

# KAMARAJAR PORT LIMITED

## WORKS MANUAL

October 2024



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## FOREWORD

1. Ports spend sizeable amounts of their budgets on works to create Assets and to maintain them. Ports have been delegated powers to make their own arrangements for procurement of works.
2. 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 bidders/ contractors, 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 which provide framework for the public procurement system.
3. The Manual for Procurement of Works was comprehensively reviewed by Ministry of Finance – Department of Expenditure and the updated guidelines are issued in June 2022. The Manual, over a period of time, has become a standard reference document for officials involved in Works in Public Procurement across all Ministries/ Departments/ PSUs/ Autonomous Bodies. All the procurement related instructions issued by Central Vigilance Commission have been subsumed into the manual in collaboration with Commission.
4. Manuals issued by DoE are generic guidelines which are necessarily broad in nature. Ports are advised to supplement this manual to suit their local/specialized needs by issuing their own detailed manuals, Customized formats, Standard Bidding documents and Delegation of powers to serve as detailed instructions to their Procuring officers.
5. In line with the above, this manual is prepared to serve as a guide to the officers dealing with various works and procurement. The guidelines in this manual serve only as ready reference to the officials. In case of further clarity, the Manual for Procurement of Works issued by DoE in June 2022 or revised if any, shall be referred.
6. In case of any provisions of this Manual have ambiguity or conflict with the provisions of any act, Rules, Policies, guidelines, Govt. Instructions, CVC advices, GFR etc. the guidelines issued by the later shall prevail. The department shall review such clauses as and when required.
7. Any relaxation in the guidelines shall require the approval of the Competent Authority.

**September 2024**

This Manual Contains 3 Sections

1. Tender Procedure
2. Execution of Works
3. Appendices



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# **KAMARAJAR PORT LIMITED**

## **WORKS MANUAL**

### **SECTION-1**

#### **Tender Procedure**

(This Section deals with the Planning, Tendering, Bid evaluation and Award of Work)





## Abbreviations

AA	-	Administrative Approval
AITB	-	Appendix to Instructions to Bidders
A&EC	-	Architectural & Engineering Consultant
BDS	-	Bid Data Sheet
BG	-	Bank Guarantee
BIS	-	Bureau of Indian Standards
BOC	-	Tender Opening Committee or TOC – Tender Opening Committee
BOQ	-	Bill of Quantities
C&AG	-	Comptroller and Auditor General (of India)
CA	-	Competent Authority
CCI	-	Competition Commission of India
CIPP	-	Code of Integrity for Public Procurement
CMC	-	Contract Management Committee
CPM	-	Critical Path Method
CPO	-	Central Purchasing Organizations
CPPP	-	Central Public Procurement Portal
CPSE	-	Central Public Sector Enterprise, see PSU also
CPWD	-	Central Public Works Department
CV	-	Curriculum Vitae
CVC	-	Central Vigilance Commission
CVO	-	Chief Vigilance Officer
DFPR	-	Delegation of Financial Powers Rules
DG	-	Director General
DGS&D	-	Directorate General of Supplies and Disposals
DLC	-	Defect Liability Certificate
DLP	-	Defect Liability Period
DoE	-	Department of Expenditure
DOP	-	Delegation of Powers

DPR	-	Detailed Project Report
DSC	-	Digital Signature Certificate
EC	-	Evaluated Cost
ECS	-	Electronic Clearing System
EIA	-	Environmental impact assessment
EMB	-	Electronic Measurement Book
EMD	-	Earnest Money Deposit
EOI	-	Expression of Interest (Tender)
EOL	-	End of Life Cost
EPC	-	Engineering, Procurement and Construction
EPF	-	Employee Provident Fund
ES	-	Expenditure Sanction
ESI	-	Employee State Insurance
FM	-	Force Majeure
FTP	-	Full Technical Proposal
GCC	-	General Conditions of Contract
GFR	-	General and Financial Rules, 2017
GOI	-	Government of India
GTE	-	Global Tender Enquiry
HSE	-	Health, Safety & Environmental Protection
HOD	-	Head of the Department
IEM	-	Independent External Monitor
IP	-	Integrity Pact
ISO	-	International Organization for Standardization
IT	-	Information Technology
ITB	-	Instructions to Bidders
ITT	-	Instructions to Tenderers
ITC	-	Instructions to Consultant
JV	-	Joint Venture (Consortium)
L1	-	Lowest Bidder

L2	-	Second Lowest Bidder
L3	-	Third Lowest Bidder
LAR	-	Last Awarded Rates
LCC	-	Life Cycle Cost
LCS	-	Least Cost System
LD	-	Liquidated Damages
LEC	-	Lowest Evaluated Cost
LCC	-	Life Cycle Cost
LOA	-	Letter of Acceptance
LOI	-	Letter of Invitation or Letter of Intent
LTE	-	Limited Tender Enquiry
MB	-	Measurement Book
MES	-	Monthly Expenditure Statement
MoF	-	Ministry of Finance
MOU	-	Memorandum of Understanding (of JV)
MSTC	-	Metal Scrap Trading Corporation
PCR	-	Project Completion Report
PE	-	Preliminary Estimate
PPP-MII	-	Public Procurement (Preference to Make in India), Order
PPR	-	Preliminary Project Report
PQB	-	Prequalification Bidding
PQC	-	Pre-qualification Criteria
PSU/ PSE	-	Public Sector Undertaking/ Enterprise
PWO	-	Public Works Organisations
QA	-	Quality Assurance
QCBS	-	Quality cum Cost Based Selection
QOP	-	Quality Oriented Procurement
RFP	-	(Standard) Request for Proposals (Document)
RFQ	-	Request for Qualification
RTI	-	Right to Information (Act)

SBD	-	Standard Bidding Document
SCC	-	Special Conditions of Contract
SD	-	Security Deposit
SLA	-	Service Level Agreement
SoPP	-	Schedule of Procurement Powers
SOR	-	Schedule of Rates
SSS/ STE	-	Single Source Selection/ Single Tender Enquiry
STC	-	Special Technical Committee
STP	-	Simplified Technical proposal
TC	-	Tender Committee
TEC	-	Tender Evaluation Committee
TS	-	Technical Sanction
TSC	-	Tender Scrutiny Committee
TCO	-	Total Cost of Ownership
TOC	-	Taking Over Certificate or Tender Opening Committee
TOR	-	Terms of Reference
VAT	-	Value Added Tax
VfM	-	(Best) Value for Money
WOL	-	Whole of Life (Cost) or Total Cost of Ownership TCO

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## Glossary / Definitions

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

- i) "Administrative Approval": The **formal acceptance** of the work, and is, in effect, an order to execute certain specified works at a stated sum to meet the administrative needs of the department requiring the work.
- ii) "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;
- iii) "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 the port (Procuring entity);
- iv) "Bid(ding) documents" (including the term 'Standard Bid Document' or 'tender (enquiry) documents' or 'Request for Proposal Documents' – RFP documents in certain contexts) means a document issued by the Port, 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 standardized template to be used for preparing Bidding Documents after making suitable changes for specific procurement;
- v) "Bidder enlistment document" means a document issued by a procuring entity, including any amendment thereto, that sets out the terms and conditions of enlistment (Empaneling) proceedings and includes the invitation to enlist (empanel);
- vi) "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.;

- vii) "Central Public sector enterprise" means a body incorporated under the Companies Act or established under any other Act and in which the Central Government or a Central enterprise owns more than 50 (fifty) per cent of the issued share capital;
- viii) "Class-I local supplier" means a supplier or service provider, whose goods, services or works offered for procurement, meet the minimum local content as prescribed for 'Class-I local supplier' under the Public Procurement (Preference to Make in India), Order 2017;
- ix) "Class-II local supplier" means a supplier or service provider, whose goods, services or works offered for procurement, meets the minimum local content as prescribed for 'Class-II local supplier' but less than that prescribed for 'Class-I local supplier' under the Public Procurement (Preference to Make in India), Order 2017;
- x) "Competent Authority" or the "Competent Financial Authority" means the officer (s) who have been delegated the financial powers to approve the decision.
- xi) 'Competent Technical Authority' (CTA) shall mean the appropriate technical authority who is delegated with relevant powers to accord technical approvals, in respect of the indented works as per the DOP.
- xii) "Consultancy services" covers a range of services that are of an advisory or professional nature and are provided by consultants. These Services typically involve providing expert or strategic advice e.g., management consultants, policy consultants or communications consultants, Advisory and project related Consultancy Services and include, for example: feasibility studies, project management, engineering services, Architectural Services, finance and accounting services, training and development. It may include small works or supply of goods or non-Consultancy services which are incidental or consequential to such services;
- xiii) "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, nondiscriminatory and efficient procurement through transparent procedures;
- xiv) "Engineer" or "Engineer-in-charge" means the means the person designated to act for and on behalf of KPL for execution of the work as per the contract agreement and requirement of the User department

- xv) "Enlisted Contractor" or Empaneled Contractor means any contractor who is on a list of enlisted / empaneled contractors of the Port;
- xvi) "Enlisting authority" means an authority which enlists bidders for different categories of procurement;
- xvii) "Enlistment" means including the name of the contractor in the list of after verification of credentials.
- xviii) "Finance Concurrence" means the acceptance by Finance department after scrutiny that the proposal for works or goods is in accordance with the guidelines and within the framework of Rules and regulations and that there is a budget provision for the same.
- xix) "Goods" includes all articles, material, commodity, livestock, furniture, fixtures, raw material, spares, instruments, machinery, equipment, industrial plant, vehicles, aircrafts, ships, medicines, railway rolling stock, assemblies, sub-assemblies, accessories, a group of machineries comprising an integrated production process or such other categories of goods or intangible products like software, technology transfer, licenses, patents or other intellectual properties purchased or otherwise acquired for the use of Government but excludes books, publications, periodicals, etc., for a library. The term 'goods' also includes works and services which are incidental or consequential to the supply of such goods, such as, transportation, insurance, installation, commissioning, training and maintenance;
- xx) "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 concerned department to procure goods, works or services specified therein;
- xxi) "Inventory" means any material, component or product that is held for use at a later time;
- xxii) "Invitation to (pre-)qualify" means a document including any amendment thereto published by the Port (procuring entity) inviting offers for pre-qualification from prospective bidders;
- xxiii) "Invitation to Enlist/emapanel" means a document including any amendment thereto published by the Port inviting offers for bidder enlistment from prospective bidders;
- xxiv) "Local Content" means the amount of value added in India which shall, unless otherwise prescribed by the Port or Nodal Ministry, be the total value of the item

procured (excluding net domestic indirect taxes) minus the value of imported content in the item (including all customs duties) as a proportion of the total value, in percent.

