In GTE tenders, the price in the quotation could be in US Dollar or Euro or Pound Sterling or Yen or in currencies under the RBI's notified basket of currencies, in addition to the Indian Rupees, except for expenditure incurred in India (including agency commission if any) which should be stated in Indian Rupees. All offers are to be converted to Indian Rupees based on the "Bill currency selling" exchange rate on the date of tender opening (Techno-commercial offer) from a source as specified in the tender document.

- ii. **Currency of Payment**

The contract price will be normally paid in the currency/currencies in which the price is stated in the contract.



iii. Evaluation of Offers

As per Government policy, Departments/Public Sector Undertakings (PSUs) should ensure imports on FOB/FAS basis failing which a No Objection Certificate (NOC) should be obtained from the Ministry of Surface Transport (Chartering Wing).

The foreign bidders are normally asked, in the bid documents, to quote both on FAS/FOB basis and also on Cost and Freight (CFR)/CIF basis duly indicating the break-up of prices for freight, insurance, and so on, with purchasers reserving the right to order on either basis. They should also to indicate the custom tariff number and custom duty applicable in India. In the case of FAS/FOB offers, the freight and insurance shall be (after ascertaining, if not quoted) added to make up the CIF cost. To arrive at the Free On Rail (FOR) cost, one per cent shall be added over and above CIF as port handling charges, custom duty, countervailing duty and surcharges, as applicable on the date of opening of the tender, as well as clearing agency charges, inland freight and Octroi/entry tax, as assessed, may be added to make it a FOR/Free On Truck (FOT) destination. The FOR/FOT destination price for domestic offers may be calculated as in OTE tenders. For bids with Letter of Credit (LC) payment, the likely LC charges (as ascertained from Procuring Entity's bankers) should also be loaded.

In case both Indian and foreign bidders have quoted in the tender, the comparison of the offers would be done on the basis of FOR/FOT destination including all applicable taxes and duties (on the principle of the total outgo from Procuring Entity's pockets). In case there are no domestic bidders, a comparison of offers can be made on the basis of CIF/landed costs since the rest of costs would be same for all bidders.

6.5 Deliberations by the Tender Committee for Award of Contract

6.5.1 Timely Processing of Tenders (Rule 174 (i) of GFR 2017)

Delays in finalising procurement deprive the public of the intended benefits and results in lost revenues and cost over-run. To enable timely decision making, complete Time schedule of finalising the Tender process from the date of issuing the tender to date of issuing the contract, should be published in the Bid Documents. Every official in the chain of the procurement operation is accountable for taking action in a specified time so that the tender is finalised on time. Any deviation from the

schedule may be monitored and explained, by way of system of Management Reporting (Appendix 4 and 5). As a check, the proposed schedule of tender process may be printed on the inside cover of the Procurement File, where actual date of completion of various stages may be recorded. The suggestive time schedule in Table 2 is a guideline for finalising contracts against various modes of procurements.



Table - Indicative time schedule

SL. No.	Mode of Procurement	Indigenous	Imported
1	Open tender/(e-tendering)	45days	60 days
2	Proprietary basis/nomination basis	21days	

This time schedule is only indicative and the schedule shall be subject to change based on the nature of requirements, sourcing, sample evaluation, site visit/pre-bid meeting with prospective bidders and Government, guidelines, and so on.

6.5.2 Extension of Tender Validity Period

The entire process of scrutiny and evaluation of tenders, preparation of ranking statement and notification of award must be done expeditiously and within the original tender validity period (Rule 174 (iv) of GFR 2017). The validity period should not be unreasonably long as keeping the tender unconditionally valid for acceptance for a longer period entails the risk of getting higher prices from the tenderers.

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

6.5.3 Variation of Quantities at the Time of award

At the time of awarding the contract, the quantity to be procured must be re-judged based on the current data, since the ground situation may have very well changed. The tendered quantity can be increased or decreased by 25 (Twenty-Five) per cent for ordering, if so warranted. This may be mentioned in the tender documents. Any larger variation may throw up issues about transparency.

6.5.4 Option clause

In case of long running, yearly procurements, to take care of any change in the requirement during the currency of the contract, a plus/minus option clause



(normally 25 (Twenty-Five) per cent) is incorporated in the tender document, reserving purchaser's right to increase or decrease the quantity of the required goods up to that limit without any change in the terms and conditions and prices quoted by the tenderers. Higher the option limit more is the uncertainty for the tenderers in formulating their prices and more is the chance of loading on the prices quoted to take care of such uncertainties.

6.5.5 Splitting of Contracts/Parallel Contracts

After due processing, if it is discovered that the quantity to be ordered is far more than what L1 alone is capable of supplying and there was no prior decision/declaration in the bidding documents to split the quantities, then the quantity being finally ordered may be distributed among the other bidders by counter offering the L1 rate in a manner that is fair, transparent and equitable based on objective data available in the bids e.g. eligibility data, quantity/delivery etc.

However, in case of critical/vital/safety/security nature of the item, large quantity under procurement, urgent delivery requirements and inadequate vendor capacity it may be advantageous to decide in advance to have more than one source of supply. In such cases a parallel contract clause should be added to the bid documents, clearly stating that Procuring Entity reserves the right to split the contract quantity between suppliers. The manner of deciding the relative share of lowest bidder (L1) contractor and the rest of the contractors/tenderers should be clearly defined, along with the minimum number of suppliers sought for the contract. In case of splitting in two and three, the ratio of 70:30; 50:30:20 respectively may be used or a different ratio as deem fit by the concerned Department may also be justified as per approved rate.

The following guidelines are to be considered while opting for parallel contracts:

- i. L1 should be awarded at least the percentage mentioned above or his spare supply capacity, whichever is lower; and
- ii. For the rest of the contract quantity, the lowest rate accepted will be counter offered to the L2 party. On acceptance of the counter offer, the order will be placed on L2 for the respective percentage or the spare supply capacity of the L2 bidder, whichever is lower, and so on, to other tenderers. In case of non-acceptance of the counter offer by the L2 party, a similar offer shall be made to L3 and L4, and so on. If approved rate is not accepted by L₂ / L₃ and other bidders participated in tender, supply order for 100% quantity will be placed to L₁ bidder (it should also be mentioned in terms and conditions).

6.5.6 Reasonableness of Prices

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



(For more details on judging reasonableness of prices, please see in Chapter 2 above).

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

- i. The basic price, taxes, duties, transportation charges, Packing and Forwarding charges should be indicated separately;
- ii. Where the firm holding the LPP contract has defaulted, the fact should be highlighted and the price paid against the latest contract placed prior to the defaulting LPP contract, where supplies have been completed, should be used;
- iii. Where the supply against the LPP contract is yet to commence, that is, delivery is not yet due, it should be taken as LPP with caution, especially if the supplier is new, the price paid against the previous contract may also be kept in view;
- iv. Where the price indicated in the LPP is subject to variation or if it is more than a year old, the updated price may also be indicated;
- v. In the case of wholly imported stores, the comparison of the last purchase rate should be made with the net CIF value at the current foreign exchange rate;
- vi. It is natural to have marginal differences in prices obtained at different cities/offices for the same item, due to their different circumstances. The prices obtained are greatly influenced by quantity, delivery period, terms of the contract, these may be kept in view; and
- vii. Prices paid in emergencies or prices offered in a distress sale are not accurate guidelines for future use. Such purchase orders and TC proceedings should indicate that “these prices are not valid LPP for comparison in future procurement”.

6.5.7 Consideration of Abnormally Low Bids

An Abnormally Low Bid is one in which the bid price, in combination with other elements of the Bid, appears so low that it raises 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.

6.5.8 Cartel Formation/Pool Rates

It is possible that sometimes a group of bidders quote the same rate against a tender. Such pool/cartel formation is against the basic principle of competitive bidding and defeats the very purpose of an open and competitive tendering system. Such and similar tactics to avoid/ control true competition in a tender leading to “Appreciable Adverse Effect on Competition” (AAEC) have been declared as an offence under the Competition Act, 2002, as amended by the Competition (Amendment) Act, 2007. Such practices should be severely discouraged with strong measures. In case of evidence of cartel formation, detailed cost analysis may be done by associating experts if necessary. Besides, suitable administrative actions can be resorted to, such as rejecting the offers, reporting the matter to trade associations, the Competition Commission or NSIC, etc., and requesting them, inter-alia, to take suitable strong actions against such firms. New firms may also be encouraged to get themselves registered for the subject goods to break the monopolistic attitude of the firms forming a cartel. Changes in the mode of procurement (GTE instead of OTE) and packaging/slicing of the tendered quantity and items may also be tried. A warning clause may also be included in the bid documents to discourage the bidders from indulging in such practices.

6.5.9 Negotiations

Post tender negotiations should not be done with lowest bidder / tenderer (L1) except in certain exceptional situations. Such exceptional situations would include procurement of proprietary items, items with limited sources of supply and items where there is suspicion of cartel formation. The justification and details of such negotiations should be duly recorded and documented without any loss of time. If negotiation with L1 seems unavoidable, then convincing reasons must be recorded in writing by the authority recommending negotiation. In addition, Department will mention as a clause in the tender document that negotiation will not be done with the lowest bidder / tenderer except in circumstance mentioned above.

After the CA has decided to call a specific bidder for negotiation, the following procedure should be adopted:

- a) It must be understood that, if the period of validity of the original offer expires before the close of negotiations, the original offer will not be available for acceptance. The period of validity of the original offer must, therefore, be extended, wherever necessary, before negotiations;



- b) The tenderer to be called in for negotiations should be addressed as per the format of letter laid down in Annexure 8, so that the rates originally quoted by him shall remain open for acceptance in the event of failure of the contemplated negotiation;
- c) A negotiations meeting should be started only after obtaining a signed declaration from the negotiating supplier as per Annexure 8; and
- d) Revised bids should be obtained in writing from the selected tenderers at the end of the negotiations in the format of letter laid down in Annexure 9. The revised bids so obtained should be read out to the tenderers or their representatives present, immediately after completing the negotiations. If necessary, the negotiating party may be given some time to submit its revised offer. In case, however, the selected bidder prefers to send a revised bid instead of being present at the negotiation, the offer should be taken into account. In case a bidder does not submit the revised bid, its original bid shall be considered.

6.5.10 Consideration of Lack of Competition in OTE/GTE (Rule 173 (xix) and (xxi) of GFR 2017)

Sometimes, against advertised tender cases, the Procuring Entity may not receive a sufficient number of bids and/or after analysing the bids, ends up with only one responsive bid – a situation referred to as ‘Single Offer’. As per Rule 21 of DFPR (explanation sub-para), such situation of ‘Single Offer’ is to be treated as Single Tender. Even when only one Bid is submitted, the process may be considered valid provided following conditions are satisfied:

- i. The procurement was satisfactorily advertised and sufficient time was given for submission of bids;
- ii. The qualification criteria were not unduly restrictive; and
- iii. Prices are reasonable in comparison to market values.

However restricted powers of Single tender mode of procurement would apply. In case of price not being reasonable retender may be considered as justifiable.



6.5.11 Cancellation of Procurement Process/rejection of all bids/re-tender (Rule 173 (xix) of GFR 2017)

- i. The Procuring Entity may cancel the process of procurement or rejecting all bids at any time before intimating acceptance of successful bid under circumstances mentioned below. In case where responsive bids are available, the aim should be to finalise the tender by taking mitigating measures even in the conditions described below. If it is decided to rebid the tender, the justification should balance the perceived risks in finalisation of tender (marginally higher rates) against the certainty of resultant delays, cost escalations, loss of transparency in re-invited tender. After such decision, all participating bidders would be informed and bids if not opened would not be opened and in case of manual tenders be returned unopened:
 - a) If the quantity and quality of requirements have changed substantially or there is an un-rectifiable infirmity in the bidding process;
 - b) When none of the tenders is substantially responsive to the requirements of the Procurement Documents;
 - c) None of the technical Proposals meets the minimum technical qualifying score;
 - d) If effective competition is lacking. However lack of competition shall not be determined solely on the basis of the number of Bidders. (Please refer to para above also regarding receipt of a single offer);
 - e) The Bids'/Proposals' prices are substantially higher than the updated cost estimate or available budget;
 - f) If the bidder, whose bid has been found to be the lowest evaluated bid withdraws or whose bid has been accepted, fails to sign the procurement contract as may be required, or fails to provide the security as may be required for the performance of the contract or otherwise withdraws from the procurement process, the Procuring Entity shall cancel the procurement process. Provided that the Procuring Entity, on being satisfied that it is not a case of cartelization and the integrity of the procurement process has been maintained, may, for cogent reasons to be recorded in writing, offer the next successful bidder an opportunity to match the financial bid of the first successful bidder, and if the offer is accepted, award the contract to the next successful bidder at the price bid of the first successful bidder.



- ii. Approval for re-tendering should be accorded by the CA after recording the reasons/ proper justification in writing. The decision of the Procuring Entity to cancel the procurement and reasons for such a decision shall be immediately communicated to all bidders that participated in the procurement process. Before retendering, the Procuring Entity is first to check whether, while floating/issuing the enquiry, all necessary requirements and formalities such as standard conditions, industry friendly qualification criteria, and technical and commercial terms, wide publicity, sufficient time for bidding, and so on, were fulfilled. If not, a fresh enquiry is to be issued after rectifying the deficiencies.

6.5.12 Handling Dissent among Tender Committee

Tender Committee duties are to be discharged personally by the nominated officers. They may take help of their subordinate officers by way of reports/evaluations, but they would still be answerable for such decisions. TC members cannot co-opt or nominate others to attend deliberations on their behalf. TC deliberations are best held across the table and not through circulation of notes.

All members of the TC 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 TC 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 TC, he should record his views and, if possible, firstly send it back to TC to reconsider along the lines of the tender accepting authority's views. However, if the TC, 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.

6.5.13 Independence, Impartiality, confidentiality and 'no conflict of interest' at all stages of evaluation of bids

All technical, commercial and finance officials who have contributed to the techno-commercial or financial evaluation of bids, even though they may not be part of the TC



should deal with the procurement in an independent, impartial manner and should have no conflict of interest with any of the bidder involved in the procurement. They should also maintain confidentiality of the information processed during the evaluation process and not allow it to reach any unauthorised person. They should sign a declaration at the end of their reports/notings stating that, "I declare that I have no conflict of interest with any of the bidder in this tender". TC members may make such a declaration at the end of their reports.

6.5.14 Tender committee recommendations/report

All formalities as per DFPRT to be followed prior to placement of proposal before purchase committee for recommendation of rates. Following points to be considered for placement of any proposal before purchase committee.

- i. Offers have been invited after observing all codal formalities and after following fair and reasonable procedures in prevailing circumstances;
- ii. Selected offer will adequately meet the requirement for which it is being procured;
- iii. The price of the offer is reasonable and consistent with the quality required; and
- iv. The accepted offer is the most appropriate taking all relevant factors into account in keeping with the standards of financial propriety.

After recommendation of rates, terms & conditions, the tender to be accepted by the respective authority as per DFPRT.

6.6 Award of Contract

6.6.1 LoA / supply order / acknowledgement to Successful Bidder

Prior to the expiry of the period of bid validity, the successful bidder will be notified (briefly indicating therein relevant details such as quantity, specification of the goods ordered, prices, and so on) in writing by a registered letter or any other acknowledgeable and full proof method that his bid has been accepted. Legally communication of acceptance of offer is considered complete as soon as it is submitted to Postal authorities (please refer to Para 2.9.1 of Appendix 2). A template for the Letter of Acceptance (or Notice of Award, or Acceptance of Tender) is given in Annexure 10. In the same communication, the successful tenderer is to be instructed to furnish the required performance security within a specified period (generally 14 (Fourteen) days). However after approval of rate procuring entity may also communicate to the approved bidder regarding acceptance of bid and LoA / supply order may be issued later on.

**6.6.2 Publication of Tender results and return of EMD of Unsuccessful Bidder**

(Rule 173 (xviii) of GFR 2017)

The details of award of contract and name of the successful tenderer should be mentioned mandatorily on the public procurement portal and also in the notice board/bulletin/website of the concerned Department. In case publication of such information is sensitive from commercial or security aspects, dispensation may be sought from publishing of such results by obtaining sanction from the administrative Department. Upon the successful bidder furnishing the signed agreement and performance security, each unsuccessful bidder will be promptly notified and their bid security be returned without interest within 30 (thirty) days of notice of award of contract. The successful supplier's bid security shall be adjusted against the SD or returned as per the terms of the tender documents.

6.6.3 Bidder's right to question rejection at this stage

A tenderer shall have the right to be heard in case he feels that a proper procurement process is not being followed and/or his tender has been rejected wrongly. The tenderer is to be permitted to send his representation in writing. Bidding documents should explicitly mention the name, designation and contact details of officers nominated to receive representations in this regard. But, such representation has to be sent within 10(ten) days from the date of LoA. The Procuring Entity should ensure a decision within 15 (fifteen) days of the receipt of the representation. Only a directly affected bidder can represent in this regard:

- i. Only a bidder who has participated in the concerned procurement process can make such representation;
- ii. In case technical bid has been evaluated before the opening of the financial bid, an application for review in relation to the financial bid may be filed only by a bidder whose technical bid is found to be acceptable.
- iii. Following decisions of the Procuring Entity in accordance with the provision of internal guidelines shall not be subject to review:
 - a) Determination of the need for procurement;
 - b) Selection of the mode of procurement or bidding system;
 - c) Choice of selection procedure;
 - d) The decision to enter into negotiations with the L1 bidder;
 - e) Cancellation of the procurement process
 - f) Issues related to ambiguity in contract terms may not be taken up after a contract has been signed, all such issues should be highlighted before consummation of



the contract by the vendor/contractor; and

- g) Complaints against specifications except under the premise that they are either vague or too specific so as to limit competition may be permissible.

6.6.4 Performance Security

The supplier receiving the LoA / supply order is required to furnish the required performance security, if it is part of tender conditions, in the prescribed form by the specified date; failing this necessary action including forfeiture of EMD will be taken against the supplier.

6.6.5 Acknowledgement of Contract by Successful Bidder and Execution

After the successful bidder is notified that his bid has been accepted, he will be asked to deposit security money and to sign agreement with the procuring entity within 14 days from the date of issue of supply order. It should also be made known to the successful tenderer that in case he does not furnish the required performance security or fails to sign agreement within the stipulated target dates, such non-compliance will constitute sufficient ground for forfeiture of its EMD and processing the case for further action against it (the successful tenderer).

All contracts shall be signed and entered into after receipt and verification of the requisite performance security, by an authority empowered to do so by or under the orders of the Governor of Tripura. The words “for and on behalf of the Governor of Tripura should follow the designation appended below the signature of the officer authorised on this behalf. The various classes of contracts and assurances of property, which may be executed by different authorities, are specified in the DFPR.

6.6.6 Framing of contract

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

- i. Any agreement shall be signed strictly as per recommendations of purchase committee and subsequent acceptance of CA as per DFPRT. The terms of contract must be precise, definite and without any ambiguities.
- ii. All contracts shall contain a provision for
 - a) Recovery of liquidated damages (LD) for delay in performance of the contract on the part of the contractor;
 - b) A warranty clause/defect liability clause should be incorporated in contracts for plant and machinery, above a threshold value, requiring the contractor to, without charge, replace, repair or rectify defective goods/works/services;



- iii. All contracts for supply of goods should reserve the right of the Government to reject goods which do not conform to the specifications;
- iv. Payment of all applicable taxes by the contractor or supplier; and
- v. When a contract is likely to endure for a period of more than two years, it should, wherever feasible, include a provision for an unconditional power of revocation or cancellation by the Government at any time on the expiry of six months' notice to that effect.
- vi. Standard forms of contracts should be invariably adopted, except in cases where standard forms of contracts are not used or where modifications in standard forms are considered necessary in respect of individual contracts, legal and financial advice should be taken in drafting the clauses in the contract and approval of CAs is to be obtained.

6.6.7 Procurement Records

The Procurement file should start with the Indent and related documents. All subsequent documents relating to procurement planning; Copy of Bid Document and documents relating to its and formulation, publishing and issue/uploading; Bid Opening; Bids received; Correspondence and documents (including Technical Evaluation and TC report) relating to pre-qualification, evaluation, Award of Contract; and finally the Contract copy, should be kept on the file. In case of bulky Bids received, all bids received may be kept in a separate volume, with a copy of accepted bids later being put on the main volume. To maintain integrity of the records relating to Procurement, these files should be kept secure and for contract management a new volume of file may be opened to obviate frequent exposure of sensitive procurement file. In contract management volume, copies of successful bid, Tender Committee Report, Contract may also be kept for ready reference, besides correspondence and documents relating to Contract Management and its closure.