- xxv) "Non-Local supplier" means a supplier or service provider, whose goods, services or works offered for procurement, has local content less than that prescribed for 'Class-II local supplier' under the Public Procurement (Preference to Make in India), Order 2017.
- xxvi) "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 Port, which informs the potential bidders that it intends to procure goods, services and/ or works.;
- xxvii) "Other Services" (including the term 'Non-consultancy Services' in certain contexts) are defined by exclusion as services that cannot be classified as Consultancy Services. Other services involve routine repetitive physical or procedural non-intellectual outcomes for which quantum and performance standards can be tangibly identified and consistently applied and are bid and contracted on such basis. It may include small works, supply of goods or consultancy service, which are incidental or consequential to such services. Other Services may include transport services; logistics; clearing and forwarding; courier services; upkeep and maintenance of office/ buildings/ Estates (other than Civil & Electrical Works etc.); drilling, aerial photography, satellite imagery, mapping and similar operations etc;
- xxviii) "Outsourcing of Services" means deployment of outside agencies on a sustained long-term (for one year or more) for performance of other services which were traditionally being done in-house by the employees Ports (e.g. Security Services, Horticultural Services, Janitor/ Cooking/ Catering/ Management Services for Guest Houses, Cleaning/ Housekeeping Services, Messenger Services, and so forth). Besides outsourcing, other services also include procurement of short-term standalone services.
- xxix) "Port" refers to Kamarajar Port Limited (KPL in short) in this manual.
- xxx) "Pre-qualification (bidding) procedure" means the procedure set out to identify, prior to inviting bids, the bidders that are qualified to participate in the procurement;



- xxxi) "Pre-qualification document" means the document including any amendment thereto issued by the port, which sets out the terms and conditions of the pre-qualification bidding and includes the invitation to pre-qualify;
- xxxii) "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;
- xxxiii) "Procurement contract" (including the terms 'Purchase Order' or 'Supply Order' or 'Withdrawal Order' or 'Work Order' or 'Consultancy Contract' or 'Contract for Other Services' under certain contexts), means a formal legal agreement in writing relating to the subject matter of procurement, entered into between the Port (procuring entity) and the contractor, 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";
- xxxiv) "(Public) Procurement Guidelines" means guidelines applicable to Public Procurement, consisting of under relevant context a set of – i) Statutory Provisions (The Constitution of India; Indian Contract Act, 1872; Sales of Goods Act, 1930; and other laws as relevant to the context); ii) Rules & Regulations (General Financial Rules, 2017; Delegation of Financial Power Rules and any other regulation so declared by the Government); iii) Manuals of Policies and Procedures for Procurement (of Goods; Works; Consultancy/ other services or any for other category) promulgated by the Ministry of Finance and iv) Procuring Entity's Documents relevant to the context (Codes, Manuals and Standard /Model Bidding Documents);
- xxxv) xxxi) "Procurement process" means the process of procurement extending from the assessment of need; issue of invitation to pre-qualify or to enlist or to bid, as the case may be; the award of the procurement contract; execution of contract till closure of the contract;
- xxxvi) "Procuring Entity" (including Procuring Authority or Employer) means Kamarajar Port Limited;

- xxxvii) "Project" means one-time, short-term expenditure resulting in creation of capital assets, which could yield financial or economic returns or both. A project may comprise one or more related but independent task-oriented 'Works'. Projects may either be approved as individual projects within an approved scheme envelope or on a stand-alone basis. They may be executed through budgetary, extra-budgetary resources, or a combination of both.
- xxxviii) 'Project Manager/Engineer-in-Charge' shall mean the person(s) designated to act for and on behalf of KPL for execution of the work as per requirement of User/Indenter.
- xxxix) 'Project Coordinator/Site-in-Charge' shall mean the person(s) nominated by Head of Engineering Services as first person responsible for total coordination, supervision & execution of work with an objective to complete the work within schedule.
- xl) "Prospective bidder" means anyone likely or desirous to be a bidder;
- xli) "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 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;
- xl ii) "Registration" means simply registering the bidder/ supplier/ service provider/ contractor, without any verification, say on a website etc.
- xl iii) "Reverse auction" (or the term 'Electronic reverse auction' in certain contexts) means an online real-time purchasing technique utilized by the procuring entity to select the successful bid, which involves presentation by bidders of successively more favorable bids during a scheduled period of time and automatic evaluation of bids;
- xl iv) "Service" is defined by exception as any subject matter of procurement other than goods or works, except those incidental or consequential to the service, and includes physical, maintenance, professional, intellectual, training, consultancy and advisory services or any other service classified or declared as such by a procuring entity but does not include appointment of an individual made under any

law, rules, regulations or order issued in this behalf. It includes 'Consultancy Services' and 'Other (Non-consultancy) Services';

- xliv) "Subject matter of procurement" means any item of procurement whether in the form of goods, services or works or a combination thereof;
- xlvi) "Technical Sanction" means an **order of a competent authority sanctioning a properly detailed estimate of the cost of a work of construction or repair proposed to be carried out in the Public Works Departments.**
- xlvi) 'Tender Committee' or 'Tender Evaluation Committee' for finalizing the bid evaluation criteria (BEC), and evaluating the tenders etc., shall be constituted for each work / tender and shall comprise representatives from the concerned Engineering Services, Finance and the Indenter as per DOP.
- xlvi) "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.
- xliv) 'Works Manual shall mean a set of instructions/guidelines/actions to be undertaken to execute any work.

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## Chapter-1

# INTRODUCTION TO WORKS MANUAL

### 1.1. Scope

The Engineering/Operating Departments are entrusted with the task of identifying, conceiving and formulating all the development works of Kamarajar port including preparation of detailed project report, detailed estimates and drawings, invitation, finalization of tenders and execution of the projects including co-ordination with various local bodies/outside agencies/departments at various stages of planning, design and execution. The Engineering/Operating Departments are also responsible for the maintenance and up-keep of all the assets of the Kamarajar Port. The assets include roads, sewer lines, water supply system, port and dock structures, port railway system, the estate including residential land, office building complex stack yards, dredging works, sub-stations, power supply, electrical and mechanical equipments, Fire tenders, jetties, berths, floating crafts etc.

### 1.2. Applicability of this Manual

#### 1.2.1. General

This Manual is intended to serve as a guide and draw attention to basic norms and practices governing public procurement. These guidelines are not applicable to projects funded by World Bank and other International Funding Agencies, as, such external aid/ loans etc. received are covered under the applicable policies/ legal agreements executed as permitted under Rules 264 of GFR 2017. For revision, interpretation, clarification and issues relating to this manual, the Procurement Policy Division, Department of Expenditure, Ministry of Finance would be the nodal authority.

#### 1.2.2. Works

This manual is applicable to procurement of Works which is defined as "any activity, sufficient in itself to fulfil an economic or technical function, involving construction, fabrication, repair, overhaul, renovation, decoration, installation, erection, excavation, dredging, and so on, which make use of a combination of one or more of engineering design, architectural design, material and technology, labour, machinery and equipment. Supply of some materials or certain services may be incidental or consequential to and part of such works.

The Term "Works" means

- (i) Civil works relating to construction of berths/jetties, roads, railway, bridges, buildings, boundary walls, storage tanks, RCC/ Steel structures, dredging, irrigation systems, water supply, sewerage facilities, land surveying, land scaping and earthworks and major/minor repairs and maintenance of civil structures and so on.
- (ii) Mechanical, Electrical and IT related works involving fabrication, installation, erection, repair and maintenance of a mechanical or electrical nature relating to machinery and plants. This includes sub-stations, power supply, electronic equipments, networking and communication equipment etc.
- (iii) Marine Works relate to works enabling safe berthing activities, floating crafts, Fire tenders, survey, dredging Environmental issues, marine pollution, major/minor repairs and so on.

#### **1.2.3. Classification of Works**

The works are classified into two categories: (a) Capital works and (b) Revenue Works. The Civil Works are further classified into (i) Original Works (ii) Minor Works and (iii) Repair and maintenance Works.

Capital Works include, a) all new constructions/equipments having life of more than 5 Years and b) Restorative / major repair of assets which increase life of asset beyond original life expected by 5 Years.

#### **Capital Works**

- a) "Original works" means all new constructions, site preparation, additions and alterations to existing works. It also includes special repairs to newly purchased or previously abandoned buildings or structures, including remodeling or replacement.
- b) "Minor works" mean works which add capital value to existing assets but do not create new assets.

#### **Revenue Works**

- a) "Repair works" means works undertaken to maintain building, equipment and fixtures. Expenditure on Repairs and Maintenance Work does not add to the value of the asset and only restores the functionality of the asset. Repair Work can be further categorized as

- (i) Annual repairs covering routine and yearly operation and maintenance work on buildings and services.
- (ii) Special repairs, which are undertaken as and when required, covering major repairs to existing buildings or services. Some types of the Special repairs may also qualify to be categorized as 'Original Work'.

### **1.3. Basic Aims of Procurement – Five R's of Procurement**

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

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

### **1.4. Fundamental Principles of Procurement**

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

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

Detailed principles are given in Appendix-WM-S3/A2.

### **1.5. Standards (Canons) of Financial Propriety**

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

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

- i) Every officer is expected to exercise the same vigilance in respect of expenditure incurred from public moneys as a person of ordinary prudence would exercise in respect of expenditure of his own money.*
- ii) The expenditure should not be prima facie more than the occasion demands.*
- iii) No authority should exercise its powers of sanctioning expenditure to pass an order which will be directly or indirectly to its own advantage.*
- iv) Expenditure from public moneys should not be incurred for the benefit of a particular person or a section of the people, unless -*
  - a) a claim for the amount could be enforced in a Court of Law, or*
  - b) The expenditure is in pursuance of a recognized policy or custom.*

*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."*

## **1.6. Public Procurement Portal**

### **1.6.1. Central Public Procurement Portal**

Central Public Procurement Portal (CPPP) has been designed, developed and hosted by National Informatics Centre (NIC, Ministry of Electronics & Information Technology) in association with Dept. of Expenditure to ensure transparency in the public procurement process.

- The CPPP has e-publishing and e-procurement modules.
- It is mandatory for all Autonomous and Statutory Bodies to publish on the CPPP all their tender enquiries and information about the resulting contracts.
- CPPP provides access to information such as documents relating to pre-qualification, Bidders' enlistment, Bidding documents; details of bidders, their pre-



qualification, enlistment, exclusions/ debarments; decisions taken regarding prequalification and selection of successful bid.

- It is mandatory to receive all bids through e-procurement portals in respect of all procurements.
- Ports 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 (CPPP) developed by NIC.
- Ports may either use e-procurement solution developed by NIC or engage any other service provider following due process. In the latter case, data on tenders are to be published on CPPP as well through web-service.

#### **1.6.2. Government e-Marketplace (GeM)**

To ensure better transparency and higher efficiency an online Government e-Marketplace (GeM– an e-commerce marketplace) has been developed for common use goods and services. In GeM

- a) Product or services are offered by a number of eligible sellers and
- b) all eligible buyers can view/ compare all the product/ services and select the product/ services offered by any one of the sellers.
- c) online marketplaces aggregate product/ services from a wide array of providers,
- d) selection is usually wider,
- e) availability is higher,
- f) prices are more competitive than in vendor-specific online retail stores.