RATE CONTRACT AND OTHER PROCUREMENTS WITH SPECIAL FEATURES

7. Rate contracts.

7.1.1 Definition: A Rate Contract (commonly known as RC) is an agreement between the purchaser and the supplier for supply of specified goods (and allied services, if any) at specified price and terms & conditions (as incorporated in the agreement) during the period covered by the Rate Contract. No quantity is mentioned nor is any minimum draw guaranteed in the Rate Contract. The Rate Contract is in the nature of a standing offer from the supplier firm. The firm and/or the purchaser are entitled to withdraw/cancel the Rate Contract by serving an appropriate notice on each other giving 15 (fifteen) days' time. However, once a supply order is placed on the supplier for supply of a definite quantity in terms of the rate contract during the validity period of the rate contract, that supply order becomes a valid and binding contract. In view of Government e Marketplace coming into operation, Rate Contract will be applicable for specialized and engineering items. Rate Contract is not required to be executed for common use items like computers, printers, photocopiers, paper and stationary, other office items like furniture, bottled water etc., which are being placed on GeM.

7.1.2 Merits of rate contract: The Rate Contract system provides various benefits to both the Purchaser (i.e. user) and the Supplier and the same are indicated below:

- i) Benefit to users:
 - a) Competitive and economical price due to aggregation of demands.
 - b) Saves time, efforts, man-hours and related costs involved in time consuming as well as repetitive tendering process. It thus reduces lead time for procurement.
 - c) Availability of quality goods with full quality assurance back-up.
 - d) Enables procurement as and when required and thus reduces inventory carrying cost.
 - e) Advantageous even to small users and those located in remote areas.
 - f) Provides one single point of contact to procure such items.
- ii) Benefit to suppliers:
 - a) Reduces marketing cost and efforts.
 - b) Eliminates repetitive tendering and follow-up actions with multiple authorities.
 - c) Provides single point contact for Govt. supplies.
 - d) Aggregation of Govt. demand leads to economic production.
 - e) Lends credibility.
 - f) Promotes quality discipline.

7.1.3 Rate contracts concluded by Departments

The Department/Organization shall conclude rate contracts after inviting online/offline tenders. The Department/Organization shall conclude rate contracts with registered suppliers for specialized items with eligible suppliers obtaining registry as registration or



the suppliers having green channel status or BIS licences for the items, in addition to meeting the other requirements specified in the tender enquiry.

7.1.4 The goods or services for which Rate Contracts are to be concluded by concerned Departments

- i) Specialized and /or heavy engineering goods.
- ii) For which prices are likely to be stable or where Rate Contracts could be finalized with provision of price variations to account for fluctuation of market rates of raw materials etc;
- iii) For which Rate Contract is convenient to operate and annual drawals are economical, say above Rs. 25 (Rupees twenty-five) lakh. NB: i) In case of goods or services of low value and which are required by the users in very small quantities, rate contracts may not be concluded. ii) Rate Contract may not be concluded for the scarce/critical/perpetually short supply goods or services.

7.1.5 Conclusion of rate contracts for automobiles, sophisticated equipment, machinery etc. on the basis of discounts on net dealer Price. The Department will conclude rate contracts for Automobiles, Machine Tools, Information Technology Products, OEM & Ancillary Spares and similar other such products where the design feature, performance parameters etc. of such products/goods or services differ significantly among the products of different manufacturers and even between different models of the same manufacturer and where equitable comparison of prices of such products or services is not feasible. Such Rate Contracts are to be concluded on discount on Net Dealer Price (NDP) or MRP basis, generally known as Catalogue basis.

7.1.6 Period of rate contract: The period of a Rate Contract should normally be one year for stable technology products. However, in special cases, shorter or longer period not more than two years may be considered. As far as possible, validity period of rate contracts should be fixed in such a way as to ensure that budgetary levies would not affect the price and thereby frustrate the contracts. Attempts should also be made to suitably stagger the period of rate contracts throughout the year.

7.1.7 Criteria for award of rate contract:

- i) The Rate Contracts shall be awarded after inviting online/offline tenders;
- ii) The Rate Contracts shall be awarded to the suppliers registered for broad category of items/products or services with eligible suppliers obtaining registry as registration or the suppliers having green channel status or BIS licences for the tendered items and fulfil the laid down eligibility and qualification criteria including availability of ISI mark, etc. Suitable stipulations are to be incorporated in the tender enquiry documents to this effect. In respect of new items being brought on rate contract for the first time where there is no registered supplier (for the subject items), the requirement of registration can be relaxed with the approval of competent authority.



The award of such rate contracts will, however, be subject to the suppliers' satisfactory technical and financial capability;

- iii) Some of the tenderers (who are otherwise registered) may also be holding current rate contracts and/or held past rate contracts for the required goods. Their performance against such earlier/current rate contracts shall be critically reviewed before they are considered for award of new rate contracts. Specific performance and achievement criteria as on a selected cut-off date is to be evolved for this purpose and incorporated in the tender enquiry document. The tenderers will be asked to furnish the relevant details (along with their tenders) to enable the purchaser to judge their performance and achievement against the past/current rate contracts. These criteria are to be evolved and decided by the purchase organization during procurement planning stage for incorporation in the corresponding tender enquiry documents.

7.1.8 Special conditions applicable for rate contract- Some conditions of rate contract differ from the usual conditions applicable for ad hoc contracts. Some such important special conditions of rate contract are given below:

- i) Earnest Money Deposit (EMD) is to be furnished by unregistered bidders only. The amount of EMD should be fixed by the purchase organizations concerned;
- ii) In the Schedule of Requirement, no quantity is mentioned; only the anticipated drawl is mentioned without any commitment;
- iii) The purchaser reserves the right to conclude one or more than one rate contract for the same item;
- iv) The purchaser as well as the supplier may withdraw the rate contract by serving suitable notice to each other. The prescribed notice period is generally fifteen days.
- v) The purchaser has the option to renegotiate the price with the rate contract holders;
- vi) In case of emergency, the purchaser may purchase the same item through ad hoc contract with a new supplier;
- vii) The terms of delivery in rate contracts are free delivery at consignee's site.
- viii) Online/offline supply orders, incorporating definite quantity of goods to be supplied along with all other required conditions following the rate contract terms, are to be issued for obtaining supplies through the rate contract;
- ix) The purchaser and the authorized users of the rate contract are entitled to place online/offline supply orders up to the last day of the validity of the rate contract and, though supplies against such supply orders will be effected beyond the validity period of the rate contract, all such supplies will be guided by the terms & conditions of the rate contract,



- x) The rate contract will be guided by “Fall Clause” (as described later in this chapter).

7.1.9 Parallel rate contracts: Since, the rate contracts concluded are to take care of the demands of various Departments and Organizations, PSUs, Autonomous Organizations etc. spread all over the State, generally a single supplier does not have enough capacity to cater to the entire demand of an item. Therefore, the rate contracts are concluded with different suppliers for the same item. Such rate contracts are known as Parallel Rate Contracts.

7.1.10 Conclusion of rate contracts including Parallel rate contracts: Techniques for conclusion of rate contract is basically identical to that of ad hoc contract (as discussed in Chapter 7 of the Manual). Identical tender documents may be utilized for conclusion of rate contracts subject to inclusion therein the special terms & conditions as applicable for rate contracts. In the first instance, the rate contract is to be awarded to the lowest responsive tenderer (L1). However, depending on the anticipated demand of the item, location of the users, capacity of the responsive bidders, reasonableness of the prices quoted by the responsive bidders, etc. it may become necessary to award parallel rate contracts also. Efforts should be made to conclude parallel rate contracts with suppliers located in different parts of the State. For the sake of transparency and to avoid any criticism, all such parallel rate contracts are to be issued simultaneously.

7.1.11 Price negotiation/counter-offer: Price Negotiation with the tenderers should be severely discouraged. However, in case the price quoted by the lowest responsive tenderer (L1) is not reasonable and un-acceptable, the price may be negotiated with L1 only and, if it reduces the price to the desired level, rate contract may be concluded with L1. There may be a situation, where parallel rate contracts are needed, though the price of L1 is reasonable. To take care of such situation, special permission may be taken to resort to negotiation and counter offering as indicated below: To start with, the rate contract may be awarded to L1 tenderer. Then the price of L1 is to be counter offered to the higher quoting responsive tenderers under intimation to L1 asking them to send their revised tenders in sealed covers/through fax or email or online on e-bidding platform to be opened in public at a specified place, date and time (as per the standard procedure). L1 may be specifically informed that it may, if it so desires, reduce its price and send its revised tender accordingly as above. The tenderers, who accept the counter offered rate or rate lower than that, are to be awarded parallel rate contracts. If L1 lowers its rate in its revised offer, same may also be accepted with effect from that date and its rate contract amended accordingly. There may also be a situation where parallel rate contracts are necessary, but even the price of the lowest responsive tenderer (L1) is not reasonable. In that case, price negotiation may be conducted with L1 in the first instance. If L1 agrees to bring down the price to the desired level, rate contract may be concluded with it and that price counter offered to other responsive tenderers under intimation to L1 for further action in identical manner as indicated in the above paragraph. If, however, L1 does not agree to reduce its price in the



first instance itself, then the price, which has been decided as reasonable may be counter offered to all the higher quoting responsive tenderers (including L1) for further action on above lines. In respect of items where single bid has been received, the same may be re-tendered, i.e. if consequent to invitation of tender/bid only one bid/tender is received or consequent to technical evaluation if only one bid/tender is found eligible, such bid/tender shall be termed as single bid in respect of that item

7.1.12 Cartel Formation/Pool rates/bid rigging/collusive bidding etc.: Quoting of pool rates/Cartel formation, bid rigging/collusive bidding is against the basic principle of competitive bidding and defeats the very purpose of open and competitive tendering system. Such practices should be severely discouraged with strong measures. Suitable administrative actions like rejecting the offers, reporting the matter to Competition Commission of India, Registering Authority e.g. DGS&D/DGQA/NSIC etc. should be initiated against such firms, on case to case basis, as decided by the competent authority. Departments/Organizations may also bring such unhealthy practice to the notice of the concerned trade associations like FICCI, ASSOCHAM, NSIC, etc. requesting them, inter alia, to take suitable strong actions against such firms. The Departments/Organizations may also encourage new firms to get themselves registered to break the monopolistic attitude of the firms giving pool rate/forming cartel. Purchaser may also debar the tenderers indulging in cartel formation/collusive bidding/bid rigging for a period of two years from participation in the tenders of the Purchaser.

7.1.13 Fall clause: Fall clause is a price safety mechanism in rate contracts. The fall clause provides that if the rate contract holder reduces its price or sells or even offers to sell the rate contracted goods or services following conditions of sale similar to those of the rate contract, at a price lower than the rate contract price, to any person or organization during the currency of the rate contract, the rate contract price will be automatically reduced with effect from that date for all the subsequent supplies under the rate contract and the rate contract amended accordingly. Other parallel rate contract holders, if any, are also to be given opportunity to reduce their price as well, by notifying the reduced price to them and giving them 07 (Seven) days time to intimate their revised prices, if they so desire, in sealed cover to be opened in public on the specified date and time and further action taken as per standard practice. On many occasions, the parallel rate contract holders attempt to grab more orders by unethical means by announcing reduction of their price (after getting the rate contract) under the guise of Fall Clause. This situation is also to be dealt with in similar manner as mentioned in the preceding paragraph. It is however, very much necessary that the purchase organizations keep special watch on the performance of such rate contract holders who reduce their prices on one pretext or other. If their performances are not up to the mark, appropriately severe action should be taken against them including deregistering them, suspending business deals with them, debarring them for two years from participating against the tender enquiry floated by concerned purchase organization etc.

The provisions of fall clause will however not apply to the following:



- i) Export/Deemed Export by the supplier;
- ii) Sale of goods or services as original equipment prices lower than the price charged for normal replacement;
- iii) Sale of goods such as drugs, which have expiry date;
- iv) Sale of goods or services at lower price on or after the date of completion of sale/ placement of order of goods or services by the authority concerned, under the existing or previous Rate Contracts as also under any previous contracts entered into with State Government Departments including undertakings.

7.1.14 Performance security: Depending on the anticipated overall drawal against a rate contract and, also, anticipated number of parallel rate contracts to be issued for an item, the Department shall consider obtaining Performance Security @ 5% (Five percent) of the value of supply order in the supply orders issued against rate contracts on the rate contract holder.

7.1.15 Renewal of rate contracts: It should be ensured that new rate contracts are made operative right after the expiry of the existing rate contracts without any gap for all rate contracted items. In case, however, it is not possible to conclude new rate contracts due to some special reasons, timely steps are to be taken to extend the existing rate contracts with same terms, conditions etc. for a suitable period, with the consent of the rate contract holders. Rate contracts of the firms, who do not agree to such extension, are to be left out. Also, while extending the existing rate contracts, it shall be ensured that the price trend is not lower.

7.1.16 Placement of online/offline supply orders: Supplies are to be obtained against a rate contract by placing on the rate contracted firm online/offline supply order containing the quantity of the goods to be supplied and incorporating the prices and other relevant terms and conditions of the rate contract. The officials placing such online supply orders should be duly competent and authorized to do so. An online/offline supply order should generally contain the following important details:

- i) Rate Contract No. and date;
- ii) Quantity(Where there is more than one consignee, the quantity to be despatched to each consignee is to be indicated);
- iii) Price;
- iv) Date of Delivery by which supplies are required. (In the supply order, a definite deliverydate based on the delivery period stipulated in the rate contract is to be provided),
- v) Full address of the purchase organization along with telephone. No., Fax No. and E. mail address;



- vi) Complete and correct designation and full postal address of the consignee(s)/goodsreceiving officer(s) along with telephone No., Fax No. and E-mail address;
- vii) Nearest Railway Siding (NRS) of the consignee(s), if applicable;
- viii) Despatch instructions;
- ix) Designation and address of the inspecting officer, if any;
- x) Designation and address of the paying authority to which the bills are to be raised by the supplier Copies of supply order are to be endorsed to all concerned.

7.2 Handling Procurement in urgencies/emergencies and disaster management

There are sufficient fast track procurement modalities to tackle procurements in urgent/emergent and Disaster Management situations. Enhanced delegations of procurement powers in DFPRT may be considered to handle such situations. Use of following modes of procurements may be utilised in order of speed(under Disaster Management situations, threshold limits of modes of procurement may be increased for higher level of officers, with the sanction of Secretary of the Department):

- i) Direct Procurement Without Quotation
- ii) Direct Procurement by Purchase Committee
- iii) SLTE/Limited/Single Tender Enquiry, with reduced time for submission of Bids

To speed up procurement, advance cash may be drawn for direct procurement modes and made available to the Committees/officer, with accounts and vouchers to be submitted after purchase.

7.3 Buy back offer

When it is decided to replace an existing old item(s) with a new/better version, the Department may trade the existing old item while purchasing the new one by issuing suitable bidding documents for this purpose. The condition of the old item, its location and the mode of its handing over to the successful bidder are also to be incorporated in the bidding document. Further, the bidder should be asked to quote the prices for the item (to be offered by them) with rebate for the old item and also, without any rebate (in case they do not want to lift the old item). This will enable the Department either to trade or not to trade the old item while purchasing the new one. (Relevant rules of GFR)

7.4 Capital Goods/equipment (Machinery and Plant – M&P)

Capital goods are Machinery and Plant (M&P) which create new Fixed Assets/utility/functionality or benefit to the organisation and has a long useful life. Special features of procurement of Capital Goods are:

- i) Since the cost is generally high, there are detailed procedures for approval of technical, administrative and budgetary provisions–before an indent is generated.



Unlike consumable items (which are procured if a non-specific budgetary provision is there), Capital Goods are procured after an item specific Budgetary provision is included in the budget. Thus the acquisition of Capital Goods is also an Investment decision and may require some form of Investment Justification. Some of the higher value Capital Goods may be accounted in the Capital Block of the Organization. However these features may not apply to Capital goods procurement of smaller threshold values;

- ii) There are also alternative to outright purchasing/owning such equipment like hiring/ hire-purchase/leasing or acquiring the functionality as a service;
- iii) The procurement involves elements of Works and Services like Installation, Commissioning, Training, prolonged trials, Warranty, After Sales Services like post-warranty Maintenance and assured availability of spares. All such elements have costs may be quoted explicitly or implicitly. A suitable warranty clause should indicate the period of warranty and service levels as well as penalties for delays in restoration of defects. Clauses for including essential initial spares for two years' maintenance to be supplied along with equipment may be provided. If necessary appropriate number of years' (say three to five or more years depending on the lifespan of the equipment) AMC may be included in the procurement detailing its conditions;
- iv) The cost of operations, maintenance and disposal of the equipment over its life cycle may far outweigh the initial procurement cost over the life cycle of the capital equipment. Hence value for money becomes an important consideration – which can be addressed in Public Procurement by way of appropriate Description, specification, Contract conditions like inclusion of cost of supply of initial essential spares and total present value (as per DCF technique) of Annual Maintenance Contracts (AMC) for specified number of years within the estimated cost and also the evaluation criteria of procurement contract;
- v) In case the Plant and Equipment consists of a number of machines which work in tandem or if it includes services/works to be done by third party, an all-encompassing Turnkey contract may be better alternative;
- vi) Because of complexity of specification evaluation of Technical suitability of offers in procurement of Capital Goods involves complex issues about acceptance of alternatives, deviations and compliance with various particulars of specification. Acceptance or otherwise of alternatives should be made explicit. A statement of deviation including detailed justification for the deviations from each clause of specification should be asked for from the bidder in the Bid documents. A schedule of Guaranteed Particulars of specification indicating the values of each parameter may be included in the Specification, where the bidder can quote the offered value of the Parameters. In complex cases Pre- bid conference may help in reducing disputes and complexity at the time of evaluation;



- vii) Past experience, Capacity and Financial strength of a supplier is an important determinant of quality, after sales support of the Capital Goods; such procurements are a fit case for Pre-Qualification bidding.

7.5 Turnkey contract

In the context of procurement of goods, a turnkey contract may include the manufacture, supply, assembly, installation/commissioning of equipment (or a group of plant and machines working in tandem – even though some of the machines may not be manufactured by the supplier himself) and some incidental works or services. Generally, in the tender enquiry documents for a turnkey contract, the purchase organization specifies the performance and output required from the plant proposed to be set up and broadly outlines the various parameters it visualizes for the desired plant. The inputs and other facilities, which the purchase organization will provide to the contractor, are also indicated in the tender enquiry document. The contractor is to design the plant and quote accordingly. The responsibility of the contractor will include supplying the required goods, machinery, equipment etc. needed for the plant; assembling, installing and erecting the same at site as needed; commissioning the plant to meet the required output etc., as specified in the tender enquiry documents.

7.6 Annual Maintenance Contract (AMC)

- i) Some goods, especially sophisticated equipment and machinery need proper maintenance for trouble-free service. For this purpose, the purchase organisation may enter into a maintenance contract. It must, however, be kept in mind that maintenance contract is to start after the expiry of the warranty period, during which period the goods are to be maintained free of cost by the supplier;
- ii) The maintenance contract may be entered into either with the manufacturer/supplier of the goods or with a competent and eligible firm, not necessarily the manufacturer/ supplier of the goods in question. The purchase organisation should decide this aspect on case to case basis on merit;
- iii) If the maintenance contract is to be entered into with the supplier of the goods, then suitable clauses for this purpose are to be incorporated in the tender enquiry document itself and while evaluating the offers, the cost component towards maintenance of the goods for specified number of years is also to be added in the evaluated tender value on overall basis to decide the inter se ranking of the responsive tenderers. Equipment with a lower quoted price may carry a higher maintenance liability. Therefore, the total cost on purchase and maintenance of the equipment over the period of the maintenance contract should be assessed to consider its suitability for purchase. While evaluating the tenderers for maintenance of goods covering a longer period (say, three to five or more years depending on the life-span of the equipment), the quoted prices pertaining to



maintenance in future years are to be discounted (as per DCF technique) to the net present value as appropriate for comparing the tenders on an equitable basis and deciding the lowest evaluated responsive tender;

- iv) However, if the maintenance contract is to be entered into with a competent and eligible supplier separately, then a separate tender enquiry is to be floated for this purpose and tenders evaluated and ranked accordingly for placement of the maintenance contract. Here, the supplier of the goods may also quote and his quotation, if received, is to be considered along with other quotations received;
- v) The details of the services required for maintenance of the goods, the required period of maintenance and other relevant terms and conditions, including payment terms, are to be incorporated in the tender enquiry document. The terms of payment for the maintenance service will depend on the nature of the goods to be maintained as well as the nature of the services desired. Generally, payment for maintenance is made on a half-yearly or quarterly basis;
- vi) A Service Level Agreement (SLA) may be incorporated in complex and large maintenance contracts. SLA should indicate guaranteed levels of service parameters like - %age uptime to be ensured; Performance output levels to be ensured from the equipment; channel of registering service request; response time for resolving the request, Channel for escalation of service request in case of delay or unsatisfactory resolution of request, monitoring of Service Levels etc. This would include provision of help lines, complaint registration and escalation procedures, response time, percentage of uptime and availability of equipment, non-degradation in performance levels after maintenance, maintenance of an inventory of common spares, use of genuine spares, and so on. The maintenance contract may also include penalties (liquidated Damages) for unacceptable delays in responses and degradation in performance output of machines, including provisions for terminations;
- vii) It should be indicated in the bid documents, whether the maintenance charges would be inclusive of visiting charges, price of spares (many times, consumables such as rubber gasket, bulbs, and so on, are not included, even though major parts may be included), price of consumables (fuel, lubricants, cartridges, and so on). If costs of spares are to be borne by the Procuring Entity, then a guaranteed price list should be asked for along with the bids. It should also be clarified, whether room/space, electricity, water connection, and so on, would be provided free of cost to the contractor. The bidding document should also lay down a service level agreement to ensure proper service during the maintenance period;



- viii) A suitable provision should be incorporated in the tender enquiry document and in the resultant maintenance contract indicating that the prices charged by the maintenance contractor should not exceed the prevailing rates charged by him from others for similar services. While claiming payment, the contractor is also to give a certificate to this effect in his bill;
- ix) If the goods to be maintained are sophisticated and costly, the tender enquiry document should also have a provision for obtaining performance security. The amount of performance security will depend on the nature of the goods, period of maintenance, and so on. It generally varies from two and a half to five per cent of the value of the equipment to be maintained;
- x) Sometimes, the maintenance contractor may have to take the goods or some components of the goods to his factory for repair, and so on. On such occasions, before handing over the goods or components, valuing more than Rupees one Lakh, a suitable bank guarantee is to be obtained from the firm to safeguard the purchaser's interest;
- xi) Sometimes, during the tenure of a maintenance contract, especially with a longer tenure, it may become necessary for the purchase organisation to withdraw the maintenance contract due to some unforeseen reasons. To take care of this, there should be a suitable provision in the tender document and in the resultant contract. Depending on the cost and nature of the goods to be maintained, a suitable notice period (say one to three months) for such cancellation to come into effect is to be provided in the documents. A model clause to this effect is provided below:

“The purchaser reserves its right to terminate the maintenance contract at any time after giving due notice without assigning any reason. The contractor will not be entitled to claim any compensation against such termination. However, while terminating the contract, if any payment is due to the contractor for maintenance services already performed in terms of the contract, these would be paid to it/him as per the contract terms”. (Relevant rule of GFR)



CONTRACT MANAGEMENT

8.1 Contract Management

8.1.1 The Purpose of contract management

The purpose of contract management is to ensure that the contract delivers the desired outcomes as per the terms and conditions of the contract. It also ensures that the payments made to the contractor match the performance. Implementation of the contract should be strictly monitored and notices issued promptly whenever a breach of provisions occurs. Monitoring should ensure that contractor adhere to contract terms, performance expectations are achieved (such as timely deliveries, quality of goods supplied, adherence to proper procedure for submitting invoices, and so on) and any problems are identified and resolved in a timely manner. Without a sound monitoring process, there can be no assurance that “we get what we pay and contract for and pay for only for what we get”. Normally, the following issues are handled during this phase:

- i. Amendments to the contract;
- ii. Operation of the option clause;
- iii. Safeguards for handing over Procuring Entity materials/equipment to contractors;
- iv. Payments to the contractor and handling of securities;
- v. Monitoring of supplier performance;
- vi. Delays in performance of the contract;
- vii. Breach of contract, remedies and termination of contract;
- viii. Dispute resolution;
- ix. Contract closure upon completion;
- x. Goods receiving;
- xi. Quality assurance;
- xii. Accountal and payment of bills; and
- xiii. Storage and issue of inspected goods.

8.1.2 Costs of delay in contract management decisions: Delays

Payments and decisions in contract management requested by the suppliers should be made within a reasonable time. An atmosphere of lackadaisical dilatory functioning in such matters is liable to lead to bidders quoting higher prices in future bids, besides delays in supplies and disputes in the contract.

8.2 Amendment to the contract

Once a contract has been concluded, the terms and conditions thereof should not be varied. No amendment to the contract should be made that can lead to a vitiation



of the original tender decision or bestow an undue advantage on the contractor. However, due to various reasons, changes and modifications are needed in the contract. Where it becomes necessary/ inescapable, any modification will be carried out with the prior approval of the CA.

Requests for such changes and modifications mostly emanate from the supplier. Any amendment to the contract may have, inter alia, financial/technical/legal implications. The indenter may be consulted regarding the technical implications. Financial concurrence should be obtained before issuing any amendment that has financial implications/repercussions. Further, if considered necessary, legal opinion may also be sought.

An amendment can concern any of the clauses of the contract but, in supply contracts, amendments often relate to the following:

- i. Increase or decrease in the quantity required, exercise of quantity option clause;
- ii. Changes in schedule of deliveries and terms of delivery;
- iii. Changes in inspection arrangements;
- iv. Changes in terms of payments and statutory levies; and
- v. Change due to any other situation not anticipated.

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. No change in the price quoted shall be permitted after the purchase order has been issued.

8.3 Operation of option clause

8.3.1 Option clause

Under this clause, the purchaser retains the right to place orders for an additional quantity up to a specified percentage of the originally contracted quantity at the same rate and terms of the contract, during the currency of the contract. This clause and percentage should be part of the Bid Document and the contract and ideally should not exceed 25-30%. Approval should be taken from the CA (who originally approved the tender decision) to exercise the option clause based on the value of the contract with the increased quantity. In case the recalculated value of the contract goes beyond the delegation of powers of the original CA, approval of the CA for the enhanced value may be taken.

Normally, for raw materials/consumables of regular and year-on-year recurrent requirements, all tenders of value above Rs. 50 (Rupees Fifty) lakh should



invariably include this clause. However, the CA may approve the inclusion of such a clause in lower denomination tenders if such items have a history of frequent disruptions in continuity of supplies. The clause may be framed along following lines:

“The purchaser reserves the right to increase/decrease the ordered quantity by up to 25 (Twenty Five) per cent at any time, till final delivery date (or the extended delivery date of the contract), by giving reasonable notice even though the quantity ordered initially has been supplied in full before the last date of the delivery period (or the extended delivery period).”

8.3.2 Conditions Governing operation of option clause

Additional demands should be available for coverage and over-provisioning may be avoided by keeping the officers concerned with provisioning/tender evaluation for the next cycle of procurement informed. The following points must be kept in mind while operating the option clause:

- i. In case of decrease in the ordered quantity, it would be fair to allow the firm to supply
- ii. work-in-progress or goods already put up for inspection;
- iii. There should be no declining trend in the price of the stores as evidenced from the fact that no order has since been placed at lower rates and no tender has been opened since the time offers have been received at lower rates – even if not finalised;
- iv. If the option clause exists, during provisioning of the next cycle and during tender evaluation in the next cycle of procurement, application of the option clause must be positively taken into account. The contract management authority must also keep a watch on delivery against contract, if other conditions are satisfied, the option clause must be exercised;
- v. The option clause is normally exercised after receipt of 50 (Fifty) per cent quantity but if the delivery period is going to expire and other conditions are fulfilled, it can be exercised even earlier;
- vi. The option clause shall be exercised during the currency of the contract such that the contractor has reasonable time/notice for executing such an increase and can be exercised even if the original ordered quantity is completed before the original last date of delivery. If not already agreed upon, the delivery period shall be fixed for the additional quantity on the lines of the delivery period in the original order. This will satisfy the requirement of giving reasonable notice to the supplier to exercise the option clause;
- vii. The quantum of the option clause will be excluded from the value of tenders for the purpose of determining the level of CA in the original tender;
- viii. There should be no option clause in development orders;



- ix. This provision can also be exercised in case of PAC/single supplier OEM cases; and
- x. However, where parallel contracts on multiple suppliers are available, care should be taken in exercising the option clause, so that the original tender decision of splitting quantities and differential pricing is not upset or vitiated. Other things being equal, the supplier with the lower rate should first be considered for the option quantity.

8.4 Safeguards for Handing over Procuring entity materials/equipment to contractors

For performance of certain contracts, Procuring Entity may have to loan stores, drawings, documents, equipment and assets (such as accommodation, identity cards and gate passes, and so on) to the contractor. In certain situations, the contractor may also be supplied electricity, water, cranes, and weighing facilities on payment/hire basis. As a measure of transparency, the possibility of provision of such resources by Procuring Entity should have been announced in the tender document or at least requested by the contractor in the tender and written in the contract. Whenever stores or prototypes or sub-assemblies are required to be issued to the firm/ contractor for guidance in fabrication, these should be issued against an appropriate bank guarantee. In addition to the bank guarantee, appropriate insurance may be asked for if it is considered necessary. Before the final payment or release of PBG/SD, a certificate may be taken from the concerned Department that the contractor has returned all documents, drawings, protective gear, material, equipment, facilities and assets loaned, including all ID cards and gate passes, and so on, in good condition. Further, it should be certified that payment from the contractor has been received for usage of electricity, water, crane, accommodation, weighing facility, and so on. For low value items of less than Rs. 1,00,000 (Rupees One lakh), or for sending spares for repairs to the OEMs, this stipulation of the bank guarantee may be waived and, if feasible, an indemnity bond may be taken.

8.5 Payments to the contractor and Handling of securities

It should be ensured that all payments due to the firm, including release of the Performance Security, are made on a priority basis without avoidable delay as per the tender/contract conditions. Before the payment is made, the invoice should be cross-checked with the actual receipt of material to ensure that the payment matches the actual performance.

Proper procedures for safe custody, monitoring and return of Bank Guarantees and other instruments may be followed. Chapter 6 has more details in this regard.



Before making a final payment or before releasing the performance bank guarantee, a 'No Claim Certificate' (Annexure 16) may be insisted upon from the supplier to prevent future claims. Whenever a bank guarantee is released following due procedure and safeguards, acknowledgement thereof should also be taken from the contractor.

8.6 Monitoring of supplier Performance

As soon as the order is issued, entry shall be made in the progress of supply order register (Annexure 12) recording therein the name of the supplier, items, rate, quantity, amount, delivery schedule, and so on. Monitoring should ensure that suppliers adhere to contract terms, performance expectations are achieved (such as timely deliveries, quality of goods supplied, and adherence to proper procedure for submitting invoices, and so on) and any problems are identified and resolved in a timely manner. Without a sound monitoring process, there can be no assurance that the buyer has received what was contracted. A sound system for monitoring the performance of the suppliers in a contract would also be useful in selecting a good supplier in future procurement of the same or similar materials. Purchase order-wise data will be maintained in this register regarding execution by and performance of the supplier. The register shall form the basis for the Management Information System report on unexecuted purchase orders beyond scheduled deliveries, reports on performance of suppliers, and so on.

8.7 Delays in Performance of contract

8.7.1 Delivery Period

The period for delivery of the ordered goods and completion of any allied service(s) thereof (such as installation and commissioning of the equipment, operators' training, and so on) are to be properly specified in the contract with definite dates and these shall be deemed to be the essence of the contract. The delivery period stipulated in contracts should be specific and practical. Vague and ambiguous terms such as 1,000 – 5,000 (One to Five thousand) numbers per month, 2 to 16 (Two to Sixteen) weeks from the date of receipt of order, 'immediate', 'ex- stock', 'as early as possible', 'off the shelf', 'approximately' and the like should be scrupulously avoided as these will not be legally binding.

In case of items such as raw material which is delivered throughout the year, a delivery schedule of the monthly rate of supply should be specified. It is usual in such cases that there is a slight deviation from such monthly rate of supply. It should be clarified in such cases that the variation in the periodic rate of supply beyond +/- 10 (Ten) per cent



in any calendar month; or +/- seven per cent cumulative in any calendar quarter; or +/- five per cent cumulative in any calendar year would be considered as delay in delivery attracting imposition of LD.

Unless otherwise agreed, the buyer of goods is not bound to accept the delivery thereof in instalments.

8.7.2 Terms of delivery

Destination (go-down, worksite) / delivery point should be clearly mentioned in the supply order. Materials to be supplied at the required destinations as per terms and conditions of supply order. The delivery period is to be read in conjunction with the terms of delivery, therefore the delivery is taken to have been made at the time when goods reach the delivery point as per the delivery terms.

8.7.3 Severable and entire delivery contracts

Such contracts, where instalments are not specified or not intended, are known as entire contracts. In such cases, even non-delivery of a part quantity can lead to a breach of contract. However, a short supply of maximum three per cent of the contract quantity is usually exempted in the contract conditions with valid ground. In the case of an entire contract, even if providing a delivery schedule, it is not necessary to grant an extension in the delivery period in the case of delay in intermediate instalments. Such extension would be necessary only in case of a delay beyond the final date for the completion of the delivery.

Contracts with clearly laid out instalment deliveries mentioning the exact dates and where each instalment is paid for separately are known as severable contracts. In effect, each of such instalments is a separate independent contract by itself. In severable contracts, delay or breach of one instalment does not affect other instalments, since each instalment is considered as a separate contract. In the case of severable contracts, extension in the delivery period is necessary for each instalment separately.

The legal position, however, is not very straightforward, since the mere mention of monthly/ quarterly rate of delivery, called delivery schedule, is not sufficient to make it a severable contract. However, instalments specifying exact dates, e.g. 310 (Three Hundred and Ten) numbers by June 20, 2016 would be amounting to a severable contract.

The delivery cannot be re-fixed to make a contract a 'severable' contract without the



specific agreement of the supplier, if the delivery originally stipulated in the contract was in the form of an 'entire' contract.

8.7.4 Extension of delivery

Suppliers shall be required to adhere to the delivery schedule specified in the purchase order and, if there is delay in supplies, LD shall be levied wherever there is failure by the party. Extension of the delivery date amounts to amendment of the

contract. Such an extension can be only done with the consent of both parties (that is, the purchaser and supplier). No extension of the delivery date is to be granted suo motu unless the supplier specifically asks for it. However, in a few cases, it may be necessary to grant an extension of the delivery period suo motu in the interest of the administration. In such cases, it is legally necessary to obtain clear acceptance of the extension letter from the supplier.

No correspondence should be entered into with the supplier after expiry of the contract delivery period or towards the end of it, which has the legal effect of condoning the delay/breach of contract. When it is necessary to obtain certain information regarding past supplies, it should be made clear that calling for such information is not intended to keep the contract alive and that it does not waive the breach and that it is without prejudice to the rights and remedies available to the purchaser under the terms of the contract. The last line of such a communication should therefore be: "This letter is issued without any prejudice to Procuring Entity's rights and remedies under the terms and conditions of the subject contract and without any commitment or obligation."

If at any time during the currency of the contract, the supplier encounters conditions hindering timely delivery of goods, he shall promptly inform the concerned officer in writing. He should mention its likely duration and make a request for extension of the schedule accordingly. On receiving the supplier's communication, the Procuring Entity shall examine the proposal (refer to Annexure 13) and, on approval from the CA, may agree to extend the delivery schedule, with or without LD and with or without the denial clause (as defined in Para 9.7.8 below), for completion of the contractor's contractual obligations, provided:

That a higher rate in the original tender was not accepted against other lower quotations in consideration of the earlier delivery; and

That there is no falling trend in prices for this item as evidenced from the fact that, in the intervening period, neither orders have been placed at rates lower than this contract nor any tender been opened where such rates have been received even though the tender is not yet decided. In cases of certain raw material supplies, where prices are linked to the PVC, extension may be granted even in case of a falling trend in price indices, since the



purchaser's interests are protected by the price variation mechanism. However, in such cases it should be ensured that extensions are done with the denial clause.

When it is decided to extend the delivery period subject to recovery of LD for delay in supplies, contractors must be given a warning to this effect in writing at the time of

granting extensions. It is not correct to grant extensions without any mention of the LD if it is proposed to recover such charges eventually. It is also not correct to grant an extension of the delivery period by merely stating that the extension is granted "without prejudice to the rights of the purchaser under the terms and conditions of

the contract" as this would mean that all the options given in the conditions of the contract would be available to the purchaser on expiry of the extended delivery period and would not amount to exercise of the option to recover LD. To take care of complex legalities brought out above, extension of the delivery period when granted should only be done in writing in the laid down format given in Annexure 14.

8.7.5 Delay in supplies for which supplier is not responsible

Normally, in the following circumstances, the contractual delivery period needs to be re-fixed to take care of the lost period, without imposing any penalty to the supplier:

- i. Cases where the manufacture of stores is dependent on the approval of the advance sample and delay occurs in approving the sample though submitted by the supplier in time;
- ii. Where extension in the delivery period is granted on account of some omission on the part of the purchaser which affects the due performance of the contract by the supplier; and
- iii. Cases where the purchaser controls the entire production.

8.7.6 Performance notice

A situation may arise where the supply/services has not been completed within the stipulated period due to negligence/fault of the supplier; however, the supplier has not made any request for extension of the delivery period but the contracted goods/services are still required by the purchaser and the purchaser does not want to cancel the contract at that stage. In such a case, a performance notice (also known as notice-cum-extension letter) may be issued to the supplier by suitably extending the delivery date and by imposing LD with denial clauses, and so on, along identical lines as in para 9.7.4 above. The supplier's acceptance of the performance notice and further action thereof should also be processed in the same manner as mentioned above. The text of the performance notice will be on similar lines to the Annexure 14.

**8.7.7 Force majeure clause**

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 wrongdoing, 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. 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.

8.7.8 Denial clause

Since delay in delivery is a default by the seller, the buyer should protect himself against extra expenditure during the extended period by stipulating a denial clause (over and above levy of LD) in the letter informing the supplier of extension of the delivery period. In the denial clause, any increase in statutory duties and/or upward rise in prices due to the PVC clause and/or any adverse fluctuation in foreign exchange are to be borne by the seller during the extended delivery period, while the purchaser reserves his right to get any benefit of a downward revisions in statutory duties, PVC and foreign exchange rate. Thus, PVC, other variations and foreign exchange clauses operate only during the original delivery period. The format of the denial clause is available in Annexure 14.

8.7.9 Liquidated damages

Compensation of loss on account of late delivery (actually incurred as well as notional) where loss is pre-estimated and mutually agreed to is termed as LD. Law allows recovery of pre-estimated loss provided such a term is included in the contract and there is no need to establish actual loss due to late supply.

**8.7.10 Quantum of LD**

While granting extension of the delivery period, where the delivery of stores or any instalment thereof is accepted after expiry of the original delivery period, the CA may recover from the contractor, liquidated damage @ 0.5% to 1% of valuation of undelivered quantity per day subject to maximum 10% will be imposed and after

imposition of maximum LD (10%) if still the bidder fails to complete the full quantity , then other penalty to be imposed. The total damages shall not exceed 10 (Ten) per cent of the value of delayed goods. The LD cannot exceed the amount stipulated in the contract .

In contracts governed by any type of variation (PVC, ERV or statutory variations), LDs (if a percentage of the price) will be applicable on the price as varied by the operation of the PVC. LDs accrue only in case of delayed supplies. Where or in so far as no supplies have been made under a contract, upon cancellation, recovery of only the loss occasioned thereby can be made, notwithstanding the fact that prior to the cancellation one or more extensions of the delivery period with reservation of the right to LD are granted.

Government establishments/Departments, as distinct from PSUs, that execute contract work should not be dealt with as ordinary contractors and not generally be penalised for late delivery and claims for loss on risk-purchase should not be enforced against them. Serious cases of defaults should, however, be brought to the notice of the HOD or the Government Department concerned.

Relaxations allowed to Government establishments/Departments, as above, will not apply to PSUs as a matter of course. Each case should be decided on merits and the decision to waive the recovery of LDs or risk purchase expenditure should be taken on merit.