The procurement process on GeM is online and electronic - end to end from placement of supply order to payment to suppliers. The registration of suppliers on GeM is online and automatic based on ID authentication etc. The procuring authorities have to assess the reasonability of rates. Buyer's transactions are processed by the GeM portal and then product/ services are delivered and fulfilled directly by the participating sellers. Tools of reverse bidding and e-auction are also available which can be utilised for the procurement of bulk quantities.

#### **1.7. Legal Aspects Governing Public Procurement of Works**

A public procurement contract, besides being a commercial transaction, is also a legal transaction. There are a number of laws that may affect various commercial aspects of

public procurement contracts. A public procurement professional is expected to be generally aware of the implications of following basic laws affecting procurement of works; however, he or she is not expected to be a legal expert. In different contexts of the scope of work, an additional set of laws may be relevant.

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

*(For salient features of laws applicable to public procurement, please refer to Appendix 8 to 11 of Section-3).*

### **1.8. The Law of Agency – applicable to Procurement of Works**

In addition to Laws which are applicable to Public Procurement of Works mentioned above, the Law of Agency (Section 182 to section 238, of the Indian Contract Act, 1872) implies that Contractor would be an Agent of the Procuring Entity, to execute the works on its behalf. Hence, there exists a Principal/ Employer and Agent relationship between Procuring Entity and such Contractor. As per this law, the employer is vicariously legally and financially liable for actions of its Agents. For example, a violation of certain labour laws in deputing staff for Procuring Entity's contract by the agents may render the Procuring Entity legally and financially liable for such violations, under certain

circumstances. The Procuring Entities need to be aware of such eventualities. Standard Bidding Documents should take care of this aspect.

### **1.9. The Basic Principles of undertaking works**

- i) No new works should be sanctioned without
  - a) Careful assessment of the assets or facilities already available and time and cost required to complete the new works.
  - b) A concept plan/ preliminary drawing has been approved by the Authority competent to accord sanction. While designing projects to the extent possible, principles of Life Cycle Costing may also be considered;
- ii) As budgetary resources are limited and granted on annual basis, adequate provisions should be ensured for works and services already in progress before new works are undertaken.
- iii) No project or work will be split up to bring it within the sanctioning powers of a lower authority.
- iv) For purpose of approval and sanctions, a group of works which forms one project, shall be considered as one work. The approval or sanction of the higher authority for such a project which consists of such a group of work should not be circumvented by resorting to approval of individual works using the powers of approval or sanction of a lower authority.

If the component parts of a project are mutually independent of each other and are not dependent on the execution of one or more such component parts, each such part should be treated as a separate project.

In case the functioning of a project is dependent on the execution of one or more other projects, the entire group of such projects should be taken as a single scheme/ project and provision made accordingly.

If however, a scheme consists of revenue component, capital expenditure and loan content, etc. the provision for which is required to be exhibited separately under respective Heads of Account, there is no objection to the provision being made in the relevant Heads of Account; but the authorities concerned should ensure that the sanction of the Competent Authority is obtained for the integrated scheme as a whole depending on the total cost of the scheme. It will not be permissible in such

cases to split up a scheme treating each part as a scheme in order to avoid the sanction of a higher authority.

- v) Any anticipated or actual savings from a sanctioned estimate for a definite project, shall not, without special authorisation, be applied to carry out additional work not contemplated in the original project.
- vi) Any development of a project considered necessary while a work is in progress, which is not contingent on the execution of work first sanctioned, shall have to be covered by a supplementary estimate.
- vii) The construction period and sanctioned cost stipulated in the sanction of Project will not be exceeded as far as possible.
- viii) Port Management shall put in place by means of a separate circular, as far as possible, empowered project teams for all large value projects and these teams should be tasked only with project execution and not given other operational duties.
- ix) The competent financial authority according Financial Concurrence should be kept informed of the physical and financial progress of the work till their completion through regular periodical reports
- x) No works shall be commenced or liability incurred in connection with it until:-
  - a) Feasibility Study Report / Preliminary Project Report (PPR) has been prepared in case of works of substantial value
  - b) A proper Detailed Project Report (DPR) has been prepared by a competent agency;
  - c) Administrative approval has been obtained from the appropriate authority, in each case;
  - d) Expenditure Sanction to incur expenditure has been obtained from the competent authority;
  - e) Technical approval has been obtained of the detailed and coordinated design of all the Architectural, Civil, Electrical, Mechanical, Marine, Horticulture and any other services included in the scope of the sanction and of the Detailed Cost Estimates containing the detailed specifications and quantities of various items prepared on the basis of the schedule of rates maintained by CPWD or other Public Works Organizations.

- f) Funds to cover the work, which will be executed, at least during the current year, have been provided by competent authority.
  - g) Tenders have been invited and processed in accordance with rules.
  - h) Award of work and execution of Contract Agreement;
  - i) A work order has been issued.
- xi) Time taken in grant of statutory and other clearances also contributes to the time and cost overrun in public projects. Concerned department should plan for obtaining all necessary clearances quickly and proper efforts be made for the same, which also should be duly recorded. The progress regarding follow-up of obtaining the statutory clearances should be closely monitored.
- xii) The process of land acquisition shall be started by the Port, well ahead and completed entirely, or at least substantially, before the work is started.
- xiii) It is desirable to have 100% of the required land in possession before award of contract; Minimum necessary encumbrance free land should be available before award of contract. The minimum may be determined based on the circumstances of each case or general guidelines, issued by the concerned authorities. However, it may not always be possible to have the entire land due to prevailing circumstances. Also, it may not be prudent to put the entire process of award of contract on hold for want of the remaining portion of land, which in the assessment of public authority or the project executing authority, could possibly be acquired in a targeted manner after award of the contract, without affecting progress.
- xiv) Availability of auxiliary services to be ensured - like roads/access, power, water, solid & liquid waste disposal system, street lighting and other civic services shall be ensured.

#### **1.10. Flow Process of Procurement of Works**

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

- i) Perspective Planning for works;
- ii) Preparation of Preliminary Project Report (PPR) or Rough Cost Estimate
- iii) Acceptance of necessity and issue of in-Principle Approval;
- iv) Preparation of Detailed Project Report (DPR) or Preliminary Estimate (PE);

- v) Administrative Approval and Expenditure Sanction (A/A&E/S) or 'Go ahead' Approval;
- vi) Detailed Design, Estimate and Technical Sanction;
- vii) Appropriation/ re-appropriation of funds;
- viii) Preparation of Bid documents, Publication, Receipt and Opening of Bids;
- ix) Evaluation of Bids and Award of Work;
- x) Execution and Monitoring of works and Quality Assurance.

**Note:** For repair works costing up to Rs. 60 (sixty) lakhs (Amendment to GFR dated 10-7-24) preparation of DPR may be dispensed with, since repair work does not need detailed designing. Sanction may be accorded by the competent authority based on Preliminary Estimate and Justification documents.

The flow process of Procurement of Works is given at Annexure – WM-S1/01.

### **1.11. Powers to Sanction Works**

The powers delegated to various levels of officers to accord administrative approval, sanction expenditure and re-appropriate funds for works shall be regulated as per the Delegation of Financial Powers.

### **1.12. Preference to Make in India**

To encourage 'Make in India' and promote manufacturing and production of goods and services in India with a view to enhancing income and employment, Department of Promotion of Industry and Internal Trade (DPIIT), Ministry of Commerce and Industry, Government of India, issued Public Procurement (Preference to Make in India), Order 2017 (Revised order No. P-45021/2/2017-PP (BE-II) issued by DPIIT dated 16-09-2020). The order is issued pursuant to Rule 153 (iii) of GFR, 2017. The Order is applicable on the procurement of Goods, Works and Services. The detailed Procedure is given at Appendix-WM-A/2 (Section-1)

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## Chapter-2

# PLANNING OF WORKS

### 2.1 Planning in advance

The Works whether of Capital or Revenue in nature shall be planned well in advance and invariably included in the Budgets of the Port. The Plans shall be futuristic considering the potential need of Traffic or Operations or Administration. The amount required in a financial year shall be planned so as to have smooth cash flow required to complete the works. Phasing of expenditure needs to be done in a scientific way so as to avoid the idling of financial resources or last-minute need for adjustments. There shall also be a provision for annual review of the plan for making modifications, if any. The following broad guidelines may be followed for planning the works.

### 2.2 Capital Works – Major

“Original works” means all new constructions, site preparation, additions and alterations to existing works. It also includes special repairs to newly purchased or previously abandoned buildings or structures including remodeling or replacement.

- i) Port shall prepare a perspective plan for undertaking different types of works.
- ii) Prepare a Background note of the work/ project justifying the need for the work
- iii) A preliminary project report (PPR) or Rough Cost Estimate shall be prepared (by the Works Committee if any) based on Land, Site Details, functional and space requirements (or Various Facilities, Special Requirements/ Features) and Broad Specifications.
- iv) Geotechnical investigation for obtaining soil report and topographical survey for determining the soil condition.
- v) Location coordinates for proposed surface facilities/pipelines
- vi) Reference to Concept Plans/ Preliminary Drawings, if any and their acceptance - This shall indicate the details of Concept Plans/ Preliminary Drawings prepared and their approval by the requisitioning authority.

- vii) Availability of land - There should be a clear indication about the availability of land required for completion of whole project. The land shall be made available free of all encumbrances
- viii) Availability of auxiliary services - like roads, power, water, solid & liquid waste disposal system, street lighting and other civic services shall be ensured.
- ix) Identifying Agency of Procurement – through direct procurement, tendering or outsourcing to a PSU or a government agency as a deposit work.
- x) If relevant, Cost benefit analysis of the project, including evaluation of options for cost sharing/ recovery (user charges) for infrastructure/ services. Principles of Life Cycle Cost may also be considered, to the extent feasible.
- xi) Time of the completion – This will consist of two parts, one for pre- construction activity till award of the work and the other one for the execution;
- xii) Environmental impact assessment (EIA) of the project and approval thereof, wherever applicable;
- xiii) Social Impact Assessment and Resettlement and Rehabilitation: Social Impact Assessment needs to be done, based on baseline socio-economic survey and census survey data, other social safeguard policies designed to protect the rights of the affected persons and communities as applicable;
- xiv) List of Approval of Statutory Bodies required;
- xv) Approvals: In case the scheme or works requires approval from the Ministry, advance action before initiating the tendering process shall be obtained.
- xvi) Annual plan allocation and cash flow
- xvii) Source & availability of funds. This is critical in case of grants to be received from the Ministry.
- xviii) Systems to be adopted for project monitoring;
- xix) Bidding Systems - Single, two parts, pre-qualification.