In the case of development/ indigenisation contracts, LDs are not levied. However, the nature of such contracts should be declared at the time of placing them.

In case of entire (non-severable) contracts, even where staggered deliveries have been indicated, it may happen that supplies are not received according to the delivery schedule. In such cases, keeping in mind the fact that the deliveries indicated under the contract are non-severable, no question of LDs or enforcement of risk purchase would arise so long as there has been no delay in the completion of supplies with reference to the total delivery period.

8.7.11 Waiver of LD



There should normally be no system of waiver of LDs for delayed supplies in supply contracts and it may be strictly be an exception rather than a rule. For an extension of the delivery date with waiver of LD, approval of the CA may be taken and justifications recorded.

8.7.12 Handling deliveries after the expiry of delivery Period

As per law, if stores are accepted after expiry of the delivery date of a particular instalment without extension in delivery period having being given, duly reserving our rights to levy LD, it amounts to voluntary abrogation of our legal rights under the contract to claim LDs or other remedies.

If the contractor makes supplies locally after the expiry of delivery period, the supplies may be provisionally retained under a franking clause reserving rights and the contractor may be asked to obtain an extension of the delivery period from an authorised officer with or without any LD/ denial clause.

“Please note that materials have been supplied after the expiry of contracted delivery date and its provisional retention does not acquiesce or condone the late delivery and does not intend or amount to an extension of the delivery period or keeping the contract alive. You may apply for an extension of delivery date from the Procuring Entity. The goods are being retained without prejudice to the rights of the Government of Tripura under the terms and conditions of the contract.”

As regards supplies coming from outside contractors, if the contractor dispatches the stores after expiry of the delivery period, the consignee should, after the receipt of the railway receipt or lorry receipt or goods consignment note or airway bill, send an intimation to the contractor stating that the action taken by him in dispatching the goods after expiry of delivery date is at his own risk and responsibility, and that the consignee is not liable for any demurrage, wharfage and deterioration of goods at the destination station and, in his own interest, the contractor should get an extension of the delivery period from the purchasers. A copy of the communication sent to the contractor should also be sent to the purchaser.

In case of imports, the contractor must not dispatch the consignment after expiry of the delivery period without taking prior extension of the delivery period. In any case, the terms of LC should be such that if there are dispatches beyond the delivery period, payment should be denied without levy of full LD and without formal extension of the delivery period by the purchaser.

**8.8 Breach of contract, remedies and termination**

In case the contractor is unable to honour important stipulations of the contract, or gives notice of his intention of not honouring or his inability to honour such a stipulation, a breach of contract is said to have occurred. Mostly, such breaches occur in relation to the performance of the contract in terms of inability to supply the required quantity or quality. It could also be due to breach of ethical standards or any other stipulation that affects Procuring Entity seriously.

The purchaser or its authorised representative is not to enter into correspondence after expiry of the delivery date stipulated in the contract because such a correspondence will keep the contract alive and would amount to abrogation of the purchaser's right and remedies for delays by the contractor. This situation will not allow the purchaser to cancel the contract straight away without first serving a performance notice to the supplier. However, even after expiry of the delivery period of the contract, the purchaser may obtain information regarding past supplies, and so on, from the supplier, simultaneously making it clear to the supplier that calling of such information is not intended to keep the contract valid and it does not amount to waiving the breach and that it is without prejudice to the rights and remedies available to the purchaser under the terms of the contract. A model communication which may be issued by the purchaser to ascertain the supply position after expiry of the delivery period is given at Annexure 15. As soon as a breach of contract is noticed, a show cause notice should be issued to the contractor reserving the right to implement contractual remedies. If there is an unsatisfactory resolution, remedial action may be taken immediately. The CA may terminate a contract in the following cases.

8.8.1 Cancellation of contract for default

Without prejudice to any other remedy for breach of contract, such as removal from the list of registered supplier, by written notice of default sent to the supplier, the contract may be terminated in whole or in part:

- i. If the supplier fails to deliver any or all of the stores within the time period(s) specified in the contract, or any extension thereof granted; and
- ii. If the supplier fails to perform any other obligation under the contract within the period specified in the contract or any extension thereof granted.
- iii. If the contract is terminated in whole or in part, recourse may be taken to any one or more of the following actions:
 - a) Forfeiture of the performance security;
 - b) Upon such terms and in such manner as it deems appropriate, goods similar to those undelivered may be procured and the supplier shall be liable for all available actions against him in terms of the contract (popularly called risk purchase); and



- c) However, the suppliers shall continue to fulfil the contract to the extent not terminated.

Before cancelling the contract and taking further action, it may be desirable to obtain legal advice.

8.8.2 Termination of contract for insolvency

If the supplier becomes bankrupt or becomes otherwise insolvent or undergoes liquidation or loses substantially the technical or financial capability (based on which he was selected for award of contract), at any time, the contract may be terminated, by giving a written notice to the supplier, without compensation to the supplier, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to Procuring Entity.

8.8.3 Termination of contract for convenience

After placement of the contract, there may be an unforeseen situation compelling Procuring Entity to cancel the contract. In such a case, a suitable notice has to be sent to the supplier for cancellation of the contract, in whole or in part, for its (Procuring Entity's) convenience, inter alia, indicating the date with effect from which the termination will become effective. This is not Procuring Entity's legal right— the contractor has to be persuaded to acquiesce. Depending on the merits of the case, the supplier may have to be suitably compensated on mutually agreed terms for terminating the contract. Suitable provisions to this effect should be incorporated in the tender document as well as in the resultant contract.

8.9 Dispute resolution

Normally, there should not be any scope for dispute between the purchaser and supplier after entering into a mutually agreed valid contract. However, due to various unforeseen reasons, problems may arise during the progress of the contract leading to a disagreement between the purchaser and supplier. Therefore, the conditions governing the contract should contain suitable provisions for settlement of such disputes or differences binding on both parties. The mode of settlement of such disputes/differences should be through arbitration. However, when a dispute/difference arises, both the purchaser and supplier should first try to resolve it amicably by mutual consultation. If the parties fail to resolve the dispute within 21 (Twenty-One) days, then, depending on the position of the case, either the purchaser or supplier should give notice to the other party of its intention to commence arbitration. When the contract is with a domestic supplier, the applicable arbitration procedure shall be as per the Indian Arbitration and Conciliation Act, 1996. While processing a case for dispute resolution/litigation/arbitration, the Procuring Entity is to take legal advice, at appropriate stages.

**8.9.1 Arbitration clause**

If an amicable settlement is not forthcoming, recourse may be taken to the settlement of disputes through arbitration as per the Arbitration and Conciliation Act 1996. For this purpose, when the contract is with a domestic supplier, a standard arbitration clause may be included in the SBD indicating the arbitration procedure to be followed. The venue of arbitration should be the place from where the contract has been issued.

8.9.2 Foreign arbitration

The Arbitration and Conciliation Act 1996 along with latest amendments if any has provisions for international commercial arbitration, which shall be applicable if one of the parties has its central management and control in any foreign country.

When the contract is with a foreign supplier, the supplier has the option to choose either the Indian Arbitration and Conciliation Act, 1996 or arbitration in accordance with the provisions of the United Nations Commission on International Trade Law (UNCITRAL) arbitration rules.

The arbitration clause with foreign firms should be in the form of self-contained agreements. This is true especially for large value contracts or those for costly plant and machinery. The venue of arbitration should be in accordance with UNCITRAL or arbitration rules of India, whereby it may be in India or in any neutral country.

8.10 Closure of contract

While making the final payment to the contractor and before releasing the PBG, it should be ensured that there is nothing outstanding from the contractor, because it would be difficult to retrieve such amounts after releasing the bank guarantee/final payment. Before the bank guarantee is released a “No Claim Certificate” may be taken from the contractor as per the format given in Annexure 16. At least in large contracts (above Rs. 25 (Rupees Twenty-Five) lakh), it should be ensured that before the release of the bank guarantee (final payment, if there is no bank guarantee), the following reconciliations should be done across Departments involved in the execution of the contract:

8.10.1 Materials reconciliation

The stores and/or the indenter should confirm that all materials ordered in the contract and paid for have been received in good condition and there is no shortfall. Full reconciliation of all raw material, part, assembly provided to the contractor should be done including wastages and return of scrap/off-cuts.

**8.10.2 Reconciliation with the user department**

Besides material reconciliation, the user Department should certify in writing that the following activities (wherever applicable) have been completed by the contractor, to the Department's satisfaction, as per the contract:

- i. Achievement of performance standards of material/equipment supplied;
- ii. Installation and commissioning;
- iii. Support service during the warranty period which has ended on _____ ;
- iv. Training of operators/maintenance staff;
- v. Return of all ID cards, gate passes, documents, drawings, protective gear, material, equipment, facilities and assets loaned to contractor; and
- vi. Support during annual maintenance contract (if it was part of the contract) which has ended on _____.

8.10.3 Payment reconciliation

The office of the procuring entity may reconcile payments made to the contractor to ensure that there is no liability outstanding against the contractor on account of:

- i. LD;
- ii. Price reduction enforced on account of shortfall in performance of material/equipment;
- iii. Variations/ deviations from the scope of the contract;
- iv. Overpayments/ duplicate payments, if any;
- v. Services availed from Procuring Entity and vacation thereof such as accommodation, electricity, water, security, transport, cranes and other machinery, and so on,
- vi. Demurrage, insurance premiums or claims, customs duties, and so on;
- vii. Material reconciliation;
- viii. Price and exchange rate variations;
- ix. Statutory duties paid on behalf of the contractor by Procuring Entity; and
- x. Inspection charges or loss of material in testing.

On satisfactory reconciliation and against a "No Claim Certificate" from the contractor, the bank guarantee may be released and its acknowledgement taken from the contractor.

On completion of all activities against a contract, the purchase file should be preserved for a period of five years in the record room and then destroyed after



expiry of the applicable mandatory retention period with the approval of the CA. However, Procuring Entity, at its discretion, may retain important records for future reference.

8.11 Goods receiving

8.11.1 Transportation of Goods

Where critical equipment of high value is involved, suitable special instructions shall be conveyed to the supplier about the mode of transport, loading, avoidance of transshipment and, if necessary, provision of escorts. In case of chemicals, powdery materials, liquid materials, and so on, parties may be advised on proper packaging to avoid spillage en route, so as to avoid pollution problems and also to conform to the ISO 14001 standard with amendment if any. In case transport is arranged by Procuring Entity, suitable instructions may be incorporated in the transportation contract accordingly.

Wherever the items make a full truck load, the suppliers should be advised to dispatch such items in a full truck direct to the consignee on a door delivery basis to the site. In such cases, Procuring Entity shall advise the supplier to send a consignee copy of the lorry receipt to the consignee along with the consignment and the consignment shall be booked to Procuring Entity and not "self". The supplier shall be specifically asked to dispatch the consignments to the designated consignee. All dispatch documents, that is, railway/lorry receipt, goods consignment note, airway bill, invoices, packing list, freight memos, test certificate, and so on, shall be sent to the Associated/integrated Finance which will arrange to make the payment. If the payment is to be made through the bank, all original documents are to be sent through the designated bank.

8.11.2 Distribution of dispatch documents for clearance/receipt of Goods

The supplier shall send all the relevant dispatch documents well in time to the purchaser to enable the purchaser to clear or receive (as the case may be) the goods in terms of the contract. Necessary instructions for this purpose are to be incorporated in the contract. Within 24 (Twenty- Four) hours of dispatch, the supplier shall notify the purchaser or consignee (others concerned), the complete details of dispatch and also supply the following documents by registered post/ speed post/air mail/courier (or as instructed in the contract).

The supplier should submit five copies of his invoice. The invoices must be pre-stamped and shall indicate the details of the lorry receipt or railway receipt number, as the case may be, and also the details of the packing list and items dispatched. The invoice must also indicate the purchase order number and date, unit rate and net total



price; the packing list shall include the total weight of the consignment and items dispatched. All documents are to be duly signed by the supplier's representative. Bank charges towards processing of the bills for payment shall be as per terms and conditions of the purchase order.

8.11.3 Receipt of consignment

In case of departmental inspection of materials, at the time of the delivery at the stores, the storekeeper should receive the goods on a "subject to inspection" basis and should issue the preliminary receipt after a preliminary inspection as an acknowledgement of having received the claimed quantity (not the quality) of consignment.

i. Preliminary inspection on receipt

On opening the packages (if applicable), the storekeeper should initiate preliminary inspection of the goods received. This should include checks for any obvious damage in transit and other physical or visual checks specific to the functional characteristics of the product. The quantity of the goods received should also be verified at this stage against the purchase order and the supplier's invoice. When goods are supplied in boxes, bundles or coils as in the case of tools, rope, canvas, barbed wire, and so on, each of which is required to contain a specified quantity, a reasonable number of such packages should be opened up and checked for quantity per package. The quantity received should also be mentioned in the preliminary receipt to be given to the supplier. Any discrepancies in packages or quantity should be mentioned therein.

ii. Detailed inspection on receipt

Before accepting the ordered goods, the storekeeper must ensure that the goods have been manufactured as per the required specifications and are capable of performing the functions as specified in the contract. To achieve this, the tender document and the subsequent contract should include references to standards or specifications that specify the details of inspection and tests to be carried out and stages and manner of carrying out these tests.

The required inspections and tests should be carried out by technically qualified and competent personnel. If the procurement agency does not have such qualified personnel, it may engage competent professionals from other Departments or even outside agencies.

**8.12 Quality assurance and inspection**

In the context of procurement of goods, the Quality Assurance (QA) process is needed to provide adequate confidence that a procured product will satisfy the laid down standards of quality and serve the purpose for which it is being procured. QA consists of three components:

- i. Defining quality standards;
- ii. Planning assurance of quality; and
- iii. Measurement of quality.

The description and TS define the quality standards expected from the product.

Planning for QA is done by way of specifying the qualifications criteria for the suppliers to ensure that they do have the technical, infrastructure and financial capabilities to meet the required quality standards. Specifications also lay down quality control requirements to indicate parameters, target values, tolerances and method of measurement of various parameters that constitute the standards of quality. This also involves laying down the type of inspection, agency for inspection.

Measurement of quality is done through a scheme of inspections at the contract management stage and laying down the actual process of inspection.

8.12.1 inspections – measuring Quality standards

The stages and modes of inspection may vary depending on the nature of the goods, total value of the contract, location of the supplier, location of the user, and so on. Depending on the nature of goods being procured, usually, the following types of inspection may be adopted:

8.12.2 Types of inspection**i. Pre-dispatch inspection**

A pre-dispatch inspection for entire ordered quantity may be conducted either during various stages of the production process (which is known as stage inspection) or on production of the finished products, but before dispatch of the goods from the supplier's premises. Stage inspection may be used for highly technical goods whose quality of the manufacturing process is likely to have considerable effect on the final quality and durability of the goods. Even after pre-dispatch inspections, these materials should be inspected again on receipt, as a matter of abundant precaution.



Inspection of the materials before dispatch shall be carried out by the inspection agency nominated in the contract or by its representative at the premises of the supplier in accordance with the inspection procedure laid down and incorporated in the purchase order.

The testing charges should be borne by the supplier. Rate should be quoted including testing charge of materials. Any special testing involving financial implications shall be settled prior to placement of the order and such cost should form part of the evaluation.

In case of offshore supplies, the inspection clause shall be incorporated in the purchase order wherever required:

- a) Procuring Entity may depute its representative or a third party inspection agency to the supplier's manufacturing premises to carry out/witness inspection and testing, performance testing at its discretion;
- b) Alternatively, Procuring Entity shall retain an option to waive the above and accept the material based on the supplier's internal test report, guarantee and fitment certificate. In this regard, the written approval of the HOD of the Indenting Department should be obtained recording the reasons for it. In that case inspection charge will be deducted from the bill of supplier.
- c) Whenever the inspection is carried out at the supplier's manufacturing premises, an inspection on receipt of goods at Procuring Entity shall also be carried out by an officer of the Indenting Department or a third party inspection agency, as the case may be, on receipt of the goods.

ii. Inspection of Goods on receipt at consignee/user's site

Post-delivery inspection is carried out on receipt of goods before accepting them. This should be typically done for goods that are available off-the-shelf and are BIS marked. All final goods that may be directly consumed or utilised on delivery (excluding machinery installations, and so on) and for which detailed inspection of the manufacturing process is not required and only a physical inspection regarding their physical characteristics is required, may be inspected using this method. On receipt of goods at stores, the storekeeper should immediately notify the officer nominated for inspection, requesting to schedule an inspection. The inspecting officer should then fix a date for inspection.



The consignee has the right to reject the goods on receipt during the final inspection on delivery even though the goods have already been inspected and cleared at the pre- dispatch stage by Procuring Entity's inspector. However, such rejection should be strictly within the contractual terms and conditions and no new condition should be adopted while rejecting the goods during final inspection.

Goods accepted by the purchaser at the initial and final inspections, in terms of the contract, shall in no way dilute the purchaser's right to reject them later, if found deficient in terms of the warranty clause of the contract.

In case of rejection of goods at this stage, the material rejection advice/rejection memo should be issued. In case of pre-inspected goods, a joint inspection of the rejected lot of goods should be held with the pre-inspecting agency and firm. In case of failure of the firm to associate with a joint inspection, it should be held with the pre-inspecting agency.

In case of rejection of the pre-inspected supply of goods at the consignee end, the material rejection advice/rejection memo should be sent to all concerned, which is, the firm, purchaser, pre-inspecting agency, paying authority, associate bill paying authority, and so on, without fail. The concerned paying authority as per the contract and associate bill paying authority should note the rejection advice details in its recovery register for effecting recovery of payments made, as the case may be. In case of replacement supply against the rejected lot of goods, the process should remain exactly the same in terms of sequence of pre-inspection/inspection as laid down in the contract, prior to acceptance by the consignee. In case of acceptance of the replacement supply/rejected supply after rectification, the earlier issued material rejection advice/rejection memo should be withdrawn under advice to all concerned.

iii. Manufacturer's Quality self-certification

Reputed manufacturers could be relied upon with respect to certain goods for quality products. These may not be subjected to physical inspection and the materials may be accepted under the firm's quality self-certification. The physical inspection clause stipulating the inspection authority and inspecting officer in such cases should not be included in the contracts entered into. Waiver of pre-dispatch inspection and acceptance of materials under the firm's quality self-certification may be considered where:

- a) The user Departments indicate, in their indent, that physical inspection is not necessary and that the materials can be accepted on the firm's quality self-certification;



- b) The user Department requests for a waiver of inspection to meet urgent requirement and where the firm is agreeable to 100 (Hundred) per cent payment against the consignee's receipt and acceptance. In such cases, the user Departments themselves should be responsible for ensuring the quality of goods supplied;
- c) In case of goods to be imported from abroad, pre-dispatch inspection of goods at the supplier's premises involves considerable expenditure to the purchaser. In such a situation, the purchaser may substitute pre-dispatch inspection by its own inspector with manufacturer's in-house inspection report and warranty. However, before adopting this procedure, the nature and cost of the goods ordered, the reputation of the supplier, and so on, should also be kept in view and appropriate decision taken. For checking the reputation and background of the supplier, the purchase organisation may also request the Indian embassy located in that country for a report on the technical and financial competence of the firm.
- d) However, the right of waiver of inspection may be reserved only for specific requirements. Justification for the waiver should be recorded. Also, a suitable clause may be incorporated in the conditions of contract.

iv. Inspection on installation and commissioning

This method is adopted to check the performance and output of equipment or machinery after it is commissioned and operational at site.

8.12.3 Types of inspection agencies

Normally, inspection modalities or agencies for inspections specified in the contract should not be changed. In rare cases, when this becomes inescapable, it should be done with the approval of the CA, justifying the rare circumstances, ensuring that no undue benefit accrues to the contractor.

i. Internal inspection authorities

Whenever there is technical expertise available in-house, an internal officer of the Indenting Department is nominated for inspection. The consignee should be the final authority for acceptance of goods.

**ii. External inspecting authorities**

In case Procuring Entity does not have technical expertise or for other relevant reasons, inspection may also be entrusted to a third-party inspection authority. The Procuring Entity, however, retains the right to reject the consignment, even if it is cleared by third party inspection authorities.