### **2.3 Capital Works - Minor**

“Minor works” mean works which add capital value to existing assets but do not create new assets. There may not be any requirement of preparing a Detailed Project Report



(DPR) or requirement of approvals from the Ministry or local bodies. These works include additions to roads, culverts, horticulture works, rest rooms, canteens, and so on. A simple procedure as under can be followed.

- i) Requisition of work when the need of the work arises due to functional requirements of various departments.
- ii) Considering the requirements of work to be carried out, the user department, executing department, service group shall prepare Basic scope of work and preliminary cost estimates
- iii) It must be ensured that the detailed scope of work to be taken up reflects the indenter's intent and "fit" purpose.
- iv) Carryout Site survey/physical check in case of revamping /modification work for preparing the related scope of work for the bid package.
- v) Check the provision in budgets to meet the expenditure.
- vi) Determine the time required for completion of the works.
- vii) Decide on the urgency of the works and the bidding procedures such as limited tenders or single tenders etc
- viii) Obtain technical sanction.
- ix) Obtain Administrative and Finance approvals.

## **2.4 Maintenance or Repair works or Revenue works**

2.4.1. "Repair works" means works undertaken to maintain building, roads, yards, Berthing Structures, railway sidings. Breakwaters, boundary wall, equipment, fixtures and so on. Expenditure on Repair Work does not add to the value of the asset and only restores the functionality of the asset. Repair Work can be further categorized as (i) Annual repairs covering routine and yearly operation and maintenance work on buildings and services. (ii) Special repairs, which are undertaken as and when required, covering major repairs to existing buildings or services. These cover major repair or replacement or remodeling of a portion of an existing structure or installation or other works due to major breakdowns, or deterioration, or periodic renewal, which do not result in a genuine increase in the value of the property.

- Maintenance Works (Revenue works) include, all works undertaken for maintenance of existing structure / assets in proper condition with in its life span.
- Repair and maintenance work essentially include the works concerning prevention of or making good the natural wear and tear and damages and may also include minor modifications to existing assets caused by their being in a continuous state of disrepair.
- Improvement of alignment, widening of carriageway and providing super elevation of curves etc.
- Improvement or repair of Residential/Non-Residential/Guest house buildings including painting.
- Improvement to/reconstruction of the surface in some different materials where it is desirable to do so at the time of renewing a road surface shall be grouped under maintenance works provided the works in question do not form part of a comprehensive scheme or project.
- A time-frame for carrying out special repair work may be fixed and a programme for carrying out the annual repairs may be drawn by the concerned officer at the commencement of each year.
- At the beginning of the year, a survey of all such assets may be conducted to identify the items requiring special repairs. Works required ensuring safety of any structure may be given priority.
- Repairs to Damage caused by outside parties on recovery basis.
- Under emergency situations normally arising out of natural calamities e.g. flood, cyclone etc. and /or accidents etc. when human life is endangered/normal operation of the port works are disrupted and further loss of property is apprehended and repair works are to be taken up without any loss of time, execution of works may be taken up by issuing orders to shortlisted contractors.

In all the above cases

- i) Considering the requirements of work to be carried out, the user department, executing department, service group shall prepare Basic scope of work and preliminary cost estimates
- ii) Check the provision in budgets to meet the expenditure.

- iii) Determine the time required for completion of the works.
- iv) Decide on the urgency of the works and the bidding procedures such as limited tenders or single tenders etc
- v) Obtain technical sanction. Technical sanction is not required for general maintenance works
- vi) Obtain Administrative and Finance approvals.

2.4.2. For repair works costing up to Rs. 60 (sixty) lakhs (Amendment to GFR dated 10-7-24) preparation of DPR may be dispensed with, since repair work does not need detailed designing. Sanction may be accorded by the competent authority based on Preliminary Estimate and Justification documents.

## **2.5. Emergency works**

Emergency works are of two types:

- a) Emergency works arising out of circumstances such as Cyclone, Tsunami, fire, flood, earthquake, war, civil disturbance, accidents, Pandemic, equipment breakdown and so on,
- b) Emergency arising out of a damage, accident or otherwise during operations / construction caused by a Third party. Eg. Ships hitting the fenders or berth surface, falling of equipment damaging electrical cables and obstruction to approach roads etc

### **2.5.1. Emergency works arising out of unexpected circumstances**

These include works that may be resorted to operational urgency caused due to fire, flood, earthquake, war, civil disturbance, accidents, equipment breakdown etc. and when it is necessary to restore normalcy (for reasons including those related to environment, safety and security) of people, equipment, machinery, civil, mechanical, marine or other works (including third party property) in the shortest time and normal methods of tendering are not feasible. The following plan of action may be adopted.

- i) The User/indenter shall record the operational urgency clearly stating the situation due to which such emergency has arisen with proper records.

- ii) Immediate report shall be given to the competent authority with a preliminary estimate and likely expenditure. In case it is not feasible, the Concerned Officer may obtain a verbal or formal go ahead from the Competent Authority.
- iii) Attempts shall be made by the Concerned Officer for obtaining competitive rates, as far as practicable, from the registered contractors available through inviting "spot bids/quotations" and the order to commence the work
- iv) Without calling quotation, Manager/Chief Manager/DGM of the respective department may award/order on spot directly to the agency to meet the emergency, subject to the delegation of powers. Subsequently formal approval of the competent authority shall be obtained.
- v) Work may be commenced without detailed estimate or formal technical / administrative sanction in situations where timely completion of the work is of utmost importance.
- vi) When human life is endangered or normal operation of the port works are disrupted and further loss of property is apprehended, emergency repair works are to be taken up without any loss of time, works may be taken up by issuing orders to shortlisted contractors.
- vii) The Engineer/Officer has to ensure that the contractors engaged for emergency works mobilize their resources including men, materials, equipment etc. at very short notices and may have to work under difficult conditions beyond normal duty hours or even round the clock. Due consideration in the form of additional surcharge may be made while assessing the probable cost for which the Heads of Divisions are authorized to take prompt decision on the spot, but to be subsequently communicated to the Competent Authority at the earliest available opportunity.
- viii) An "Emergency Certificate" containing the following information shall be submitted by the Concerned Officer to his higher authority at the earliest available opportunity for information and communicating post-facto approval of the Competent Authority in due course.
  - a) Description of work.
  - b) Circumstances which warrant the Emergency.
  - c) Maximum probable cost likely to be involved.
  - d) Date and time of commencement of work.
  - e) Probable date of submission of detailed estimate.
  - f) Provision of funds, if any, made at the Concerned department level.

### 2.5.2. Emergency arising out of a damage, accident caused by a Third party

In case of emergency arising out of a damage, accidental or otherwise caused to the Port Property by a Third party, when the operating department is of the opinion that such damages, if left unrepaired, will cause operational difficulty and request accordingly in writing, the concerned Officer may take up the repair work pending acceptance of liability of the damage by the party responsible after intimating his Superior Officers regarding the accident and proceed with the repairs only after obtaining at least oral sanction from the competent authority. The requesting department shall, in cases, obtain post facto sanction to the estimate as soon as the same is forwarded to them.

The following points to be remembered for taking up such works.

- i) The restoration works shall be undertaken against a requisition from the operating department where the damage has occurred.
- ii) The requisitioning department is responsible for realization of the cost of making good the damages from the party causing the damage or for taking legal steps as necessary.
- iii) On receipt of information a joint inspection shall be carried out by the Concerned Officer with his counterpart of the requisitioning department to ascertain the extent of damage and urgency of repairs.
- iv) The requisitioning department shall be requested to name the party responsible for causing the damage and bring suitable representative of the party at the time of joint inspection, whenever possible.
- v) The joint inspection report should be prepared indicating the date, time and nature of the accident causing the damage.
- vi) An estimate for probable cost of repair at the prevalent market rate plus departmental charges shall be forwarded to the requisitioning department for obtaining necessary administrative approval and further necessary action.
- vii) The requisitioning department shall collect the estimated cost of works in advance from the party responsible for such damage. In case, it is not possible but works are required to be taken up immediately the party may be asked to submit an Indemnity Bond followed by BG for the equal amount.

- viii) Actual cost of repairs as per final bill after execution of the work including approved departmental charges shall be intimated to the requisitioning department.
- ix) The requisitioning department has to ensure that the amounts are recovered from the concerned Third Party

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## Chapter-3

# PREPARATION OF ESTIMATES

### 3.1 Cost Estimate

Every prudent person or organization would like to know the cost of the product before purchase or cost of the Work before it is taken up. It is a pre requisite to be followed before the work is taken up or liability in connection with it. The cost and methodology to be followed depends upon the Project or work. In case of simple works, detailed estimates can be prepared before submitting for approvals. Whereas for projects / works involving technical capabilities and intellectual abilities, the estimates may require a Preliminary Project Report (PPR) and a Detailed Project Report (DPR).

Broad stages involved in various works regarding preparation of estimates are given below :

The estimate is the probable cost of work. Estimates shall be of two types:

- i. Preliminary Estimates
- ii. Detailed Estimates

### 3.2. Minor works or Repair Works or Maintenance Works

In the case of Minor works or Repair works where there is no necessity of preparing the PPR or DPR, the following procedure can be followed.

#### 3.2.1. Preliminary estimates

Preliminary estimate is a quick estimate to find out the cost of a work. This is an approximate estimate to determine an approximate cost in a short time. It is also known as a rough estimate made in any Project or works in early stage of design. Preliminary estimates are necessary to obtain Administrative approval in the case of any work, the emphasis being given to the proposed work. The estimate should include full description of the work, justification, Head of Account/allocation and budget provision of the work proposed to be under taken wherever available.

Guidelines for Preparation of Preliminary estimates:

- a) Calculate approximate value of the work on the basis of the plinth area of the building/shed or length of road/wharf etc. based on prevalent market rates.
- b) Provided for services like sanitary, water-supply, drainage and electrical installations, etc.
- c) Keep necessary provision for dismantling/shifting of the existing structures and service facilities, if any coming in the way of execution of the proposed work.

### 3.2.2. Detailed estimates

The Detailed Cost estimates of the work shall reflect to the extent possible likely cost of completion of work as per the scope of work. Detailed estimates are prepared by giving full description of every item of work contemplated to be undertaken and the quantity of each item and should be drawn from relevant detailed drawings, if any. Detailed estimate is essential for giving technical sanction to the proposed work.

Guidelines for Preparation of Detailed estimates:

- a) Prepare Detailed Estimate after receiving sanction of the Competent Authority to the preliminary estimate.
- b) Prepare detailed designs and drawings.
- c) Prepare Bill of Quantities. Quantities of various items of the works shall be worked out on the basis of investigation, surveys, and drawings prepared as per the scope of the work. Quantities shall be calculated fairly accurately so that during execution of work there are no excesses. The estimate shall provide for all the items likely required for work.
- d) Adopt rates of the PWD/CPWD/NHAI/TNRDC/TWAD/CMWSSB/MoRTH/Indian Railway/CIRIA etc with updated cost index
- e) Where CPWD/PWD Schedule of Rates are not available, LAR (Last Awarded Rates) duly updated by cost index for the current year or derived from the other existing rates by interpolation can be adopted.
- f) If such LAR is not available, then the rates shall be worked out with the help of budgetary quotes and/or market rates.
- g) While carrying out market survey/collecting budgetary quotes etc., no commitments and assurances of awarding works will be given to quoted vendors/ suppliers/ contractors.



- h) No profit margin will be added to the estimates where ever budgetary quotes are adopted for complete item of work.
- i) Cost estimates for specialized nature of works shall be prepared using project cost data obtained on budgetary basis or drawn from execution of similar earlier works, or use of costing software/database or through expert services of experienced project management / design consultant.
- j) In case of hiring of equipment / craft, the estimate be based on previous year rates duly revised to cover escalation or on budgetary quotes.
- k) Where rate for an item is not available in the Schedule, a rate may be arrived at by proper Rate analysis allowing 15% towards overhead and profit on prevalent market rate for cost of labour plus material. Following points shall be kept in view while arriving at a rate based on analysis.
- i) Specifications for materials
  - ii) Quantity of materials and volume of the work
  - iii) Number of different types of labour and their respective wages
  - iv) Location of the work, viz Shore work, river work, under water work etc
  - v) Distance and mode of transportation in respect of materials tools, plants, equipments etc.
  - vi) Charge for supply of electricity, water, pneumatic power etc if relevant to the particular item of work
  - vii) Provision for Night work: Additional cost shall be provided in the estimates to cover for night works and for working under difficult conditions
  - viii) Provision for Contingencies [(a) Estimated cost up to Rs. 1 Crore ..... 5% (b) Estimated cost more than Rs. 1 Crore ... 3%, subject to minimum of Rs. 5 Lakhs]
  - ix) Provision for reimbursement of ESI, PF, GST, Labour Escalation etc., has to be added to the estimate amount for Civil / conservancy / labour deployment works as applicable.
- l) Other considerations in the estimates
- Utility shifting
  - Project monitoring and supervision by external agencies

- Third party inspections
- Third party quality audit
- Design charges for external agencies
- Diversion of roads etc.

### **3.3. Major Capital Works/ Projects**

These works include all new constructions involving sizeable amount of outlay and time for completion with an objective to generate/supplement revenue earnings and/or addition to the Assets or creation of new infrastructure facilities. It includes the equipment/ infrastructure leading to Capacity Addition to the port and forms part of Capital Plan expenditure. Port shall prepare a perspective plan for undertaking such different types of works. There shall also be a provision for annual review of the plan for making modifications, if any.

In view of large outlays (as decided by the Port Management from time to time), the Techno-economic feasibility Report/Feasibility Report needs to be analysed upfront before the project is put to tender.

#### **3.3.1. Preparation of Preliminary Project Report (PPR)**

A preliminary project report (PPR) or Rough Cost Estimate shall be prepared by the concerned department based on availability of Land, Site Details, functional and space requirements (or Various Facilities, Special Requirements/ Features and Broad Specifications for specialized Equipment and Plants), Layout Plans etc, with the technical details. Availability of auxiliary services - like roads, power, water, solid & liquid waste disposal system, street lighting and other civic services shall be ensured. Reference to Concept Plans/ Preliminary Drawings, if any and their acceptance shall be ensured. Preliminary estimate or Preliminary Project Report or Feasibility Report is necessary to obtain administrative approval in the case of any work before the work involving medium/ large capital outlay is taken up. The following guidelines may be followed for preparing the Feasibility report/ PPR.

- i) Calculate approximate value of the work on the basis of the plinth area of the building/shed or length of road/wharf etc. based on prevalent market rates.
- ii) Provide for services like sanitary, water-supply, drainage and electrical installations, etc.
- iii) Keep necessary provision for dismantling/shifting of the existing structures and service facilities, if any coming in the way of execution of the proposed work.

- iv) If relevant, Cost benefits analysis of the project, including evaluation of options for cost sharing/ recovery (user charges) for infrastructure/ services. Principles of Life Cycle Cost may also be considered, to the extent feasible.
- v) Year wise Cash flow: requirement and the Source & availability of funds for executing the works shall also be spelt out.
- vi) A presentation on the findings of the feasibility study/ PPR may be made by a team (which may include engineers/ consultants/ outside experts, finance officers etc.) before the competent authority to provide an opportunity to have an overall assessment of the situation, appraisal of various options as well as likely challenges and mitigation measures.
- vii) In the case of large projects, such presentation may be made to the MD/Chairman of the Port.
- viii) The record of discussions during the presentation may be considered in preparing the Detailed Project Report.

Approval of competent authority for accepting the necessity of works and its Scope should be sought on the basis of TEF/FR/PPR or Rough Cost Estimate and in Principle Approval of the Competent Authority shall be obtained before proceeding for preparation of Detailed Project Report.

### **3.3.2. Preparation of Detailed Project Report (DPR)**

On receipt of in-principle Approval of the project, the Concerned department shall prepare a Detailed Project Report (DPR) giving reference to the documents mentioned below. The DPR should provide a level playing field to the bidders and should ensure as far as feasible, the widest possible competition:

- i) Reference to Concept plan/ preliminary drawings and their acceptance - This shall indicate the details of Concept plan/ preliminary drawings prepared and their acceptance by the Port.
- ii) Details of scope of the project indicating clearly the list of Engineering Services (Mechanical/ Electrical/ Plumbing) as well as Operation and Maintenance included or not included in the DPR/PE;
- iii) Preliminary estimated cost – This will also include the expected escalation for the period of completion of the project and also the departmental or lump sum charges to be paid to the executing agency (PMC). Cash flow projection should show year-

wise requirement. While designing the projects etc, if and to the extent possible, principles of Life Cycle Cost may also be considered;

- iv) Time of the completion – This will consist of two parts, one for pre- construction activity till award of the work and the other one for the execution;
- v) Details of land required along with land plan schedule to implement timely land acquisition procedures;
- vi) Environmental impact assessment (EIA) of the project and approval thereof, wherever applicable;
- vii) Social Impact Assessment and Resettlement and Rehabilitation: Social Impact Assessment needs to be done, based on baseline socio-economic survey and census survey data, to identify the Project Affected People (PAPs). A Resettlement and Rehabilitation Plan should be prepared for the PAPs in accordance with the LARR Act 2013 or National Policy on Resettlement and Rehabilitation (NPRR), and State Governments framework of resettlement policies and other social safeguard policies designed to protect the rights of the affected persons and communities as applicable;
- viii) List of Approval of Statutory Bodies required;
- ix) Annual plan allocation and cash flow;
- x) Systems to be adopted for project monitoring;
- xi) Works accounting system;
- xii) Quality assurance system/ mechanism;
- xiii) Bidding Systems - Single, two parts, pre-qualification, post-qualification.

For repair works costing up to Rs. 60 (sixty) lakhs (Amendment to GFR dated 10-7-24) preparation of DPR may be dispensed with, since repair work does not need detailed designing. Sanction may be accorded by the competent authority based on Preliminary Estimate and Justification documents.

3.3.2.1. Major reason for the problem in works contracts (in particular relating to construction of roads, Berths, etc on EPC basis) is the out-sourcing of preparation of Detailed Project Reports to consultants without sufficient relevant experience or without giving them sufficient time to do so. It is therefore essential to stipulate & ensure

successful project design/ supervision experience while selecting consultants, especially for large works contracts. DPR in such contracts is required to be based on proper ground investigation at each specified stretch (normally 50 metres), called "reach", and the Consultant be directed to exercise such due diligence.

3.3.2.2. The involvement of Port officials in providing proper inputs including user requirements during the preparation of the DPR and before accepting the draft DPR is paramount in ensuring successful implementation. Proper field surveys and investigations of ground conditions are critical in preparation of a reliable DPR. Providing scientifically valid data to bidders will depend on the quality of the investigations done by the DPR consultant.

3.3.2.3. As a corollary, the Port must insist on a qualified team of engineers with experience for carrying out DPR studies. It is also essential that the Port insists that the Consultant offers them technology options at the early stage of preparation of the DPR, so that a cost-efficient choice may be made using principles of Life Cycle Costing.

- a) In case the deviations between actual ground situation and the situation recorded in such DPR results in significant cost and time over-runs, the engineer, while doing valuation of variations must bring to the Head of Department's notice, the reach-wise differences and the Port may consider stringent action against the consultant who has prepared such DPRs, including debarment from future consultancy contracts, after following due procedure. Such clauses may be included in the contracts for preparation of DPR.
- b) Wherever consultants are appointed for preparation of DPR, field level of the Port should also be associated with the process. The inputs from these field level officers can be useful in proposing best solutions for design and execution of the work as they are the custodian of legacy data, which may not be available with the consultants, as they may not be operating regularly in that geographical region.

Presentation may be made about the DPR before the Competent Authority, for projects above a threshold value, as decided by Project Executing Authorities. The presentation may include salient features of the project including general layout, architectural drawings, broad specifications, cash flow (over the life of the project), composition of the project team, quality management plan for the project, important milestones in the project execution, obligations of the authority and the contractor/ concessionaire (hereinafter referred to as "contractor") and possible risks and mitigation measures. In the case of very large projects such presentation may be made to the MD/Chairman/ Board members as the case may be. The record of discussions during the presentation shall become part of tender file/project record.

### 3.4. Administrative Approval

Administrative approval (A/A) shall be obtained from the Competent Authority to the execution of work after due examination of Detailed Project Report and Preliminary estimates. Post Sanction changes in scope and specification lead to delay, loss of quality and contractual penalties therefore such A/A shall be accorded after carefully assessing their requirements.

### 3.5. Technical Sanction

On receipt of sanction of the project, based on DPR or PE and assurance of funds, the Concerned Department, in consultation with the Works Committee if any, shall prepare and accord Technical Sanction to detailed and coordinated design of all the Architectural, Civil, Electrical, Mechanical, Horticulture and any other services included in the scope of the sanction and of the Detailed Cost Estimates containing the detailed specifications and quantities of various items prepared so as to ensure that proposals are structurally sound and that the estimates are accurately calculated based on adequate data.

- a) In case the work is to be executed through a Public Works Organization or Public Sector Undertaking, preparation of detailed design/ estimates and technical sanction shall be done/ accorded by that organization.
- b) Architectural and structural drawings (fit for construction) are among the core requirements for projects. Finalization of these drawings at the earliest, preferably at the time of preparation of the cost estimate itself, can help to determine quantities of various items of the work.
- c) Adverse consequences of not preparing these drawings before invitation of tenders may manifest in the form of delay in execution of the work and deviations in quantities of the items of work.
- d) Hence, Fit for construction (sometimes called Good for construction) drawings i.e approved architectural and structural drawings should be available before invitation of tenders.

### 3.6. Expenditure Sanction

Expenditure Sanction (E/S) shall be obtained from the Competent Authority to the execution of work.