Sometimes, it becomes necessary to conduct a type test, acceptance test or special test at external laboratories, when facilities for these tests are not available in-house with the supplier or carrying out of confirmatory tests is considered desirable before accepting the goods. The Procuring Entity should draw up a list of approved laboratories for this purpose, to which the samples drawn from the lots offered by the supplier can be sent for tests. The list should also contain approved laboratories, which can be used as referral/ appellate laboratories for retest, when samples tested at one laboratory are decided to be re-tested. The following guidelines should apply to such cases:

- a) External testing may invariably be done by national accredited or reliable laboratories, preference being given to National Test House (NTH). For testing the samples drawn from the lots offered by the supplier, an inspection agent qualified to conduct random sampling in accordance with Quality Assurance requirements should do the selection of samples;
- b) Test reports must contain the values obtained in the tests besides fail/pass results. The laboratory must preserve the sample and test records for a period of three years;
- c) The Department should lay down a liability statement for costs expended on tests, dispatch of samples, transportation costs, test charges, and so on., in respect of samples tested at outside laboratories as may be applicable;
- d) In cases where the samples are to be tested at the supplier's cost because of non-availability of his own testing arrangements, the responsibility of depositing the testing fees would rest with the supplier;
- e) Normally unless otherwise intended in the contract, charges of routine testing prior to dispatch of materials are to be borne by the supplier and charges of testing of materials after receipt by consignee are to be borne by the procuring agency. Contract should be clear about responsibility of cost of materials expended in tests and charges of special tests e.g. type test or tests at external labs. Even where Procuring Entity is responsible for testing charges, if the material fails in the test, the charges would become the responsibility of the seller.

**iii. Joint Inspection on complaint**

In case a written complaint is received from the supplier disputing the rejection of goods by the Procuring Entity's inspecting officer, it should be jointly investigated by a team consisting of an authorised representative of the Procuring Entity, a senior representative of the inspecting agency who is conversant with the goods and an authorised representative of the supplier.

8.12.4 Issue of inspection report

After satisfactory inspection and tests, the acceptable goods shall be stamped, labelled, marked or sealed, in such a way as to make subsequent identification and tally with the inspection report of accepted lots easy for the consignee/user. The following guidelines should be used for inspection reports to be issued:

- i. Each inspecting officer shall be supplied with acceptance stamps, lead seals, pliers, rubber stamps, stencils, labels, stickers, holograms, and so on, according to requirements, for sealing and marking the inspected goods in terms of the contract. He will be responsible for safekeeping of these articles and shall ensure that they are not misused by unauthorised persons. Unserviceable seals, pliers, stamps, stickers, holograms, and so on, shall be returned to the concerned issuing official. The Procuring Entity shall lay down detailed guidelines covering all these aspects. For reasons of security and to avoid irregular or incorrect issue, inspection notebooks should be machine numbered and, wherever possible, different coloured copies marked for each user. An account of the inspection notes issued with serial number-wise details shall be maintained in an appropriate register. Procuring Entity should also develop a full proof system to avoid any fraudulent and unauthorised use of the inspection notes;
- ii. There should not be any initial provisional acceptance at a lower level. A time limit shall be fixed for the issue of inspection documents. The inspection note shall also indicate the validity period, by which period the supplier must dispatch the accepted goods to the consignee in terms of the contract. The number of copies of the inspection notes and their distribution for different types of inspections will be as prescribed by the Procuring Entity/indenter Department;
- iii. Inspection reports should be prepared detailing the inspection done, samples examined, requirements as per the relevant specification/contract and the observations jointly with the representative of the firm. Each inspection note copy issued should invariably bear the individual's name, stamp along with his designation and code number of the officer authorised to sign and issue



inspection documents. Facsimiles of the inspection stamps and their position should be put on the inspected material to help identify the inspected goods at the consignee's end. Inspection note copies meant for payments should be attested with full signature in ink by the inspecting officer. The Accounts Department will make payments only against copies so attested, not against any other copy. Corrections, if any, on the inspection note should be duly authenticated by the officer issuing it. Similarly, each continuation sheet, if attached to the inspection note, should be signed by the inspecting officer at the relevant places and any correction duly authenticated;

- iv. Departmental instructions should invariably prescribe that paying authorities will keep a record of specimen signatures of authorised inspecting authorities for verification with the signature in the inspection note while authorising payment;
- v. A separate inspection report must be prepared for each consignment. In the case of large consignments, the issue of the inspection report may not be held up until the inspection of the full consignment is completed. These must be issued for lots inspected every day or every two days. If the contract is in terms of 'sets' or 'number' and materials are such that they comprise a number of components or accessories, the inspection report should be issued only when all parts, components and accessories forming a set are inspected and accepted. When plant and equipment are ordered with spares, the inspection report for spares should not be issued before acceptance of the main equipment. In the case of contracts for imported materials that involve initial inspection in the country of origin and final inspection in India, the final inspection note should be issued giving reference of the certificate issued abroad;
- vi. In respect of materials which have been rejected by the inspecting officer, the rejection inspection report should be issued immediately following the completion of inspection. In case of total rejections, no copies meant for payments or the accounts office should be issued. All the reasons for rejection and deviations against the governing specifications, drawings or other particulars should invariably be noted in detail in the "remarks" column of the rejection inspection note. The rejected material should be given a yellow paint mark to avoid it being submitted again for inspection or supplied to other customers. Such copies should be cancelled across by the inspecting officer with his signature and retained in the inspection file along with the office copy of the rejection inspection note; and
- vii. No 'certified true copy' of the lost original payment copies should be issued until a 'non- payment certificate' has been received from the accounts officer



concerned or stating that payment has not been made and should not be made against the original inspection report even if received subsequently. This copy must be endorsed as “certified copy”. This endorsement should be attested in full in indelible ink by the officer proving a cross reference to the accounts officer’s non-payment certificate with the name stamp with the designation and code number of the officer issuing the duplicate copy.

8.12.5 Material put up for inspection towards the end of delivery

As far as possible, the inspection should be commenced and finished and the inspection report issued during the validity period of the contract. In cases where the supplier offers materials for inspection during the last few days of the contract delivery period or even on the last day of the contract delivery period, efforts should be made by the inspecting officer to commence the inspection before the expiry of the delivery period.

In cases where it is not possible to commence or conclude the inspection before the expiry of the delivery period, the inspecting officer should, immediately, on receipt of the intimation or request for inspection of the materials, bring this to the notice of the supplier orally as well as in writing. He must mention that the materials have been submitted for inspection at a very late stage and that it is not possible to commence/conclude the inspection before the expiry of the delivery period.

The supplier should also be informed that the goods offered for inspection should, however, be inspected until the completion of the inspection which can be after the expiry of the delivery period and that such an inspection continuing after the expiry of the delivery period is neither intended nor to be construed as condoning the delay or keeping the contract alive.

In such cases, the inspection note, whether accepting or rejecting the goods, should be duly franked as per the franking clause given below:

8.12.6 Franking clause on acceptance and rejection

“The issue of this inspection/rejection report does not acquiesce or condone the late delivery and does not intend or amount to an extension of the delivery period or keeping the contract alive. The goods are being passed/rejected without prejudice to the rights of the Government of Tripura under the terms and conditions of the contract.”

This clause may also be incorporated in conditions of the contract.



8.12.7 Approval of acceptable deviations

Under no circumstances will the inspecting officer have the authority to modify the governing specifications, approved drawings or samples during inspection without reference to the CA that approved the tender. For all cases of acceptance with deviation, the nature of deviation along with a justification for acceptance against such deviation should be duly documented. The CA that approved the tender should have the final decision on deviations.

Deviations from the contract specifications or requirements not affecting price, quality, performance and other terms of the contract may be allowed at the level of the CA in consultation with the Department on merits or nature of deviations along with penalty at the percentage by which deviation will occur with respect to the standard requirement.

In all other cases, the goods should be rejected giving all reasons by issuing a rejection inspection report. Rejections should not be made in a piecemeal manner.

8.13 Storage and issue of inspected Goods

After satisfactory inspection and tests, the accepted materials should be stamped, labelled, marked, or sealed and stored in a systematic manner. This is to facilitate easy retrieval at a later stage. As all goods needed or procured cannot be consumed at one point of time, storage is an inevitable process. The storage system forms the key component of any materials management system. It should be ensured that the goods are stored in such conditions that they are protected against unauthorised removal and deterioration.

8.14 Accounting and Payment of received materials

8.14.1 Goods receipt and inspection report

If the received material successfully passes the quantity and quality checks, accounting of material received shall be on the basis of the Goods Receipt and Inspection Report (GRIR) (Annexure 17) prepared after inspection and acceptance of the material which will be signed by the concerned officers. This includes cases where payment is made to the supplier on proof of dispatch, for which inspection at the suppliers' premises is conducted by an authorised officer of Procuring Entity prior to dispatch by suppliers. This excludes cases of imported materials where accounting will be done on completion of certain further formalities as per regulations and practices. While preliminary receipt is only an acknowledgement of quantity received, GRIR is an acknowledgement of receipt of the correct quantity as well as



quality of goods. GRIR is a voucher which forms the basis for the supplier to claim payment as per the contract. It also is a voucher for account of the received material in the inventory accounts. Along with the GRIR, material is handed over to the warehouse where it is to be stored.

In case the received material fails to pass quantity and quality checks, a rejection GRIR is issued, noting the reasons for rejection. If feasible, a yellow paint mark should be put on the rejected material to prevent its resubmission by the supplier. The associated Finance/FA should be asked to recover any advance payment or freight charges paid for the rejected quantity. The rejection GRIR contains instructions for the supplier to take back the rejected goods within a stipulated number of days (usually 21). Such removal should be permitted only after the advance payment/freight paid is recovered. Lots that are under inspection, accepted, or rejected should be properly tagged, segregated and identified.

8.14.2 Passing of supplier's bills

After the GRIR is issued, the invoice is received from the supplier, supported by relevant documents evidencing award of purchase orders/contracts and receipt of materials/services. Based on contractual terms where payments are made based on proof of dispatch against a purchase order, bills shall be passed and accounted based on the GRIR of approved materials. The invoice submitted by the supplier will be verified and signed by the indenting officer, and pay order form (Annexure 23) or any other relevant forms will be prepared by the Procuring Entity and signed by an officer authorised to sign pay-orders. All correspondence with the supplier will be handled by Procuring Entity Department.

The documents, which are needed from the supplier for release of payment, are to be clearly specified in the contract. The paying authority is also to verify the documents received from the supplier with corresponding stipulations made in the contract before releasing the payment.

While claiming the payment, the supplier must also certify on the bill that the payment being claimed is strictly in terms of the contract and all the obligations on his part for claiming this payment have been fulfilled as required under the contract. There should also be a suitable provision for verification of the authenticity of the person signing the invoice, and so on, to claim the payment.

In case of part supply, the payment will be released by deducting 10 (Ten) per cent of the bill value which will be released once the entire supply is made. Deduction of applicable taxes at source from payments to suppliers will be done as per the existing law in force during the currency of the contract.



Disposal of Scrap Goods

9.1 Scrap for disposal

There accumulates, in every organisation, a large quantity of material which is neither usable for the purpose for which it was originally procured nor of any other operational value. Such material is generally called “scrap” and should be distinguished from other stores and component parts which can be utilised after repair or renovation. Occasionally, scrap may consist of second-hand or in excellent repair even new material which is surplus to the need of the organisation or its sister organisations and may command a fair price in the market not normally associated with scrap.

9.2 Classification and categorisation

It is very important to categorise the scrapped items under different trade groups based on the use to which the scrap purchaser can put it for commercial use, for example, melting, re-rolling, burning, recycling, and so on. Properly grouped and sorted scrap is likely to attract better value and help in keeping historical data of prices and facilitates fixing of reserve prices.

9.3 Survey of materials for classifying as scrap for disposal

9.3.1 Competent Authority to declare and dispose off Scrap Material may be laid down in the DFPRT, based on the ‘Book Value’ or 5% (Five percent) of the Original/Market Value of new goods, if Book value is either not available or has become negligible. Before any item of stores can be sold as ‘scrap’, it should be declared as such by the Survey Committee (SC) appointed by the Head of Office and the sanction of the CA obtained for such a sale. The CA may relax this need for survey by SC, as a standing order, in the case of a list of known items of scrap like Newspapers, containers etc. of small value (Rs. 5,000 – Rupees Five thousand). Lots of small value may also not require to be condemned by SC, on which the Head of Office may be given powers to declare such materials as scrap without survey committee. However, this dispensation is subject to furnishing of a certificate by the concerned Departmental officer as laid down in the DFPRT that the items being offered have been inspected by him personally and found unserviceable and unfit for any further use.

9.3.2 Survey of Scrap: Generally, items may be identified as scrap in any of the following cases:

- i) Whether the item has completed its expected useful life or not, factors such as norms for maintenance cost; norms for utilisation of such equipment; usability in the organisation or any other office must also to be considered before deciding on scrapping the equipment;
- ii) The item has a limited shelf life, exists in surplus quantities and there is likely to be no future use of the item during the remaining period of its useful life;



- iii) The reasons for declaring the item surplus or obsolete or unserviceable should be recorded by the SC. A standard format for SC's recommendations for disposal of goods is provided in Annexure 18;
- iv) SC may seek the approval of the CA with the concurrence of the Associated/integrated Finance.

9.4 Modes of disposal

The mode of disposal may be determined by the CA, keeping in view the necessity to avoid accumulation of such goods, consequent blockage of space and also deterioration in value of goods to be disposed of. The usual modes of disposal of scrap are:

- i) Small value scrap such as waste paper or industrial sweepings, and so on, up to a value of Rs. 5,000 (Rupees Five thousand) in each case may be sold directly to the local scrap dealers on a summary quotation basis;
- ii) Scrap upto Rupees Two lakh may be sold on a Limited Tender basis to locally known Scrap Dealers of relevant category;
- iii) Sale through the e-auction portal, or a tender for disposal or traditional public auction may be resorted to for scrap value above Rupees two lakh. E-Auction should be the preferred mode for such disposals, using the e-Auction platforms of NIC, MSTC, Indian Railways or any other appropriate portal;
- iv) Certain useable machinery/spare may still be useable by other Departments/ PSUs; these should be disposed at book value plus 20 (Twenty) per cent (7.5 (Seven and a half) per cent freight +12.5 (Twelve and a half) per cent handling charges) directly to the concerned organisation.
- v) Sales by Submission of Tenders: Disposal may also be done by submitting bids in response to public invitations for tenders for supplying materials, whether such invitations are issued by Government Departments, PSUs or by private bodies. This method of sale is particularly suitable where it is proposed to dispose of its 'overstocks' and surplus stores' which are in fit to use condition.
- vi) Scrap which is a security or safety risk (stamps, negotiable instruments, money value documents, security press items) may be destroyed suitably in an eco-friendly manner in accordance with guidelines of State Pollution Control Board (SPCB) in the presence of a committee after obtaining CA's approval. The committee should issue a certificate of having destroyed these. Video recording may also be done of such disposal.
- vii) Sale of hazardous waste items would be governed by the following procedures in addition to guidelines/notifications issued by the Central Pollution Control Board (CPCB)/Ministry of Environment and Forests (MoEF) from time to time:
 - a) Sale of old batteries/lead acid batteries will be governed by the Batteries
 - b) (Management & Handling) Rules, 2001 or as amended from time to time;



- c) Sale of other categories of hazardous waste items will be governed by the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016 or as amended from time to time; Sale of e-waste shall be governed by E-Waste (Management) Rules, 2016 or as amended from time to time;
- d) Bidders must submit a notarized copy of the valid registration certificates issued by the State (or Union Territory) Pollution Control Board (SPCB) and produce it at the time of taking delivery of the materials, failing which their bid will be liable for rejection. In case of lead acid batteries, used/waste oils and nonferrous metal wastes, in addition to submitting necessary valid registration from the SPCB, the bidder must also submit a notarized copy of the valid registration certificate from CPCB (or MoEF); and
- e) In case of a sale involving inter-state movement of goods, the buyer shall also submit an NOC from the concerned SPCB, with whom the buyer is registered, to the seller before taking delivery, failing which the buyer will be responsible for the consequences and the seller shall take further decision as may be deemed fit.

9.5 Preparation for disposal

9.5.1 Scrap recommended for disposal should be segregated from other materials into an identifiable lot. It should be marked as such with a board, indicating the lot number and brief description. Valuable scrap such as non-ferrous metals should be secured in lockable rooms.

9.5.2 Determining reserve Price

In any mode of disposal, material should not be sold at rates per lot but bids should be registered by rate per unit (number, length or weight) so that a complete check on the quantity delivered can be exercised, at any time. The Head of Office holding the stock may determine the reserve price after approval of CA. In case of large value disposals a Reserve Price Committee may be appointed to recommend the reserve price. The use of external costing experts, price databases, price indices and data sharing may be done in the same manner as detailed in Chapter 2 relating to the reasonableness for procurement prices. Large newspapers and economic dailies have dedicated sections dealing with rates in the scrap market. The reserve price should be recorded on a page numbered register in advance of the date of disposal. This register should be sealed immediately after the reserve prices of all lots are recorded in the register, and kept in safe custody. The sealed register should be opened just before the e-auction creation/tender opening. Some methods for determining reserve prices are:



- i) Book value with depreciation. In case the Book value is not available or has become insignificant, the reserve price may be based on 5% of the Original or Market cost of the new item;
- ii) Last sale price moderated by quantity, quality, location, market condition, price trend of various metals, and so on;
- iii) Prevailing market price ascertained through a market survey; and
- iv) Costing analysis based on costs of various elements of the item (discounted for melting losses) labour charges and transportation cost; etc.
- v) In cases where the reserve price cannot be fixed as per the laid down procedure an Insurance Regulatory and Development Authority (IRDA)-approved valuer may be engaged for valuation of such material and the Reserve Price Committee will take into account the valuation given by the valuer while recommending the reserve price.

9.6 Conditions of Disposal Applicable to all Modes of Disposal

9.6.1 'As-is-Where-is' basis

Notwithstanding anything contained in the e-auction or advertisement issued on the description and particulars of material for sale, the sale is on 'as-is-where-is' basis only and the principle of caveat emptor (let the buyer be aware) will apply. As is where is means that the description/ quality/quantity indicated are approximate and the seller does not give any assurance or guarantee that the material will strictly adhere to the advertisement or e-auction. All items shall be taken delivery of from the site by the successful bidders, with its faults and errors in description, if any. Neither can the sale be invalidated nor the bidder make any claim/ compensation, whatsoever, on account of any defect in description or deficiency in the quantity and quality. No plea of misunderstanding or ignorance of conditions put forth subsequent to a confirmation of sale shall be accepted.

9.6.2 Inspection by Bidders

In view of the 'as-is-where-is' condition, bidders are advised to quote rates only after inspection of items at the site. The bidder or his authorised representative may inspect the materials as per the inspection schedule mentioned in the auction details, between 11 am to 4 pm (excluding lunch hours) on any working day at the location specified against each lot with the prior permission from the contact person, as given in the auction details. The detailed description of all lots, including the list of spare parts, if any, is available at the site.

9.6.3 Right To Reject All Bids

The seller reserves the right to accept/reject and cancel any bid, amend the quantity under any lot or withdraw any lot at any stage before or after acceptance of bid/issue of acceptance letter/sale order/delivery order/deposit of the full sale value by the bidder, without assigning any reason thereof and the value of such material, if paid for, shall be



refundable. The seller shall not be responsible for damage/loss to bidders on account of such withdrawal at any stage from the sale.

9.6.4 Excise Duty And Taxes

Any statutory variations in the rate of taxes/duties are to be borne by the purchaser. VAT/excise duty rates indicated in the e-auction catalogue or Tender advertisement are only indicative and the actual VAT rates as applicable on the date shall be payable by the successful bidders directly to the seller at the time of taking delivery of materials. Form 'C' will be accepted. In order to avoid the imposition of penalty, the amount deposited by the successful bidder towards taxes and duties will be immediately deposited with the concerned tax authorities without waiting for the actual delivery.

9.7 Disposal through Tender

Disposal through tender could take place through the e-Procurement portal or normal tendering. In the bidding documents, General Conditions of Sale (GCS, in place of GCC in procurement tenders) may be laid out.