- a) The estimates suggested by a DPR consultant may be modified for proposal for sanction only after careful thought and recording reasons.

- b) The proposal for sanction should contain scope of work, estimated cost, and time schedule for completion of work and funding sources along with their share.
- c) Where a project as a whole has been sanctioned after scrutiny and acceptance by the Finance wing and the Competent Authority, further concurrence of the Finance / Competent Authority shall not be required for sanctioning expenditure on the various constituent works included in the project unless the scope of cost is more than the sanctioned amount.

### **3.7. Appropriation of funds**

Before taking up the execution of work it shall be ensured that proper funds are available to meet out the expenditure on the work. It should also be emphasized that the DPR consultant is able to provide realistic year wise requirement of funds. This will enable the Finance department to include such funds projection in their budget.

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## Chapter-4

# AGENCY FOR EXECUTION OF WORKS

Port may execute any work on its own with the available resources or execute the work by engaging a Contractor with due process. Port may, at its discretion, assign repair works estimated to cost above a threshold limit to any Public Works Organisation (PWO) authorised to carry out civil or electrical works or railway works.

### 4.1. Executing works on its own

Port may execute small works of maintenance or repair on its own with the available resources by engaging the services of skilled workers/ agencies. In such cases, Port may have a list of small contractors or skilled workers or agencies with the rates for each work determined valid for a year. If the same is not possible, the reasonability of the charges to be specifically certified by the concerned user/executing department before any payment of the bill is recommended.

### 4.2. Executing works by engaging Contractors

The procedure for executing different types of works by engaging contractors with due process is described in the subsequent chapters of this manual.

### 4.3. Executing works by engaging other PSUs/PWOs

Port may, at its discretion, assign original / repair works to any Public Works Organisation (PWO) such as CPWD, State PWD, IIT, RITES or other Central / State Government Organisations/institutions authorized to carry out civil or electrical works or railway works and so on.

#### 4.3.1. Procedure for Assigning Work to PWO or PSU/ Organisations

The award of work to a PWO/PSU should be taken as Project Management Consultancy (PMC) and the concerned PSU shall be treated as consultancy firm. In exceptional cases, the work may be assigned on nomination basis. The work under these circumstances shall also be assigned only on the lump sum basis. The following procedure is to be followed in assigning the work to PWOs.

- i) The Concerned Engineer shall ensure observance of due process in the planning and execution of works, check the reasonability of the estimates and other technical details and monitor the execution of the works.



- ii) A Memorandum of Understanding (MoU) may be drawn with the PWO/PSU for proper execution of work.
- iii) The MoU should spell out the obligations on the part of PWO or PSU regarding execution of works as per proper specifications and for maintaining proper quality and speed of execution of works.
- iv) Different stages at which funds shall be released to the PWO/PSU should also be clearly spelt out.
- v) Proper reporting system to be spelt out for monitoring the timely execution and the ability of the executing agency.
- vi) Such MoU would normally be for a specific standalone work, but could also be for a Project consisting of a collection of related works.
- vii) The MoU could also be as a long-term basis in case of recurring nature of work.
- viii) A Sample MOU delineating complete procedure of assignment of work to PWO/ PSUs and its monitoring is given in Annexure WM-S1/10.
- ix) The concerned department may change the MOU format suiting to the work requirement, duly vetted by the Legal cell / Finance.

#### **4.4. Third Party Agency**

##### **4.4.1. Third Party Certification Agency**

- a) A Third-party Certification Agency may be appointed for the specialized nature of the project for value more than Rs.10 crores who is required to issue a Certificate of Fitness in respect of quality, safety and life of the structure on completion of the work or during construction stage.
- b) Scope of work and estimated cost for third party certification work for the respective project shall be prepared by Project Group in consultation with and duly vetted by Engineering Consultant.
- c) Selection of Certification Agency may be done on the basis of an open tender, limited tender or on nomination basis.

#### **4.4.2. Third party inspection agency**

Third party inspection is required to be carried out by a third-party inspection agency. Bidding documents shall indicate in detail that third party inspection agency, shall be appointed by KPL for carrying out the fabrications inspection and supervision jobs for works and services.

#### **4.4.3. Empanelment of Consultants / Third Party Agencies**

In case the Engineering Consultants / Certification Agencies / Third Party Inspection Agencies are regularly required for various projects, Port shall process for empanelment of such agencies in different categories to save on time for tendering etc. However, for appointment of Consultant /Third Party inspection /Certification Agency for a specific project, administrative approval and expenditure sanction shall be obtained as per the relevant provisions in Delegation of Powers.

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## Chapter-5

# TYPES OF CONTRACTS

### 5.1. Types of Contracts

There are different types of contracts followed in the Ports. The selection of a particular type depends mainly on the circumstance, the need of the work, the nature of work, expertise or quality requirement and performance of the contract. It also depends on the timely completion and funds allotted for such works. The selection also depends on different risks and mitigation measures. Bids are called and evaluated based on the type of contract. The choice of the type of contract should be based on Value-for-Money (VfM) with due regard to the nature of Work. Adoption of an inappropriate type of contract could lead to a situation of lack of competition, contractual disputes and nonperformance/ failure of the contract. Each type of contract is described briefly in subsequent paras, and criteria are suggested for their adoption. Mostly used types of contracts are:

- (a) Lumpsum (Fixed price) contract
- (b) Item rate (Unit Rate) Contract
- (c) Percentage Rate Contract
- (d) Piece Work Contract
- (e) EPC Contracts
- (f) Public Private Partnership (PPP)
- (g) Deposit Works

### 5.2. Lump sum (Fixed Price) Contract

**5.2.1.** This form is used for work in which contractors are required to quote a lump sum fixed price figure for completing the works in accordance with the given designs, specifications and functional requirements. Bidder's price is deemed to include all elements of cost - no arithmetical correction or price adjustments are allowed during evaluation and execution. Lump sum contracts are easy to administer because it is a fixed price for a fixed scope and payments are linked to clearly specified outputs/ milestones.

**5.2.2.** Lump sum service contracts should be used mainly for assignments in which the quality, scope and the timing of the Work are clearly defined. Lump sum contracts may be used where the Works can be defined in their full physical and qualitative

characteristics and risk for change in quantity or specification, and unforeseen difficulties and site conditions (for example, hidden foundation problems) are minimal. This is suitable for stereotype/ repetitive residential buildings or other structures for which standard drawings are normally available. It is also suitable for minor bridge works, chimneys, bins/ silos, overhead tanks, etc. whether on Department's design or that of the contractor. In the latter case, the Department shall spell out the requirements in detail to enable the contractor to prepare his designs and drawings accordingly, and submit them to the Procuring Entity for check and approval before construction

### **5.2.3. Risks and Mitigating measures in Lumpsum (Fixed Price Contract)**

The following are some of the Risks and Mitigating measures in Lumpsum Contracts.

- i) There may be tendency by the Contractor to cut corners on quality and scope of work by saving on resources employed.
- ii) Disputes may arise due to different possible interpretations of quality and scope of work.
- iii) The contract should include provision for evaluation of quality and scope of work and certificate for its acceptability.
- iv) As time is not linked to the payment, there may be tendency for the Contractor to save on deployment of resources which may result in time-over-run.
- v) While the payments are not linked to time, the assignment should be monitored per month to ensure that the progress of work per month is in line with planned and estimated time-line.
- vi) A Schedule of Rates (SOR) may still be specified in order to regulate the amounts to be added to or deducted from the fixed sum on account of additions and alterations to drawings, designs and specifications not covered by the contract.
- vii) The contractor shall be paid from time to time as per the schedule specified in the contract or the full amount on completion of the work. The concept of priced "activity schedules" may be used, to enable payments to be made on the basis of percentage completion of each activity.
- viii) The billing schedule shall commensurate with the actual work done, and the risk of front-loading strictly guarded against.
- ix) Detailed measurements of work done in a lump sum contract are not required to be recorded, except in respect of additions and omissions.
- x) No reference is made in the contract to the departmental estimate of the work, prevailing SOR or the quantities of work to be done.

- xi) Payment of additions and omissions is regulated by prevailing SOR as agreed upon while approving the tender or the rates.

### 5.3. Item rate (Unit Rate) Contract

For item rate tenders, contractors are required to quote rate for each individual items of work on the basis of Bill of quantities (BOQ) provided by the Port in the Bid Documents. Reasonable variations in quantities can be allowed during the execution in terms of the contract. This is the most commonly used contract type for civil works. This type of contract is suitable for all types of major works such as buildings, bridges, culverts, roads, sewer lines, irrigation works, and carries the least risk of uncertainty for the parties.

- i) The payment is made at the rate set out in the contract for the measured quantity within prescribed range [usually +/- 25 (twenty five) percent per item] of the estimated quantity of the initial BOQ.
- ii) Specifications, design, drawings and contract conditions have to be critically appraised before the initiation of procurement process, in order to minimize the incidence of internal inconsistencies, variations, and situation of claims/ disputes or contract failure.
- iii) In item rate contracts, if the rates for various items quoted by the overall lowest bidder are lower than 25% of the estimates, the party shall be asked to give written confirmation for execution of the entire works at the quoted price. In the event, the party backs out, EMD to be forfeited and re-tendering to be adopted if time permits or else revised price bid shall be obtained from other techno commercially acceptable bidders and contract shall be finalized.

### 5.4. Percentage Rate Contract

For percentage rate contract, the contractors are required to quote rate as overall percentage above or below the total estimated cost. This type of contract works are best when the work does not involve major design process and directions, and simple drawings are sufficient for execution. It saves on the time and effort of detailed design before the procurement process.

The following procedure shall be followed for operating Percentage Rate contracts.

- a) Open tenders or Limited tenders from the approved list should be invited wherein the rates shall be called for, for specified estimated quantities, which should be valid for one or two years. Bidders may also be asked to quote for a

percentage variation ( $\pm$ ) in item rates with respect to KPL's estimated rates in the tender document in respect to the works contract.

- b) In case of approved rates contract, the rates are to be approved by the competent authority empowered based on the estimated annual value with finance concurrence.
- c) If the quoted percentage rate is lower than 10% of the estimate cost put to tender, the bidder shall be asked to give written justification and confirmation for execution of the entire works at the quoted price and assure quality as per the terms of tender.
- d) Tenders with lowest workable rates shall be considered for such works.
- e) These accepted parties should be short-listed for the identified works.
- f) As more than one contractor can be short listed for similar works, at the stage of finalizing the tender, they should be asked to match the lowest acceptable rates to ensure uniformity.
- g) Separate work orders indicating the estimated annual work value shall be issued to the selected agencies.
- h) Equitable distribution of work among the Contractors shall be ensured by the department executing such works. As and when the need for executing a repair work arises, a separate work order shall be issued. Since the finance concurrence is already obtained for the rates no further concurrence may be required.
- i) Bills for percentage rate contracts shall be prepared at the estimated rates for individual items only and the percentage excess or less shall be added or subtracted from the gross amount of the bill.
- j) The payment is made for the measured quantity.
- k) Contract provisions are made to determine the price of the items not included in SOR.
- l) In the absence of a standard schedule of rates, a project-specific schedule of items and their rates is drawn.