The broad steps to be adopted for this purpose are:

- i) Preparation of bidding documents;
- ii) Invitation of tender for the surplus goods to be sold;
- iii) Opening of bids;
- iv) Analysis and evaluation of bids received;
- v) Selection of the highest responsive bidder;
- vi) Collection of sale value from the selected bidder;
- vii) Issue of sale release order to the selected bidder;
- viii) Release of the sold surplus goods to the selected bidder; and
- ix) Return of bid security to the unsuccessful bidders;
- x) Any special conditions of contract for each lot may also be given. Important aspects to be kept in view while disposing the goods through an advertised tender are:
 - a) The basic principle for sale of such goods through an advertised tender is ensuring transparency, competition, fairness and elimination of discretion. Wide publicity should be ensured of the sale plan and the goods to be sold;
 - b) All required terms and conditions of sale are to be incorporated in the bidding document comprehensively in plain and simple language. The applicability of taxes, as relevant, should be clearly stated in the document. The bidding document should also indicate the location and present condition of the goods to be sold so that the bidders can inspect the goods before bidding;



- c) Bidders should be asked to furnish bid security (EMD) along with their bids. The amount of bid security should ordinarily be five per cent of the assessed or reserved price of the goods. The exact bid security amount should be indicated in the bidding document. The EMD shall be forfeited if the tenderer unilaterally withdraws, amends, impairs or derogates from his offer in any respect within the period of validity of his offer;
- d) Late bids, that is, bids received after the specified date and time of receipt should not to be considered;
- e) The bid of the highest acceptable responsive bidder should normally be accepted and an acceptance/sale order be issued. However, if the price offered by that bidder is not acceptable, a negotiation may be held only with that bidder;
- f) In case the selected bidder does not show interest in depositing the balance sale value or in lifting the goods, the bid security should be forfeited and other actions initiated including resale of the goods in question at the risk and cost of the defaulter;
- g) In case the total quantity to be disposed cannot be taken up by the highest acceptable bidder, the remaining quantity may be offered to the next higher bidder(s) at the price offered by the highest acceptable bidder. The minimum quantity to be accepted shall be indicated in the tender;
- h) If the tenderer's offer is not accepted, the tenderer's EMD shall be refunded to him. No interest shall be payable on such refunds. The EMD deposited by the successful tenderer shall remain with the disposing Department till payment of the SD money has been made. It may be adjusted as part of the total SD money at the discretion of disposing Department;
- i) The offer should be examined by the competent level of Tender Committee as per DFPRT and TC recommendations should be accepted by the Competent Authority as per the laid down DFPRT.;
- j) The acceptance letter/sale order would be issued to the successful bidder(s) notifying the amounts and schedule of submission of SD and Balance Sale Value (BSV);
- k) Successful tenderers, herein after referred to as purchasers, shall have to submit a SD @ 25 (Twenty-Five) per cent of the total sale value of the contract within seven calendar days of the issue of the acceptance letter/sale order (excluding the date of issue). The SD shall be deposited in the form of bank draft/pay order, drawn on any of the commercial bank in favour of officer concerned as mentioned in the NIT;
- l) BSV: The successful bidder in an e-auction or tender sale may be allowed 15 (Fifteen) calendar days (including the date of acceptance letter/sale order) for payment of BSV. The Head of Office (or the Officer delegated by an order as



per DFPRT) after taking into consideration the prevailing market rates and trends, may grant an extension of time for the payment of BSV with late payment charges@ one per cent per week or part thereof up to two weeks only and, thereafter, the SD will stand forfeited without notice. Extensions should not be granted as a matter of routine. The date of submission of the demand draft in the cash office is the date of payment for all purposes. No interest will be paid to the purchaser for the amounts paid or deposited and subsequently found refundable to the purchaser under any of the conditions of the contract; and

- m) Delivery Order: Delivery Order is an essential document required to be produced to take delivery of the material from the custodian and therefore after depositing BSV, the Delivery Order should be issued and the delivery should be made to purchaser or his agent on the strength of the Delivery Order and after verifying cashier's receipt.

9.8 Disposal Through Auction

- i) A Department/Organization may undertake auction of goods to be disposed of either directly or through approved auctioneers;
- ii) The basic principles to be followed here are similar to those applicable for disposal through the advertised tender so as to ensure transparency, competition, fairness and elimination of discretion. The auction plan including details of the goods to be auctioned and their location, applicable terms and conditions of the sale, and so on, should be given wide publicity in the same manner as is done in case of the advertised tender;
- iii) While starting the auction process, the condition and location of the goods to be auctioned, applicable terms and conditions of sale, and so on, (as already indicated earlier while giving wide publicity to it), should be announced again for the benefit of the assembled bidders;
- iv) During the auction process, acceptance or rejection of a bid should be announced immediately on the stroke of the hammer. If a bid is accepted, SD (not less than 25 (Twenty-Five) per cent of the bid value) should immediately be taken on the spot from the successful bidder either in cash or in the form of deposit-at-call-receipt, drawn in favour of the FA of the disposing organisation. The goods should be handed over to the successful bidder only after receiving the balance payment as in case of sale through tenders;
- v) The composition of the auction team will be decided by the CA. The team should preferably include an officer of the internal finance wing of the Department and a representative of security staff.



9.9 Disposal at Scrap Value Or By Other Modes

If a Department/Organization is unable to sell any surplus or obsolete or unserviceable item at the reserve price, in spite of its attempts through an advertised tender or auction, it may dispose it off at its scrap value with the approval of the CA. In case the Department/Organization is unable to sell the item even at its scrap value, it may adopt any other mode of disposal including destruction of the item in an eco-friendly manner.

9.10 Delivery of Sold Material

9.10.1 Free delivery Time and Ground rent

Delivery has to be taken within 30 (Thirty) calendar days (called free delivery period) from the date of the acceptance letter/sale order (excluding the date of issue of acceptance letter/sale order). The delivery of material will be given only after realisation of the demand draft/pay order. If the purchaser is not able to lift the material within the free delivery period, he may request for an extension. Such extensions are generally granted after levying a ground rent @ 1/2 (half) per cent of the sale value per day. But, in some genuine cases, the levy of ground rent may be waived. An accounts representative will be responsible for seeing that when the ground rent has become due, it is recovered by the stock-holder before delivery of the stores. The amount realised as ground rent should be noted in the issue note by the stock holder and certified by the stock verifier. The stock-holder will be responsible for remitting the cash to the cashier and obtaining a receipt.

9.10.2 All Risks to the Buyer

The items shall remain, in every aspect, at the risk of the buyer from the time of acceptance of his offer. The seller will not undertake any liability whatsoever for the safe custody, protection or preservation after the sale has been confirmed. Lots are put up for sale, subject to change by nature's wear and tear. No complaint regarding the quality or description of the materials sold will be entertained once the bid has been accepted.

9.10.3 Terms of delivery

No picking, choosing, sorting, welding, cutting or breaking of goods or materials sold will be permitted unless otherwise specified. In used/waste oil, separation of oil and water, and so on, shall not be allowed at the site. If these actions are allowed, there is possibility of leakages. In mixed lots, the buyer may take undue advantage by leaving cheaper components behind. If whole machinery is sold and cutting and breaking is allowed, it would be difficult to ensure that the purchaser is taking out only his own cut material and not other unsold material or from other scrap lots. If any foreign materials are found to be mixed in the lot, other than the items included in the auction catalogue and acceptance letter/sale order, the seller reserves the right to remove them at the time of delivery. The buyer shall not be



entitled to re-sell an item, lot or part of a lot while the goods are still lying within the premises of the seller and any such sale or assignment of the buyer's right to the material sold in an auction will not be recognised. All documents for releasing materials will be made out in the name of the buyer only.

The material will be delivered only to the successful bidder or his authorised representatives against the presentation of the buyer's identity proof. If the successful bidder desires to authorise a representative or an agent to accept delivery, the bidder shall produce a suitable power of attorney or authorisation letter for each lot separately, duly attested, by a notary public authorising his representative or agent to lift the material from the seller.

9.10.4 Default by Seller

The seller will not be, in any way, responsible for failure to deliver the material due to causes beyond his control such as a strike, lockout, cessation of work by labourers, shortened hours, act of God or other causes or other contingencies whatsoever. The buyer shall not be entitled to cancel the contract and the period of delivery shall automatically be extended proportionately.

9.10.5 Default by Buyer

Materials sold but not removed within the specified date will become the property of the seller and it will have the right to dispose of such goods in any manner as he deems fit without any notice.

9.10.6 Witnessing Delivery

All materials sold shall be weighed or counted before delivery, this being supervised by the:

- i) Stock-holder's representative;
- ii) Accounts representative – stock-verifier;
- iii) Representative of the security force of a rank not less than constable; and
- iv) Representative of the purchaser (if he wants to be present).

9.10.7 Deliveries of Scrap

At the time of delivery of scrap material to the purchaser, the weighment is to be done in the presence of the stockholder's representative, so nominated by the Head of Office. The stockholder's representative and accounts representative will sign a joint statement indicating the type of scrap, name of the party to whom scrap is delivered and quantity as per the weighment slip. The stock-holder should arrange for the deliveries to be affected according to the agreement and terms and conditions of sale. He should take every possible step to expedite delivery of the auctioned materials. The stock verifier should count, measure or weigh each lot or part of a lot after comparison of the description and quantity shown in the sold lot to ensure that only such kinds and quantities of materials as have been shown in the sold lot are being issued; he should sign the gate passes and issue notes in token of such a check. In giving delivery of scrap of non-ferrous items, the material should



be weighed on electronic weighing scales and the weight of each consignment should be recorded in detail by the stock verifier in his field book. All deliveries should be done through Electronic Weigh Bridges. All the Weigh Bridges should have valid certificate from Weight & Measurement Department of the State Government.

He should sign the issue note after fully satisfying himself that entries made therein agree with those in the field book. The field book should be attested by the other representatives making delivery of the goods in token of their having accepted the correctness thereof.

The empty and loaded trucks or carts should be weighed and particulars of the gate pass issued recorded. The issue note and gate pass should be countersigned by the stock verifier.

The loading of the sold materials should be done under the supervision of the stock-holder and be witnessed by other representatives. The stock-holder will be responsible for realising the loading charges, if any, from the purchaser.

9.10.8 Variation in available Quantity

At the time of delivery, the actual quantity may vary from the quantity mentioned in the delivery order. In case of excess available material, the seller reserves the right to retain material in excess of quantity in the lot at its discretion. The purchaser may be allowed to lift the additional quantity after making the requisite additional payment to the seller.

If the quantity in a lot on actual weightment or count is less than the announced quantity, the seller will not make good the deficiency under any circumstances. The purchaser thereof will be entitled to obtain a refund for the undelivered quantity at the quoted rate. No interest will be paid on the amount of short delivered quantity. The reasons for shortfall should be recorded by the stock-holder and the Head of Office (or any other officer as per DFPR) should also record his opinion. Any refund in this regard will be made with the Head of Office's (or any other officer as per DFPR) recommendation and CA' approval. Copies of the weightment slip will be the base for determining the refund amount. It may be necessary to look into the ledgers for the total quantity held by the stock-holder and particularly so in the case of non-ferrous scrap; the item concerned may have to be processed for special stock verification. In case of a short delivery of the material, the refund of taxes will be the responsibility of the successful bidder only.

9.10.9 Conclusion of Delivery

The seller's responsibility ends after the consignment has been loaded and handed over to the representative of the purchasers. The seller will be no party to any dispute that may arise after the loading has been completed. At the conclusion of the delivery of the lot or lots, pertaining to the item of scrap, any stock, left over should be verified by the Accounts



Department with the book balance and any discrepancies adjusted. Such “left over” stock may be transferred to fresh scrap of similar description. At the conclusion, a report of sale account of goods disposed has to be submitted to the CA and FA, to show that only the material paid for (and nothing else) has been disposed of and that all payments due (and nothing less) have been credited to the relevant accounts. A format of the report is shown in Annexure 19.

9.11 Procedure for adjustment of sale Proceeds in the books of accounts

The following procedure may be followed for adjustment of sale proceeds in the books of accounts:

- a) If the realised price is more than the book value, the sale proceeds should first be applied towards the ‘head of account’ in which the book value is lying, and the remaining portion should be treated as “profit on sale of capital asset”; and
- b) If the realised price is less than the book value, it should be apportioned in the ratio of the reserve price of the equipment and that of the spares. In this case, the CA’s sanction to write off the difference between the book value and the realised price would be necessary.



ANNEXURE*

* Annexure as per requirement to be adopted with slight modification if required, by concerned department as per approval of CA.



Annexure 1: Purchase requisition (indent) for Goods (non-stock)

(Refer Para 2.3)

Name of Indenting Office _____

Purchase Requisition for Goods (Non-stock)

(Send in duplicate and separate requisition to be furnished for each Trade Group)

no.			Date :							
Dept:			Office :							
Category of stores/ trade group			In case of equipment spares - details of equipment/as- sembly where fitted:							
Goods are required by Date						Consignee and place of delivery				
Details of items										
S.N.	Descrip- tion/Speci- fication/ Drawing/ Sample	Unit	Past Consumption			Avail- able Stock if any	Total Qty. Indented	Esti- mated/ Past Pur- chase Rate	Last Pur- chase Refer- ence	Total Esti- mat- ed Cost
			Yr-3	Yr-2	Yr-1					
a	b	c	d	e	f	g	h	i	j	k
Estimate name/number										
Allocation : No					Code No					
Is proprietary certificate attached:								Yes, reference/ No		
<p>It is certified that all</p> <ol style="list-style-type: none"> 1. Description and technical specification and quantity are in conformity with the guidelines in this regard in the Procurement Manual for Goods. 2. Technical and financial approvals at appropriate levels as per DPFRT have been obtained. 3. Funds are provisioned for, in the budget. 4. The quantity indented does not exceed any sales, consumption or usage limits of require- 										
Signature Indenting officer					Signature Indenting officer					



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Annexure

Annexure 2: Purchase Requisition Register for Indenters

(Refer Chapter 2 Para 2.3)

_____ (Name of Indenting Office)

Purchase Requisition (PR) Register for Indenters

(To be prepared and maintained by the intending divisions)

Name of Procuring Entity to whom PRs sent _____

Sr. No.	Description	Qty.	PR No. and date	Date of submission	Ascertained from Procuring Entity					Date of Receipt of Material	Remarks
					Tender No: and opening date	Contract Ref & Date	Qty.	Name of the Supplier	Delivery Date		
1	2	3	4	5		6		7	8	9	10

Office Superintendent

Indenting Officer



Annexure 3: Purchase requisition register for Procuring entity

(Refer Chapter 2 Para 2.3)

Name of the Procuring Entity _____

Purchase Requisition (PR) Register for Procuring Entity

(To be prepared and maintained by the Procuring Entity)

Date/ Sr No	Tender File No.	PR No. and Date	Descrip- tion	Qty.	Date of Receipt of PR	Indenter	Tender Type/Date of Floating	Date of Tender Opening	Contract Number and Date	Supplier	Qty.	Delivery Date	Sr. No. of Contract Progress Register	Remarks
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15

Office Superintendent

Procuring Officer

Note:

- 1) The register will be reviewed and signed by Head of Office every month.
- 2) A summary will be prepared and submitted to HOD every quarterly.



Annexure 4: Proprietary article certificate

(Refer Para 3.4.1)

Valid for the Current Financial Year

File Number and Date Reference		
1	Description of article	
2	Forecast of quantity/annual requirement	
3	Approximate estimated value for above quantity	
4	Maker's name and address	
5	Name(s) of authorised dealers/stockists	
6	I approve the above purchase on PAC basis and certify that: -- Note- Tick to retain only one out of (b), (c-1) or (c-2) whichever is applicable and cross out others. Please do confirm (a) by ticking it – without which PAC certificate will be invalid.	
6(a)	This is the only firm who is manufacturing/stocking this item. AND	
6(b)	A similar article is not manufactured/sold by any other firm, which could be used in lieu OR	
6 (c-1)	No other make/brand will be suitable for following tangible reasons (like OEM/warranty spares): OR	
6(c)	No other make/brand will be suitable for following intangible reasons (if PAC was also given in the last procurement cycle, please also bring out efforts made since then to locate more sources): OR	
7	Reference of concurrence of finance wing to the proposal:

History of PAC purchases of this item for past three years may be given below			
Name of the Supplier			
Order/Tender	Quantity Ordered	Basic Rate on Order	Adverse Performance

Signature of Approving Authority

Date Designation of Officer



Annexure 5: Purchase without Quotation Format

(Refer Para 3.6.2)

Ref No:	_____		
Place:	_____	Date:	_____

“I, _____, am personally satisfied that the goods (described below) purchased are of the requisite quality and specification and have been purchased from a reliable supplier/contractor at a reasonable price.”

Item:	
Quantity:	
Indenter:	
Unit Rate:	
Taxes/Duties:	
Other Charges:	
Total Unit Price:	
Total Price:	
Purchased from: M/S	
Vide Bill No.:	
Justification:	
Cheque may be drawn	
Name:	
Designation:	
Signature:	



Annexure 6: Bid opening attendance sheet cum report

(Refer Para 4.3)

[Name of Procuring Entity]

Bid Opening Attendance Sheet cum Report

Attendance Record						
Sr No	Bidder's Name	Bidder's Address	Bidder's Authorisation and	Represented by	Contact No.	Signature of Representative

Bid Opening Report						
Tender No			Title			Date of Opening
Offer No.	Bidder's Name	Bidder's Ref and Date	Submission of Requisite EMD (Y/N)	Submission of Documents (as per detailed scrutiny to be informed later)	Rate Quoted and Taxes/	Signature of Representative
--/---						
--/--						
--/--						

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 7: Tender committee minutes Format

(Refer Para 6.4.1)

(For Techno-Commercial/Financial Bids)

Organisation: _____

Minutes of Tender Committee Meeting

(Techno-commercial/Financial Bids)

Section I: Top Sheet

File No:				Date:	
Description				Estimated Cost:-	
Tender Published In				Date of Publication	
Bid Validity				Bid Opening Date	
Past Procurements					
Sr. No	Supplier	Order Reference &	Quantity	Basic Rate (Rs.)	Remarks
Members of the Tender Committee					
Sr.	Name	Designation	Sr. No.	Name	Designation
1			2		
3			4		

Section II: Salient Feature of the Tender

Review background of indent; 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 mode of bidding; bidding document contents; bid publication; level of competition obtained; issues if any noticed during bid-opening (bids not opened due to lack/unsatisfactory EMD, etc.) and any other procurement of this requirement in process (at various stages)

Review special conditions, restriction if any, on participation of bidders; purchase preferences, requirements prescribed in bid documents (EMD, document submission, etc.)

Section III: Preliminary Evaluation

Review handling of any complaints received

Review/confirmation of quantity and period of delivery required



Discuss preliminary evaluation for determining substantially responsive bids and for minor Corrections and clarifications

Section IV: Evaluation of Responsive Bids

Bid-wise deliberation should be recorded

In case of evaluation of Financial Bids

- i) Start with review of techno-commercial evaluation
- 2. Insert a summary table of evaluated price in the order of L1, L2, etc.
- 3. Deliberations should be in the sequence of 1, L2, etc. Section V:

Summary of Recommendations

Bid-wise recommendation should be recorded

In case of evaluation of financial bids,

- a) Give a summary of recommended bids, award value, bid expiry date and special conditions, if any.
- b) Also mention that the rates recommended are considered reasonable (and basis for such determination).
- c) Total value of the recommendations for determining level of acceptance authority.
- d) Mention that none of the TC members have any conflict of interest with the parties recommended for award.
- e) 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					
	Date:			Date:	
	(Name & Designation)			(Name & Designation)	
				Date:	
	Date:			(Name & Designation)	
	(Name & Designation)				

Remarks by the Accepting Authority: _____

Signature: _____ Date: _____

Name & Designation of Accepting Authority _____



Annexure 8: Invitation and declaration for negotiations

(Refer Para 6.5.9)

Invitation for Negotiations

(On letterhead of the Procuring Entity)

No: Datt:

To M/s Registered A/D

Sub: Tender No opened on for the supply of

Dear Sir,

The rates quoted in your tender are considered high. You are therefore, requested to come for negotiations of rates, on..... (date) at..... (time) at..... (venue).

You should, however, come for negotiations only in case you are prepared to furnish before such date the declaration appended herewith.

A copy of the form in which you may submit your revised offer after negotiations is enclosed.

Yoursfaithfully,

Enclosure: (AuthorisedOfficer)

- 1) Form of Declaration
- 2. Form of Revised Offer

FORM OF DECLARATION

(To be signed and submitted before start of negotiations)

(On company letterhead)

No: Date :

To

Sub: Tender No Opened on for the supply of

Ref: Your invitation for negotiations No: dated:

Dear Sir,

I duly authorised on behalf of M/s. do declare that in the event of failure of the contemplated negotiations relating to Tender No. opened on my original tender shall remain open for acceptance on its original terms and conditions.