## 5.5. Piece Work Contract

Piece Work Contract is to be used mainly in following cases:

- a) The cases, in which it is necessary to start the work in anticipation of formal acceptance of contract, an agreement on piece work contract may be drawn and the contract may be cancelled as soon as regular contract is signed.
- b) For running contracts i.e. those for pipes, laying of sewerage etc. quotations are called periodically and a running rate contract is drawn up as a result of those quotations usually for one year.
- c) The piece work contract provides for payment of stipulated rates only when it refers to such quantity of time and also stipulates that the Port may put an end to the agreement at his option at any time.

## 5.6. EPC Contracts

**5.6.1.** The Engineering, Procurement and Construction (EPC) (also called 'Design & Build' Contracts) approach relies on assigning the responsibility for investigations, design and construction to the contractor for a lump sum price determined through competitive bidding. The objective is to ensure implementation of the project to specified standards with a fair degree of certainty relating to costs and time while transferring the construction risks to the contractor.

**5.6.2.** Unlike the normal practice of construction specifications, the technical parameters in the EPC Agreement are based mainly on output specifications / performance standards. Port specifies only the core requirements of design and construction of the project that have a bearing on the quality durability, reliability, maintainability and safety of assets and enough room is left for the contractor to add value. The Contractor has full freedom to design and plan the construction schedule using best practices to achieve quality, durability, reliability, maintainability, and safety as specified along with efficiency and economy. Projects risks such as soil conditions and weather or commercial and technical risks relating to design and construction are assigned to the Contractor. The Port bears the risk for any delays in handing over the land, approvals from local authorities, environment clearances, shifting of utilities and approvals in respect of engineering plans.

**5.6.3. Salient features of Selection of contractor and monitoring EPC contracts.**

- i) Selection of the contractor is based on open competitive bidding. All project parameters such as the contract period, price adjustments and technical parameters are to be clearly stated upfront, and short-listed bidders are required to specify only the lump sum price for the project.
- ii) The bidder who seeks the lowest payment is awarded the contract.
- iii) The contract price is subject to adjustment on account of price variation during the contract period as per a specified formula. It also lays down a ceiling of 10 (Ten) per cent of contract price to cater for any changes in the scope of project, the cost of which the Port will bear.
- iv) The selected Contractor carries out survey and investigations and also develops designs and drawings in conformity with the specifications and standards laid down in the Agreement.
- v) Port's engineer/Consultant reviews the design and drawings to ensure that these conform to the scope of the project, design standards and specifications.
- vi) Any comments by the Port on the design proposals submitted by the contractor are to be communicated in totality once in a time-bound manner as indicated in the schedule.
- vii) The contractor is free to proceed with construction after the expiry of specified period in case no remarks/ clearances are given by the Port.
- viii) The Contractor is liable to pay Liquidated Damages for each day of delay beyond the specified date of completion, subject to the total amount of Damages not exceeding 10 (ten) per cent of the Contract Price. However, the Contractor is entitled to time extension arising out of delays on account of change of scope and force majeure or delays caused by or attributable to the Port.
- ix) "Incentive Bonus" clause (not exceeding ten percent) may also be provided on case-to-case basis in the tender document with the approval of the competent authority for completion of the project before the scheduled completion date.
- x) Monitoring and supervision of construction are undertaken through Port's engineer, (or a qualified firm that will be selected through a transparent process) acting as a single window for coordination with the contractor.
- xi) Each item of work is further sub-divided into stages and payment based on output specifications and performance standard is to be made for each completed stage of work.



- xii) Defects liability period of two years may be specified in the Agreement in order to provide additional comfort to the Port.
- xiii) FIDIC - an International Federation of Consulting Engineers, has also published such contractual frameworks. Model EPC contract documents have been developed by several PWOs. Model bidding documents and Model EPC contracts may be suitably modified to suit the requirements of Port or a particular work.
- xiv) The selected Port's Consultant should have good experience in design, project supervision and works management. The Port must have an experienced team with (works committee) to super check the quality of supervision including quality of design review, site supervision, quality audits, etc. Periodic audits of the Port's Consultant functioning are desirable in ensuring that he carries out his tasks professionally.
- xv) In complex projects, a third-party consultant be deployed for specific tasks like design audit, quality audits, safety audits, etc., to cross-check the Port's consultant's diligence in the process.
- xvi) Since primary responsibility in the EPC contract to execute the work lies with the EPC contractor, success of the project also depends upon the quality of the tender document wherein enough clarity on the broad framework for execution of the work and the obligations of the contractor needs to be built in.
- xvii) Milestones for payment to the contractor should be fixed in a manner that facilitates smooth cash flow for the contractor as well as for progress of the work. Milestones fixed should avoid excessive front loading or back loading, i.e., amount of payment should be commensurate with stage-wise quantum of work/ cost incurred. Milestones for payment to the contractor should also be linked with the deliverables.
- xviii) In case of EPC contracts, only general arrangement drawings and architectural control parameters should be part of the EPC tender document. In case of EPC contracts, timelines for submission of drawings by the contractors and approval thereof by the competent authority should be clearly prescribed in the tender document, wherein, damages for non-adherence of such timelines in this regard may also be incorporated.
- xix) EPC contracts shall specify broad technical specification and key output parameters. Over-specification of design may lead to increase in cost. Technical specifications shall be framed in such a manner to allow sufficient freedom to the contractor to optimize design.

Provisions on the following should be included in commercial conditions:

- a) Limitation of liability for Port as well as contractor.
  - b) Deviation limits and procedure for change of scope.
  - c) Contract closing timelines and procedure to ensure timely closing of contract.
  - d) Performance parameters and liquidated damages for shortfall in performance
  - e) Risk matrix and responsibilities of the contractor and the Port.
- xx) In addition, a latent defect period beyond the defect liability period may be included to protect the Port and public authority interest in case of any design/ engineering defect after the defect liability period is over, wherever appropriate.
- xxi) To mitigate the risk involved in the methodology proposed by the contractor, the project executive authority shall either have an in-house engineering, quality assurance and project management expert or alternatively hire an experienced engineer to intensively examine the proposal submitted by the contractor.
- xxii) Project executing authorities are to ensure that optimal technological solutions are provided by the contractor.
- xxiii) To ensure equality, regular inspection and quality checks must be carried out. The Project, executing authority shall carry out stage inspections in manufacturing of critical equipment/critical activities of the project.

Note: In the above para 5.6 instructions containing "shall" are mandatory; any deviation from these instructions shall require relaxation from the Board of Directors.

## 5.7. Public Private Partnership (PPP)

PPP is an arrangement between a Port on one side [The Authority] and a private sector entity (a legal entity in which 51% or more of equity is with the private partner/s - concessionaire) on the other, for the creation and/ or management of public assets and/ or public services, through investments being made and/ or management being undertaken by the concessionaire, for a specified period of time (concession period) on commercial terms, where there is well defined allocation of risk between the concessionaire and the Authority; and the concessionaire (who is chosen on the basis of a transparent and open competitive bidding), receives performance linked payments that

conform (or are benchmarked) to specified and pre-determined performance standards, measurable by the Authority or its representative. For further information, PPP instructions issued by Department of Economic Affairs (DEA), Ministry of Finance from time to time, may be referred.

### **5.8. Deposit Works**

The Works which cannot be executed by the Port either due to non-availability of required man power or due to lack of expertise in the specific field, generally assign the works to an Organisation who have the relevant expertise or appoint a Project Management Consultant (Public Works Organisation or a PSU. Detailed procedure is given in Chapter-18 of Section-2).

## Chapter-6

# BIDDING SYSTEMS

### 6.1. Types of Bidding Systems

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

- i) Single Stage Bidding System
- ii) Single Stage Single Envelope System (1S1E)
- iii) Single Stage Two Envelope Systems (1S2E)
- iv) Single Stage Multiple Envelope System (with post-qualification, 1S3E)
- v) Two Stage Bidding with Expression of Interest (Eoi)
- vi) Pre-qualification Bidding (PQB)
- vii) Electronic Procurement (e-Procurement)
- viii) GeM

### 6.2. Single Stage Bidding System

In single stage bidding, all bids are invited together in a single envelope. 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. This system is invariably followed in small contracts of similar nature covering a number of areas. Eg. Supply of goods at various places within the port or conservancy works at various places in the port etc.

### 6.3. Single Stage Single Bid/ Envelope System (1S1E)

Where it is feasible to work out the schedule of quantities and to formulate detailed specifications for Works and capability of contractor is not critical and value of

procurement is low or moderate, the single envelope system may be adopted. In this case eligibility, technical/ commercial and financial details are submitted together in the same envelope along with EMD. This is the simplest and the quickest bidding system. The lowest responsive priced bid that meets the eligibility criteria, technical and commercial requirements laid down in the bid documents is declared as successful and awarded the contract. This system may be followed in case of works the estimated value is not more than Rs. 5 (Five) lakhs.

#### **6.4. Single Stage Two Envelope Systems (1S2E)**

In technically complex requirements but where capability of source of supply is still not crucial and value of procurement is not low, a two-envelope system may be followed. If required, technical specification and techno-commercial conditions may be modified, after the pre-bid conference in the two envelopes. The pre-bid conference is to be organized before the bid submission date. The pre-bid queries, replies, corrigendum if any shall be uploaded in the Web portals. In case of revision of the tender, the same shall also be uploaded in the web-portal.

- i) The tenderers should be asked to bifurcate their quotations in two envelopes.
- ii) The first envelope, called the techno-commercial bid, contains the eligibility, technical quality and performance aspects, commercial terms and conditions and documents sought in the tender, EMD, except the price and relevant financial details.
- iii) In the second envelope, called the financial bid, the price quotations along with other financial details are submitted. Both the envelopes are to be submitted together in a sealed outer envelope, as it would not be desirable to invite financial bids after opening of techno-commercial bids;
- iv) The techno-commercial bids are to be opened in the first instance on the bid/tender opening date and time, and scrutinised and evaluated by the Tender Evaluation Committee (TEC) with reference to parameters prescribed in the tender documents and responsive, eligible and technically compliant bidders are decided;
- v) 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 preannounced date and time for further scrutiny, evaluation, ranking and placement of contract. In the case of Offline Bidding, 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.

- vi) In e-Procurement, financial bids of technically non-compliant offers would not get opened;

### **6.5. Single Stage Multiple Envelope System (1S3E)**

Where the procurement is moderately complex and the time, effort and money required from the bidder to participate in a tender is not very high, instead of a separate stage of Pre-Qualification bidding, a clear-cut, fail-pass qualification criteria can be asked to be submitted as the first (additional) envelope in a three-envelope single stage bidding, so that a bidder's risk of having his bid rejected on grounds of qualifications is remote if due diligence is exercised by him. Strictly speaking, this is not a prequalification but a post-qualification of bidders.