Yoursfaithfully,

Place:

Signatures of bidder, or officer authorised to sign the bid documents on behalf of the bidder

Date:



Annexure 9: Format of revised offer in negotiations

(Refer Para 6.5.9)

Revised Offer in Negotiations

(On company letterhead)

From

Full address

To

Sir,

Sub: Tender No opened on for the supply of

Ref: Your invitation for negotiations no: dated:

i) On further discussions with your representatives on in response to your letter no dated

We are not prepared to reduce the rates already quoted in the original tender, which will remain valid up to

Or

i) I/we reduce my/our rates as shown in the enclosed schedule of items.

2. I/we am/are aware that the provisions of the original bidding document remain valid and binding on me.

3. I/we undertake to execute the contract as per following Schedule

4. I/we agree to abide by this tender on the revised rate quoted by me/us, it is open for acceptance for a period of 120/180 (one hundred twenty to one hundred eighty) days from this date, *i. e.*, up to and in default of my/our doing so, I/we will forfeit the earnest money deposited with the original tender/attached herewith. Eligibility as valid tenderers shall be deemed to be the consideration for the said forfeiture.

Yoursfaithfully,

Signatures of bidder or officer

authorised to sign the bid documents on

behalf of the bidder



Annexure 10: Letter (notification) of award (LoA) of contract

(Refer Para 6.6.1)

Name of the Procuring Entity

Letter of Award of Contract

Contract No: [Insert date]

Contract Title:

To,

M/s. [Insert name & address]

Sub: Award of contract for contract no: [insert contract number] and contract title: [insert contract title]

REF. Your offer no. [insert offer number] against our tender no. [insert tender no] opened on [insert date of opening of tender]

Dear Sir/Madam

I am directed to inform you that after evaluating the bid documents submitted by you on ---[enter date] -----[Enter Name of Procuring Entity] is pleased to inform you that you have been selected as the successful bidder for the supply of [enter description]. The total purchase price shall be [enter amount] as indicated in your financial bid submitted on [enter date], in accordance with the procedures intimated in the relevant bid documents.

You/your authorised representative(s) are requested to be personally present at [insert address] for the signing of the contract by [enter date].

In this respect, we also request you to submit the performance security of [insert amount of Rupees in words] by [insert date]. Security deposit being 10% (ten percent) of the total cost = Rs.

Please apply for refund of EMD deposited over and above the SD of if any.

You are requested to execute necessary agreement within seven days from the date of issue of this letter in the enclosed agreement form. Special adhesive stamp of Rs.10 (Rupees Ten) and revenue stamp of Rupee one shall be affixed on the enclosed agreement form. Treasury receipts of EMD and SD shall be deposited in office within the stipulated time limit as above.

This notification concludes the legally binding contract between you and the Government of India, till issue of a formal contract.

Yours truly,

[Authorised Officer]

Enclosure: Agreement Form along with the schedule of delivery



Annexure 11: Example of Formula for Price Variation clause

(Refer Para 5.6)

(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:-

$$Pa = Po \left[\frac{(F + a (M1/Mo) + b (L1/Lo))}{100} \right] - Po$$

Where: -

Pa 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 P_0 .
- 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, $(M1/M_0)$ and $(L1/L_0)$ should be multiplied by a correction factor of exchange rates, where E_0 is the exchange rate (E_0/E_1) 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_0 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 12: Progress of supply order register

(Refer Para 8.6)

Progress of Supply Order Register

Sr. No.	Supply Order No. and Date	Brief Description of Material	Name of the Supplier & Registration No.	Quantity & Due Date of Delivery		Quantity & Actual Date of Delivery		Whether Delay was Attributable to the Supplier or Procuring Entity?	Whether Penalty is Imposed or not?	Status of Security Deposit	Remarks
				Qty,	Date	Qty,	Date				
1	2	3	4	5	6	7	8	9	10	11	12

Office Superintendent

Procuring Officer

Note:

1. The register will be reviewed and signed by Head of Office every month.
2. A summary will be prepared and submitted to HOD every quarterly.



Annexure 13: Proposal for extension of delivery Period

(Refer Para 8.7.4)

Proposal for Extension of Delivery Period

Department		Office	
Description		Contractvalue	
Contract No:		Date:	
Variations applicable	PVC/ERV/Statutory Variations	Type of contractor	Govt. Dept./ PSU/MSE
Contractor & Regn. No.:		Quantity on order	
Quantity already supplied		Quantity remaining	
Details of earlier extensions granted		Is it a contract:	Development/ Indigenisation
Reference and date of request for extension		Reasons cited for extension	
Original/extended delivery period/date		Proposed extension of period/date	
Signature of Procuring Officer		Date	

Remarks of Indenter:

Regarding the proposed extension of delivery period/date, the following remarks are given regarding loss and inconvenience due to delay:

Loss: (strike out options not applicable): No loss would be incurred/loss is incurred but cannot be quantified/loss to the extent of Rs. would be incurred

Inconvenience: (strike out what is not applicable): No inconvenience would be incurred/ inconvenience would be incurred

Proposed extension in delivery is recommended with above remarks.

Signature of Indenting Officer and Date



Proposal by Procuring Entity

It is certified that:

- a) That a higher rate in the original tender was not accepted against other lower quotations in consideration of the earlier delivery;
- b) That there is no falling trend in prices for this item as evidenced from the fact that in the intervening period neither orders have been placed at rates lower than this contract nor any tender has been opened where such rates have been received even though tender is not yet decided.

It is proposed to grant extension of delivery period/date up to ,
(strike out options not applicable) with recovery of liquidated damages/with recovery of token liquidated damages/without any liquidated damages and with/without denial clause, in view of justifications recorded below:

.....

In view of value of the contract and proposal regarding liquidated damages, this would require approval of (competent authority). This would/would not require financial concurrence.

Signature of Procuring Officer and Date

Head of Office recommendations/approval

Signature of Superintending Engineer/date



**Annexure 14: Format for extension of delivery Period/
Performance notice**

(Refer Para 8.7.4, 8.7.6 and 8.7.8)

Registered A/D
or SpeedPost

Name of the Procuring Entity

Extension of Delivery Period/Performance Notice

To M/s (name and address of form)

Sub: Contract No dated for the supply of

Ref: Your letter no. dated:

Dear Sir,

1. You have failed to deliver {the (fill in qty.) of Stores/the entire quantity of Stores} within the contract delivery period [as last extended up to] (fill in date). In your letter under reply you have asked for [further] extension of time for delivery. In view of the circumstances stated in your said letter, the time for delivery is extended from (fill in date) to (fill in date)
2. Please note that notwithstanding the grant of this extension in terms of Clause (fill in clause number) of the subject contract an amount equivalent to % (..... per cent) of the delivered price of the delayed goods for each week of delay or part thereof (subject to the ceiling as provided in the aforesaid clause) beyond the original contract delivery date/the last unconditionally re-fixed delivery date (as & if applicable), viz., (fill in date) will be recovered from you as liquidated damages. You may now tender the Stores for inspection [balance of the Stores] in terms of this letter. Stores if any already tendered by you for inspection but not inspected will be now inspected accordingly.
3. You are also required to extend the validity period of the performance guarantee for the subject contract from (fill in present validity date) to (fill in required extended date) within 15 (fifteen) days of issue of this amendment letter.
4. The above extension of delivery date will also be subject to the following Denial Clause.
 - i. That no increases in price on account of any statutory increase in or fresh Imposition of customs duty / GST or on account of any other taxes/duty, including custom duty), leviable in respect of the Stores specified in the said contract which takes place after (insert the original delivery date) shall be admissible on such of the said Stores, as are delivered after the said date; and.
 - ii. That notwithstanding any stipulation in the contract for increase in price on any other ground including foreign exchange rate variation, no such increase which takes place after (insert the original delivery date) shall be admissible on such of the said Stores as are delivered after the said date.



- iii. But nevertheless, the purchaser shall be entitled to the benefit of any decrease in price on account of reduction in or remission of customs duty, excise duty, Sales Tax, VAT/CST or on account of any other Tax or duty or on any other ground as stipulated in the price variation clause or foreign exchange rate variation which takes place after the expiry of the above mentioned date namely (insert the original delivery date)
5. All other terms and conditions of the contract remain unaltered. This is without any prejudice to purchasers' rights under the terms and conditions of the subject contract.
6. Please intimate your unconditional acceptance of this amendment letter within 10 (ten) days of the issue of this letter failing which the contract will be cancelled at your risk and expense without any further reference to you.

Yours faithfully,

(Authorised Officer)

Duly authorised, for and on behalf of
The President of India

Note: Select one option within { } brackets; delete portion within [] brackets, if not applicable; fill in () brackets. Brackets and this note are not to be typed.

Substitute following first para instead of first para in format above, for issuing a performance notice.

1. You have failed to deliver {the (fill in qty.) of Stores/the entire quantity of Stores} within the contract delivery period [as last extended up to] (fill in date). In spite of the fact that the time of delivery of the goods stipulated in the contract is deemed to be of the essence of the contract, it appears that (fill in the outstanding quantity) are still outstanding even though the date of delivery has expired. Although not bound to do so, the time for delivery is extended from (fill in date) to (fill in date) and you are requested to note that in the event of your failure to deliver the goods within the delivery period as hereby extended, the contract shall be cancelled for the outstanding goods at your risk and cost.



Annexure 15: Format for correspondence with supplier after expiry of delivery date

(Ref Para 8.8)

Registered Acknowledgement Due

To

M/s

.....

.....

Sub : Contract No. dated

for supply of

Dear Sirs,

The date of delivery of the subject contract expired on As supplies against the same have not yet been completed, there is a breach of the contract on your part. As information is required regarding past supplies against this contract, you are requested to send the particulars regarding the quantity supplied so far and, also, the quantity inspected so far, but not yet dispatched and the quantity ready but so far not tendered for inspection before the expiry of the date of delivery.

The above information is required for the purpose of verification of our records and is not intended to keep the contract alive and does not waive the breach. This is without prejudice to the rights and remedies available to the purchaser in terms of the contract and law applicable in this behalf.

Yours faithfully,

(.....)

for.....



Annexure 16: No claim certificate

(Refer Para 8.5 and 8.10) (On company letterhead)

To

(Contract Executing Officer)

Procuring Entity

NO CLAIM CERTIFICATE

Sub: Contract Agreement no. dated for the supply of

We have received the sum of Rs. (Rupees only) in full and final settlement of all the payments due to us for the supply of under the abovementioned contract agreement, between us and Government of India. We here by unconditionally and without any reservation whatsoever, certify that with this payment, we shall have no claim whatsoever, of any description, on any account, against Procuring Entity, against afore said contract agreement executed by us. We further declare unequivocally, that with this payment, we have received all the amounts payable to us, and have no dispute of any description whatsoever, regarding the amounts worked out as payable to us and received by us, and that we shall continue to be bound by the terms and conditions of the contract agreement, as regards performance of the contract.

Yours faithfully,

Signatures of contractor or
officer authorised to sign the contract
documents
on behalf of the contractor
(company stamp)

Date:

Place:



Annexure 17: Goods receipt and inspection report

(Refer Para 8.14.1)

Purchase Order No.		RR/GC No. & Date		Procuring Entity
Name of Supplier M/s.		Date of Clearance from Transporter		Goods Receipt And Inspection Report
Indenter.		Date of Inspection and Acceptance/Rejection		Acceptance/Rejection Part/Full Quantity
Materials procured for Project/Scheme		Earlier GRIR No. for Part Supply		GRIR No.
Allocation		Code No.		Date

Nos.	Description of Materials	Code No.	Invoice No.	Qty. as per S.O.	Qty. Recd.	Qty. Inspected		Rate Unit	Amount	Taxes/Duties	Packing/Forwarding	Total Amount
						Accepted	Rejected					

Copy To	Reason for not accepting the material	
A/c Officer		
Indenting Officer	Inspected by me	Received above material of correct quantity and Quality
Procuring Officer	sign	sign
Book-Keeping	inspecting Officer	Indenting/Receiving Officer
Inspecting Officer		(Not below the Rank of Supervisor)

In case of rejected quantity: replacement required/not required Rejected materials of local firms will normally be delivered at the designated consignee. Firms are required to arrange collection within 14 (fourteen) days from the date of rejection failing which Procuring Entity's responsibility will cease and after that time they will remain at supplier's entire risk and if not removed before a further period of seven days, Procuring Entity shall have the right to dispose of such stores as deemed fit at the supplier's risk and account without further reference to them and to recover thereafter from the supplier's as ground rent or demurrage at the rate of Rs. per day for consignments occupying less than 0.2 (point two) cubic meters, or 50 (fifty) kilograms in weight and up to Rs. per day for articles bulkier or heavier than above. Rejected materials of firm from outstation if not removed within 21 (twenty one) days of the rejection will be dispatched to them by goods train freight to pay at public tariff rate. A/c Officer may please recover any advance payment or freight charges paid for such rejected quantity.



Annexure 18: Survey committee's Report

(Refer Para 9.3.2)

Name of the Organisation

SURVEY COMMITTEES REPORT

Report Reference No:										Date:			
Sr No.	Code No.	Description of Stores	Quantity		Book Value			Total	Total	User Dept.	Reason of Survey	Recommendation of Survey Committee	Remarks by the Competent Authority
			No.	Wt.	Rate	Unit	Amount	Est Scrap	Est Loss				
1	2	3	4	5	6	7	8	9	10	11	12	13	14
(Signature)					(Signature)					(Signature)			
Committee Member Designation					Committee Member Designation					Committee Member Designation			
Date and Place:													
Signature													
Competent Authority													



Annexure 19: Sale account for Goods disposed

(Refer Para 9.10.9)

Name of the Organisation

Sale Accounts for Goods Disposed

Auction Disposal Officer	(Signature)				Lot No.
					Particulars of Stores
					Quantity/Weight
					Name and Full Address of Purchaser
					Highest Bid Accepted (Name of bidder & bid value)
Accounts Representative	(Signature)				Amount and Date Earnest Money/ Security Deposit Realised
					Amount & Date on which the Complete Amount is Realised and Credited with Cashier and Reference thereof
					The Actual Date of Handing over of the Articles with Quantities with reference of Issue Notes and Gate pass
					Signatures of the Purchaser
Security Staff	(Signature)				eAuction Service Provider's Commission and Acknowledgement for its Payment
					Book Value
					Profit/Loss w.r.t Book Value

APPENDIX



Appendix 1: Legal aspects of Public Procurement

1.0 Relevant Provisions of the constitution of india

1.1 Equality for bidders

Article 19 (1) (g) of the Constitution of India (under Part 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

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

“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.”



who are authorised to do so are listed in the DFPRT.

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 (MSME Development) 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



- i) **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.
- ii) **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.
- iii) **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.
- iv) **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 there presentations 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 off act and a mistake of law. A contract is not void because it was caused by a mistake as to any law in force in India but a mistake as to law not in force in India has the same effect as a mistake of fact.

2.6 Consideration

Consideration is something which is advantageous to the 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 like wise 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 maybe 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 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 Departments are advised to set the effective date to be a date after the following:

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

3.0 Salient Features of the sales of Goods act, 1930

3.1 Scope

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



3.2 Concept of Transfer of Property (Passing of Title)

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

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

3.3 Ownership

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

3.4 Concept of “Res Prit Domine” -- Risk Follows ownership

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

3.5 Action against Third parties

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

3.6 Time at which Property in Goods is Transferred

The property in goods is transferred to the buyer at such time as the parties to the contract intend this to happen, as recorded in the terms of the contract. This needs neither to coincide with the point when payment is made nor with the delivery of Goods and not even with the point of time when the seller dispatches the goods.

3.7 Document of Title to Goods

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

3.8 Doctrine of caveat emptor

The Sales of Goods Act lays down this important concept that the buyer must act with due diligence when buying goods; it is not a seller’s duty to point out the defects in goods. This is



a doctrine which is not in consonance with modern times but, unfortunately, is a legal position. This, however, does not apply if the buyer's consent to buy is obtained by the seller by knowingly concealing the defects which could not have been discovered by the buyer reasonably at the time of procurement. The caveat emptor is also diluted under some implied conditions in a contract for sale.

3.9 Provision of the act regarding statutory Variations in Taxes and duties

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

4.0 Salient Features of the indian arbitration & conciliation act 1996

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

4.1 Arbitration

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

4.2 Arbitrator, arbitration and arbitral award

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

4.3 Arbitration agreement

It is an agreement by the parties to submit to arbitration all or certain disputes, which have arisen or which may arise between them, in respect of a defined legal relationship, whether contractual or non-contractual. The dispute resolution method of arbitration, as per the Arbitration and Conciliation Act, can be invoked only if there is an arbitration agreement (in the form of an arbitration clause or a separate arbitration agreement) in the contract. If there is such an agreement, courts are barred from directly entertaining any litigation in respect of such contracts, and are bound instead to refer the parties to arbitration.



4.4 Appointment and composition of arbitral Tribunal

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

4.5 Challenge to appointment of arbitrator

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

4.6 Conduct of arbitral Proceedings

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

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

4.7 Arbitral award

The decision of the arbitral tribunal is termed as 'arbitral award'. The decision of arbitral tribunal shall be by majority. The arbitral award shall be in writing, mentioning the place and date, and



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

4.8 Recourse against arbitral award

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

4.9 Conciliation

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

4.10 Changes introduced by the arbitration and conciliation (amendment) act, 2015

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



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

- c) **Disclosures:** An arbitrator who is approached for appointment is obligated to disclose as per Sixth Schedule of the Act. The declaration as per a set format removes any ambiguity and ensures uniformity:
1. conflict of Interest the existence either direct or indirect, of any past or present relationship with or interest in any of the parties or in relation to the subject matter in dispute, whether financial, business, professional or other kind, which is likely to give rise to justifiable doubts as to his independence or impartiality as per fifth schedule to the Act for arbitrator.
 2. Time constraints: An arbitrator shall disclose all circumstances which may affect his ability to deliver an award within 12 (twelve) months.

ii) **Fast-tracking arbitration in india**

- a) **Award within 12 (Twelve) months:** The arbitral tribunal is statutorily obligated to deliver an award within 12 (twelve) months from the date when arbitral tribunal enters into reference. The arbitral tribunal is said to have entered upon the reference on the date on which the arbitrator(s) have received notice of their appointment. The award can be delayed by a maximum period of six months only under the special circumstances where all parties give their consent to such extension of time. Where the award is not made out within the statutory period the mandate of arbitrators shall automatically terminate. It is open for the courts to extend the time period for making an award upon receipt of an application by any of the parties. Such extension is to be granted only for sufficient cause and the court in its discretion may impose the following penalties depending on the facts and circumstances of the case:
1. Reduce the fees of arbitrators by up to 5% (five percent) for each month of delay.
 2. Substitute one or all the arbitrators.
 3. Impose actual or exemplary costs on any of the parties.
- b) **Oral arguments to be held on a day-to-day basis:** Oral arguments as far as possible shall be heard by the arbitral tribunal on a day to day basis and no adjournments shall be granted without sufficient cause. Provision for imposition of exemplary cost on the party seeking adjournment without sufficient cause has also been made.
- c) **Fast Track Procedure:** The parties to arbitration may choose to opt for a new fast track procedure either before or after the commencement of the arbitration. The award in fast track arbitration is to be made out within six months. Where



the Arbitral Tribunal delivers the award within a period of six months the arbitral tribunal shall be entitled to additional fees. The quantum of such additional fees shall be determined by the parties. The salient features of the fast track arbitration are:

1. Dispute is to be decided based on written pleadings only.
 2. Arbitral Tribunal shall have the power to call for clarifications in addition to the written pleadings where it deems necessary.
 3. Oral hearing maybe held only if all the parties make a request or if the arbitral tribunal considers it necessary.
 4. The parties are free to decide the fees of the arbitrator(s).
- d) **Appointment within 60 (sixty) days:** Whenever an application for appointment of Arbitrator(s) is moved before a court such application shall be disposed of as expeditiously as possible and an endeavour shall be made to dispose of the matter within a period of sixty days from the date of service of notice on the opposite party. The court while appointing arbitrators shall confine itself to the examination of the existence of an arbitration agreement.

iii) **Procedural and Jurisprudencesimplified**

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



(listed below) on International Commercial Arbitrations even in instances where the seat of the arbitration is outside India, however giving freedom to exclude the applicability the Act by entering into an agreement to this effect:

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

5.0 Salient Features of competition act, 2002 relating to anti-competitive Practices

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



- vii) CCI may initiate an inquiry:
 - a) On its own motion on the basis of information and knowledge in its possession; or
 - b) On receipt of any information, in such manner and accompanied by such fee as may be determined by regulations, from any person, consumer or their association or trade association; or
 - c) On receipt of a reference from the Central Government or a State Government or a statutory authority.
- viii) The Act provides for Director General office as a separate investigative wing to assist the CCI. The DG looks into the complaints received from the CCI and submits all findings to it. DG is solely responsible for making enquiries, for examining documents and for making investigations into complaints. The DG is vested under the Act with powers of summoning of witnesses, examining them on oath, requiring the discovery and production of documents, receiving evidence on affidavits, issuing commissions for the examination of witnesses etc.
- ix) The Act in Section 49 (3) lays down the advocacy function of CCI and lays down that the CCI shall take suitable measures for the promotion of competition advocacy, creating awareness and imparting training about competition issues. Section 32 of the Act grants the CCI extra-territorial jurisdiction over anticompetitive conduct which has an appreciable adverse effect on competition within India. Any anticompetitive activity taking place outside India but having an appreciable adverse effect on competition within India shall be subject to the application of the Competition Act.
- x) Under Section 21 of the Act, any statutory authority can suo motto or on request of a party in the course of a proceeding before it can make a reference to CCI. CCI shall give its opinion within sixty days of receipt of such reference by such statutory authority. Under the provisions of the Act, the authority which made reference shall consider the opinion of the Commission and thereafter, give its findings recording reasons on the issues referred to in the said opinion by CCI. Section 21A in the same language provides for such reference by CCI to any statutory authority.
- xi) The key provisions of the Competition Act include:
 - 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.

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

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

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

- 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.

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

1. Declare Anticompetitive Agreements Void;



2. Impose Heavy Penalties:
 - a) Penalty can be up to 10% (ten percent) of the average turnover for the last three preceding financial years upon each of such persons or enterprises which are parties to bid-rigging;
 - b) Cartel, a penalty of up to three times of its profit for each year of the continuance of such agreement or 10% (ten percent) of its turnover for each year of the continuance of such agreement, whichever is higher.
 2. Order the parties to Cease & Desist;
 3. Modification of agreements;
 4. Remedy Damage to reputation;
 5. Fix Individual Liability;
 6. Grant Interim orders;
 7. Any other order as CCI deems fit.
- xvi) **Who can file the information:** Raising issues regarding anti-competitive behaviour for action by CCI under the act is called filing the information:
- a) Any person, consumer or their association or trade association can file information before the Commission;
 - b) Central Govt. or a State Govt. or a statutory authority can also make a reference to the Commission for making an inquiry;
 - c) "Person" includes an individual, HUF, firm, company, local authority, cooperative or any artificial juridical person.
- xvii) **What are the issues on which information can be filed?**
- a) The information can be filed on the issues like anti-competitive agreements and abuse of dominant position or a combination;
 - b) Class of consumers.
- xviii) **The fee -**
- a) Rupees 5000/- (Five thousand only) in case of individual, or Hindu undivided family (HUF), or Non Government Organisation (NGO), or Consumer Association, or Co-operative Society, or Trust, duly registered under the respective Acts;
 - b) Rupees 20,000/- (Twenty thousand only) in case of firms, companies having turnover in the preceding year upto Rupees one Crore; and
 - c) Rupees 50,000/- (Fifty thousand only) in case not covered under clause (a) or (b) above.

6.0 Salient Features of the whistle blowers Protection act, 2011 and the whistle blowers Protection (amendment) act, 2015

- i) The Act seeks to protect 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.

- i) 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;
- ii) 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;
- iii) The Designated Agency may, with the prior written consent of the complainant, reveal the identity of the complainant to such office or organization where it becomes necessary to do so. If the complainant does not agree to his name being revealed, in that case, the complainant shall provide all documentary evidence in support of his complaint to the Designated Agency;



- iv) 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 Rs. 50,000 (Fifty thousand);
- v) Similarly any disclosure made with mala fide and knowingly that it was false or misleading shall be punished with imprisonment up to two years and fine not exceeding Rs. 30,000 (Thirty thousand);
- vi) 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;
- vii) While dealing with any such inquiry, the Designated Agency shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908 in respect of matters like receiving evidence, issuing commissions, discovery and production of any document etc. Also, every proceeding before the Designated Agency shall be deemed to be a judicial proceeding under the Code of Criminal Procedure, 1973 and Indian Penal Code;
- viii) 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;
- ix) 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;
- x) 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;
- xi) 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;
- xii) 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;
- xiii) 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;
- xiv) 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 2: Electronic Procurement (e-Procurement) and e-auction

(The details given in this appendix are generic in nature are not prescriptive part of this Manual of Policies and Procedures. Procuring Entities may settle and decide the details with the service provider)

1.0 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. The Procurement Policy Division, Department of Expenditure, MoF, has vide Office Memorandum no: 10/3/2012-PPC dated 09th January, 2014 prescribed mandatory publishing of tenders through the e-Procurement mode for tenders valued above Rupees two lakh.

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 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:

- 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. 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 mutadis 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; 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.

4.0 Disposal through e-auction

4.1 Contractual legal aspects of auction sale of scrap

Ministry/Departments should decide the calendar for holding auctions/tenders for groups of lots. A brief summary of this Auction Schedule is given publicity in Newspapers and on websites, indicating how to obtain/download Auction Catalogues. For each Auction a Catalogue is prepared containing details of Schedule of Lots in the Auction, as well as General and Special Terms and Conditions of Sale (GTC and STC). In contractual terms, Publishing of an Auction catalogue in sale of scrap is equivalent to NIT/SBD in Tenders for procurement and forms the basis of bids by the purchasers. In e-Auction, the General Conditions of Sale are available on the website and Special Conditions of Sale of each lot is hyperlinked to the Lot Description. In case of Tender/Physical Auctions Catalogue contains these in printed format.

In Auction, the bidders keep bidding higher and the highest accepted bid is accepted. In such a case a Bid-Sheet is immediately signed by the Seller and Bidder's representative, which along with the delivery order serves as a legal contract document. In e-Auction, Bid Sheet is generated with DSCs of Buyer and Seller.

4.2 Legal status of e-auction

e-Auction through E- Auction Service Provider (eASP) is a triangular contract. eASP is a sub-agent of the seller through a standing contract entered between them, which is subject to general terms and conditions (GTC) of eASP. eASP is also a sub-agent of the successful buyer through a standing contract between them which is subject to Buyer Specific Terms and Conditions (BSTC).



eASP gets a commission of fixed percentage of sale value from the purchaser directly – which is deducted from the amount payable to the seller. The e-auction sale is governed by GTC, BSTC and Special Terms and Conditions (STC) of the e-auction. In case of conflict or differences among any provisions of GTC, BSTC and STC, the provisions of STC would prevail. Normally, successful purchasers pay all monies to eASP who, in turn, transfers it to the seller. But the seller may, if desired, negotiate with eASP to accept such payments directly from purchaser.

4.3 Creating an auction event: auction catalogue

The seller lists items to be auctioned on a specified date. This list is generally called an auction catalogue. Besides the list of items, it also contains any special conditions of contract applicable generally or to specific lots. The following auction details are provided in this list: Auction Catalogue.

- i) Auction number;
- ii) Auction Opening date and time,
- iii) Auction Closing date and time;
- iv) Type of Auction Ending: Close Ended/Open Ended
- v) Max Auto Extensions Allowed (five to ten)/Duration of Auto Extensions (90 Secs– ninety seconds)
- vi) Auction Catalogue Number and Date
- vii) Inspection from date;
- viii) Inspection closing date;
- ix) Seller/Unit name;
- x) Address; Contact details;
- xi) Details of the contact person;
- xii) Details of ED and Sales Tax (CST/VAT) in each Lot and TCS (including Surcharge and Edu Cess) for all lots;
- xiii) Whether Subject to Acceptance (STA) is applicable for bids within (10% (ten percent) or any other percentage) of the Reserve Price and
- ix) List of lots to be included: (Lot Description is hyper-linked to relevant details containing special terms of lifting, etc)

Auction Sq No:	Lot No	Lot Desc	Quantity	ED/(ST/Vat)%	Custodian/ Location	Start Time	Close Time	Minimum Increment	STA applicable Y/N
Total Number of Lots =									

The fixed reserve price also has to be uploaded on the portal for each lot, which is kept confidential. It should also be mentioned if bids below the reserve price up to a percentage can



be accepted on an STA basis. The auction details can be posted by eASP but to maintain the sanctity of the reserve price, it is better for the seller to do so through his login and password. The bidder's queries before the auction will reach seller by e-mail and can be answered online. The seller will not be allowed to edit any item once the auction starts. To attract bidders to the auction to get a higher price, the seller should describe items in detail to include information such as condition and size of the item. The more information is provided, the more bidders will bid with confidence. A photo can also be uploaded. Generally, auctions with images have higher sell-through. Many buyers like to browse through the eASP categories and, therefore, listing the item in the appropriate category increases the likelihood of interested bidders viewing it.

4.4 Buyer Eligibility

All prospective e-auction sellers and bidders will have to register themselves by filling in the relevant details online. Bidders have also to pay the specified non-refundable registration fee (usually Rs.10,000 – Ten thousand) off line. Only registered bidders will be able to access the auction floor. The auction notification will, however, be seen by all internet users. If it is found that the bidder is not adhering to the terms and conditions of the e-auction and also indulging in any malpractices either himself or through his agents, deputies or observer, such a bidder is liable to be blacklisted and appropriate action will be taken as deemed fit by the seller. There are various reports available by which seller can rate a bidder. The seller can restrict or blacklist a buyer from bidding by making a formal request to eASP.

4.5 Conduct of auction

The seller cannot close/cancel an auction once it starts. It can be cancelled/amended prior to the starting of the auction by making a request for cancellation. The following information will be present on the auction floor web-page:

- i) Opening date and time,
- ii) Closing date and time,
- iii) Item number,
- iv) Item name, hyper-linked to relevant details containing duties, etc., /special terms of lifting, etc.;
- v) Quantity and unit of measurement;
- vi) Location of material/item;
- vii) Last bid or basic price, if any;
- viii) Bidders' bid in Rs./unit; and
- ix) Bid history.

The closing time of an auction shall automatically be extended by period indicated in Auction Catalogue for all auctions if bid continues (e.g., in case the closing time is 5.30 pm of any particular date and if a bidder bids at 5.29 pm then the closing time will be automatically extended). Maximum number of auto extensions are also specified.



Bidders are able to indicate the bid price through their login. A bid, once given, cannot be retracted. Conditional offers will not be accepted/entertained. Each bidder will have the option to declare his maximum value of bid (which cannot be viewed by other bidders) up to which his automatic bidding will continue.

The seller can monitor auction activity and view the bidding history of the live auctions, reserve prices (reserve price can only be viewed by seller and no one else), and other features. However, the seller will get an automated email once the auction ends with detailed information on the auction (highest bidder, subject to approval items, rejected items).

The respective items will be marked “sold” after closing of the auction when the highest bid is greater than the reserve price and an automatic intimation to the concerned buyer will be sent online to make the payment.

If the bid price matches the limits specified for inclusion in STA, then it shall be shown under the STA category and the seller will be accordingly informed. In case of STA, the seller has to convey the acceptability of the bid amount or otherwise of the bid value to eASP as well as the bidder within three days (excluding holidays) of the close of the auction.

In case of “Sold” or STA a Bid-Sheet is displayed (Annexure 20), indicating the details of the accepted bid, which is printed and shows digital signatures of Auction Supervising Officer and the Bidder. As mentioned before this serves the role of legal Contract document.

If the reserve price has not been met by close of auction, the auction closes without a winning bidder. On the seller’s request, eASP will arrange for inclusion of the unsold item in the next auction.

4.6 Earnest money deposit

EMD is payable within seven calendar days from the date of closing of the e-auction (excluding the date of closing) by the successful bidder. EMD is equivalent to 25 per cent of material value of the accepted lots and 10 (ten) per cent of the material value for STA lots in the forms of a demand draft drawn in favour of the authority mentioned in the auction catalogue. On receipt of the EMD by eASP, an acceptance letter/sale order will be issued for sold lots. In case of failure to pay the EMD in time, the login of the party will be deactivated in addition to other actions as deemed fit and the offer will stand withdrawn.

4.7 Payment of balance sale Value (BSV)

In case of sold/accepted lots and lots taken on STA basis, the balance payment has to be made within 15 (fifteen) calendar days from the date of the acceptance letter/sale order (excluding the date of issue of the acceptance letter/sale order), by way of a demand draft as per the following manner:

- i) Commission percentage as per STC/GTC/BSTC to be paid in favour of eASP, by way of demand draft/pay order;
- ii) The balance amount (after deducting the EMD and amount payable to eASP) plus applicable VAT/duties, income tax and other charges if any must be paid in favour of authority mentioned in auction catalogue;



- iii) In case of delay, a late payment charge @ one per cent per week or part thereof will be charged up to two weeks only and thereafter the EMD will stand forfeited without any notice; and
- iv) Tax Collected at Source (TCS) at the applicable percentage (presently@ one per cent) of the gross value (material value + excise duty + VAT + any other applicable taxes/duties/cess, etc.) may be deducted by the purchaser and a TDS certificate may be given. A surcharge of 10% (ten percent) on TCS and a further Education cess of 3% (three percent) is leviable on the TCS+ Surcharge.

4.8 Delivery order

eASP will hand over, to the successful buyer, a delivery order authorising the Stores Department to make such a delivery, after getting the requisite material value. The purchaser will approach the seller with the delivery order to allow him to lift the material. The validity of the delivery order is 60 (sixty) days from the date of the e-auction. The delivery order should show the following particulars:

- i) Lot number;
- ii) Description of material;
- iii) Purchaser's name and address;
- iv) Approximate quantity in the lot;
- v) Rate at which sold;
- vi) Value realised;
- vii) Reference to the cash remittance note, under which the value was remitted to the nominated cashier;
- viii) Chief cashier or treasurer's receipt note and date; and
- ix) Amount of loading charges recovered by the store keeper.

Note: Information sought in S. No. i) to viii) shall be filled in by eASP in tabular form (Columns 1 to 8). Information pertaining to S. No. ix) (Columns 9) shall be filled by the store keeper.



Appendix 3: Management of Public Procurement Function

1.0 Organisation of Procurement Function

The procurement function should be so organised that procurement executives get an opportunity to develop expertise in a particular market segment, and internal customers may have to deal with only a single point of interface. Thus, work distribution in the procurement entity may be segmented based on markets, but there may be nodal officers to provide a single window interface to internal clients.

In a procurement entity, beside procurement activities, there are also ancillary activities. In a small procurement entity, these ancillary activities may be distributed among various executives. Ancillary procurement activities are:

- i) Administration and management services;
- ii) Human resources development and training;
- iii) Policy and guidelines;
- iv) Procurement performance measurement and management reporting
- v) IT systems and master data management;
- vi) Advertising, bidding document sale/issue/receipt, tender boxes, tender opening, custody of samples;
- vii) Direct contracting/local purchase;
- viii) Liaison and progressing;
- ix) Supplier relations management and registration; and
- x) Legal and arbitration matters.

2.0 Management reporting

2.1 Procurement Key Performance indices and management reporting

As in all management and financial functions, it is possible to measure the pulse of the procurement function by using certain Procurement Key Performance Indices (KPIs). As part of management reporting, these KPIs can be devised to reflect the status of workload, throughput and efficiency of the procurement function. Some KPIs are given in Appendix 5: Templates for Management Reports and KPIs.

2.2 Management reports for monitoring of Procurement Function

For proper monitoring and control of the procurement function, regular monthly reports to procurement managers should highlight throughput and stagnation at important milestones of the procurement process. The milestones where workload, throughput and stagnation need to be studied in procurement management are:

- i) Receipt of indent;
- ii) Issue of tenders;
- iii) Finalisation of tender decision;
- iv) Signing of contracts;



- v) Successful performance of the contract; and
- vi) Payments for supplies/works/services.

This will highlight stages where urgent intervention is required for efficient procurement to the management. These reports would be compiled by the Procuring Entity. Templates for management reports are given in Appendix 5: Templates for Management Reports and KPIs.

3.0 Record Keeping

3.1 All procurements done by the organisation are subject to post audit by internal audit, statutory audit and various internal and external vigilance agencies. Hence, all documents related to the procurement should be filed and kept systematically and safely. Files shall be properly numbered on the notes and correspondence side. The period of retention of various types of documents should be laid down. The Procuring Entity should also maintain following basic records (either in manual or electronic form):

- i) **Item/asset master database:** The heart of the procurement system is the item/asset master database. It contains complete data about an item or asset handled in the past. It contains: code-number; category; description long/short; specification; drawings; trade group of vendors; book-rate; estimated annual consumption; replenishment data; inventory parameters (buffer stock, safety stock levels) – to the extent relevant to goods, works or services;
- ii) **Vendor/contractors database:** Contains vendor/contractor information such as name; address ; small scale and minority enterprise categorisation; registration data (registration code, trade groups, monetary limits of registration, NSIC or DGS&D registrations); past performance ratings;
- iii) **Procurement register:** Key information at various stages of procurement operations, from receipt of indents till the issue of the contract, is recorded (manually or electronically) in the procurement register. The Procurement register thus enables ascertaining of status of a particular procurement and also overall monitoring of efficiency and throughput of procurement operations;
- iv) **Procurement order Guard register:** An indexed register with only machine numbered stubs of pages (instead of full pages) is used for this purpose. One ink signed copy of all orders issued by the Procuring Entity is compulsorily pasted in these stubs in chronological order. This is the most authentic record which is used as a guard and ultimate reference against any tampering/falsification/misreporting of procurement orders; and
- v) **Procurement order Progress register:** It contains record of all procurement orders issued and progress of supplies against these contracts. It contains procurement order numbers, vendor/contractor name, brief description of procurement, total value of the order, delivery dates, actual dates of supply, and so on.



Appendix 4: Templates for management reports and KPIs

(Refer Appendix 4, Para 1.3)

1. Delays by more than one month in floating of tenders against indents received

Serial No.	Item/Work Code and Description	Quantity, Value Required/Indented	Date Received in Procuring Entity	Date of Floating Tenders	Remarks

2. Delays by more than one month in finalising tenders over ideal time (Chapter 7, Para 1.2)

Serial	Tender Number & Opening date	Item/Work Code and Description	Quantity & Value	Date Indent eived in Procuring Entity	Delay as er Ideal Time	Likely Date of Contract/ Remarks

3. Cases of tenders discharged or proposed for re-tendering

Serial	Tender No. & Opening Date	Item/Work	Quan-	Reasons of Retendering	Level of Approval	Is it a Case of Repeat ering?	Actions Taken to etition



4. Delays by over one month in signing contracts after finalisation of tender

Serial No.	Tender Number & Opening date	Item/Work Code and Description	Quantity & Value	Date of Finalisation of Decision	(Likely) Date of Contract Signing	Remarks

5. Delays by over three month in Performance of Contract

Po No & Dt.	Item/Work Code and	Contractor e / e	Original Delivery /Performance Period/	Delay in	Indicative Delivery/Performance	Proposed marks

6. Delays in payment by over three months from due date

Po No & Dt.	Item/Work Code and Description	Vendor /	Date of Performance/ Delivery	Due Date of Payment as r tract	Date of Signing Payment er	Likely Date of ayment	Proposed on/ Remarks



7. Top 10 Contractors during the current year

Serial No.	Vendor Name /	Item/Work Code/De- scription	Number and Value of Orders			Remarks
			Outstanding as on April 1, ----	Further Ordered Since Then	Value of Supplies since April 1, ----	

8. KPIs during last month/quarter/financial year

Work Load & Throughput	Number/Value/Ratio
Number and Value of Indent pending contract placement	
Number and value of indents received during the month	
Number and value of tenders floated during the month	
Number and value of tenders finalised during the month	
Number and value of contracts signed during the month	
Number and value of payments made for deliveries/performance during the month	
Efficiency of procurement process	
Productivity– number and value wise tenders finalised/on hand per head of staff	
Average time taken for award decision for procurement	
Proportions of tenders on PAC, STE basis with reference to the total number/value of tenders	
Proportions of tenders on limited/selective bidding with reference to	
Proportion of tenders through e-Procurement with reference to the total number/value of tenders	