This system is followed in works of a highly complex technical nature which do not lend themselves for technical specification / criteria to be frozen at the initial floating stage itself. This may require a wider cross-pollination of technical ideas and examination of various possibilities. That means the port is not sure about the technology or solution which they would like to go for the intended procurement. To deal with such cases which require a more critical and detailed evaluation of the technical criteria, three cover system is recommended to be adopted.

In this, as a first stage, a pre-bid conference shall be held with the prospective bidders, the port presenting the perception of work in the conference with the contemplated technical criteria. The prospective bidders can present their ideas and their technical perception in the pre-bid conference to arrive at a technical framework for the contemplated work. Having thus arrived at a common platform, the prospective bidders shall submit their bids in three envelopes.

- i) The first envelope will have the documents relating to the fulfilment of eligibility criteria in the areas of experience, completion of past work as specified in the tender document, EMD, financial status along with the details of plant and machinery, etc.
- ii) Only the technical bids of those bidders, who have qualified in envelope-I will be opened for the consideration of second envelope, the technical bid which give the technical details of their offer. Generally, at pre-defined date a conference is arranged to discuss the various offers submitted by various bidders, to discuss the merits and demerits of the technical offers. The bidders

who offer the most viable and technologically superior technical solution are declared. In the technical bid, the tenderers can give alternative designs also, whose technical acceptability will be decided by the concerned authorities. After finalization of technical bid, if required, tenderers may be given chance to modify their financial bids (envelop-III) in case of changes in the technical specifications etc.

- iii) The third envelope containing the financial bids of only those tenderers who have successfully qualified themselves in the technical bid will be opened and evaluated.

## **6.6. Two Stage Bidding with Expression of Interest (Eol)**

### **6.6.1. Works requiring Expression of Interest**

There are instances where the Works to be procured are of complex nature and the procuring organization may not possess the full knowledge of either the various technical solutions available or the likely Contractors for such Works. To meet the desired objectives of a transparent procurement that ensures value for money simultaneously ensuring up gradation of technology & capacity building; it would be prudent to invite a two-stage Expression of Interest (Eol) Bids and proceed to explore the market and to finalise specifications based on technical discussions / presentations with the experienced Contractors in a transparent manner.

Expression of Interest (Eol) bids may be invited in following situations:

- i) It is not feasible for the Port to formulate detailed specifications or identify specific characteristics for the subject matter of procurement, without receiving inputs regarding its technical aspects from bidders;
- ii) The character of the subject matter of procurement is subject to rapid technological advances or market fluctuations or both;
- iii) The Port seeks to enter into a contract for the purpose of research, experiment, study or development; or
- iv) The bidder is expected to carry out a detailed survey or investigation and undertake a comprehensive assessment of risks, costs and obligations associated with the particular procurement.

**6.6.2. Procedure for two stage bidding in EOI**

The procedure for two stage bidding shall include the following:

- i) In the first stage of the bidding process, the Port shall invite Eoi bids containing the broad objectives, technical and financial eligibility criteria, terms and conditions of the proposed procurement etc without a bid price.
- ii) On receipt of the Expressions of Interest, technical discussions/ presentations may be held with the short-listed Contractors, which are prima facie considered technically and financially capable of executing the proposed work, giving equal opportunity to all such bidders to participate in the discussions.
- iii) During these technical discussions stage the procurement agency may also add those other stake holders in the discussions who could add value to the decision making on the various technical aspects and evaluation criteria.
- iv) Based on the discussions/ presentations so held, one or more acceptable technical solutions could be decided upon laying down detailed technical specifications for each acceptable technical solution, quality bench marks, warranty requirements, delivery milestones etc., in a manner that is consistent with the objectives of the transparent procurement.
- v) Care should be taken to make the specifications generic in nature so as to provide equitable opportunities to the prospective bidders.
- vi) Proper record of discussions/ presentations and the process of decision making should be kept;
- vii) In revising the relevant terms and conditions of the procurement, if found necessary as a result of discussions with the shortlisted bidders, Port shall not modify the fundamental nature of the procurement itself;
- viii) In the second stage of the bidding process, the Port shall invite bids from all those bidders whose bids at the first stage were not rejected, to present final bid with bid prices in response to a revised set of terms and conditions of the procurement; and
- ix) Any bidder, invited to bid, but not in a position to execute the work due to modification in the specifications or terms and conditions, may withdraw from the bidding proceedings without forfeiting any bid security that he may have been required to provide or being penalised in any way, by declaring his



intention to withdraw from the procurement proceedings with adequate justification.

- x) If the Port is of the view that after EOI stage, there is likelihood of further participation by many more bidders and to avoid getting trapped into a legacy technology, the second stage bidding may not be restricted only to the shortlisted bidders of EOI stage and it may be so declared in the EOI document ab-initio. Thereafter in the second stage, normal OTE/ GTE bidding may be done. Such variant of EOI is called 'Non-committal' EOI.

### 6.6.3. Invitation of Eoi Tenders

In Eoi tenders, an advertisement inviting expression of interest should be published. The invitation to the Eoi document should contain the following information:

- i) A copy of the advertisement;
- ii) Objectives and scope of the requirement: This may include a brief description of objectives and broad scope of the requirement;
- iii) Instructions to the bidders: This may include instructions regarding the nature of work, last date of submission, place of submission and any other related instructions;
- iv) Formats for submission: This section should specify the format in which the bidders are expected to submit their Eoi;
- v) The Eoi document should be made available to the interested bidder as a hard copy as well as on its website in a downloadable form; and

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

### 6.6.4. Eligibility criteria

The invitation to Eoi should clearly lay down the eligibility criteria, which should be applied for short listing. Supporting documents required need to be clearly mentioned. An example of Eoi eligibility criteria is shown in Table 1. However, appropriate eligibility criteria have to be designed, keeping in mind the specific objectives of the Eoi. Criteria

used should be measurable and based on documents that are verifiable. Definitions and explanatory notes shall be provided for each criterion that are simple and unambiguous. It may also be advisable to cross-check and verify these documents, when in doubt.

**Table-1 (An example of Eol eligibility criteria)**

S.No	Criteria/Sub criteria	Weightage*	Break-up of Weightages
1	Past experience of the firm with similar requirements	A*	
	Total Number of eligible works completed		
	Number of eligible works as per requirement		A1*
	Number of additional eligible works		A2*
2	Financial strength of the bidder	B*	
	Turnover figures of the last three years		B1*
	Net profit or Net worth figures of the last three years		B2*
3	Quality accreditations, licensing requirements	C*	

\*Weightages (out of 100) should be pre-decided and declared in Eol documents by the Competent Authority based on assessment of the required profiles of the potential bidders. The marking/ grading scheme for allotting marks (out of 100) for various parameters should also be laid down.

#### 6.6.5. Evaluation of Eol

The bidders should be evaluated for short listing, inter-alia, based on their past experience of performance in a similar context, financial strength and technical capabilities, among others. Each bidder should be assigned scores based on the sum of marks obtained for each parameter multiplied by the weightages assigned to that parameter. All bidders who secure the minimum required marks [normally 60 (sixty) per cent] should be shortlisted. The minimum qualifying marks should be specified in the Eol document. Alternatively, instead of weighted evaluation, the Eol document may specify a 'fail-pass criteria' with the minimum qualifying requirement for each of the criteria, such as minimum years of experience, minimum number of Works executed and minimum financial turnover. Under such circumstances, all bidders who meet the minimum requirement, as specified, should be shortlisted. The short list should normally comprise at least three firms

## 6.7. Pre-qualification Bidding (PQB)

### 6.7.1. Works requiring Pre-Qualification

In high value contracts or complex technical requirements where capability of source of supply is crucial (for example in construction of complex bridges / berths / Jetties / Conveyor systems), 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 and infrastructure. In such situations a separate stage of PQB bidding system may be considered (or single stage multiple envelope bidding). In PQB stage, competent qualified tenderers are shortlisted prior to the issue of the bid document exclusively to shortlisted bidders in the second stage by using a Pre-qualification Criterion (PQC).

### 6.7.2. Transparency in Pre-qualification bids

Pre-qualification Bids (PQBs) should meet the norms of transparency, fairness and maintenance of competition. *Since PQB system may strain the transparency principle and there is heightened risk of cartelization among shortlisted bidders, PQB should be done only as an exception under specified circumstances. It should not be a routine/ normal mode of procurement of works and an eligibility criteria clause (post qualification) as part of single/ two envelope/ cover tendering should suffice in normal/ routine situations. PQB bidding as a separate stage is contra-indicated in the following circumstances:*

- i) Where procurement can be done through limited tender enquiries;
- ii) Where the requirement is technically and commercially simple enough that prequalification of the bidder is not crucial for the performance of the contract, for example, routine residential buildings; and
- iii) *Where the procurement is of medium value (say less than Rs 100 crore) or moderately complex in nature and the time, effort and money required from the bidder to participate in a tender is not very high, a clear-cut, (preferably fail-pass) post-qualification criteria can be specified in a three envelope single stage bidding (instead of separate PQB bidding), so that a bidder's risk of having his bid rejected on grounds of qualifications is remote if due diligence is exercised him.*

### 6.7.3. Pre-qualification Criteria

PQC should be unrestrictive enough so that it will not leave out even one capable bidder/ contractor. Otherwise, it can lead to higher prices of procurement/ works/ services. However, on the other hand, these criteria should be restrictive enough so as not to allow even one incapable bidder/ contractor and thus vitiate fair competition for capable bidders/ contractors to the detriment of the Port's objectives. A misjudgment in either direction may be detrimental.

- i) Due consideration should be given while framing PQC, to its effect on adequacy of competition.
- ii) PQC should therefore be carefully decided for each procurement.
- iii) It should be clarified in the PQB documents that bidders have to submit authenticated documents in support of eligibility criteria.
- iv) Specific criteria of 'qualify' for each attribute will be as specified in the standard pre-qualification document.

A bidder may be awarded more than one contract in a Tender if he:

- i) meets the PQC of each of them;
- ii) demonstrates having the resources in respect of financial, personnel and equipment capabilities to meet the aggregate of the specified capabilities for each contract; and
- iii) has bidding capacity at the time of bidding, as calculated by the above formula, more than the total estimated cost of these works.

The attributes of PQC should cover inter-alia:

#### 6.7.3.1. General Construction Experience: Annual Turnover

- i) The applicant should have achieved minimum annual value of general construction work (as certified by Chartered Accountant, and at least 50 (fifty) percent of which is from Engineering (Civil/ Electrical/ Mechanical as relevant to the work being procured) carried out in any of the year over a stated period (normally seven years), ending last day of month previous to the one in which applications are invited. The value of work executed shall be brought to current costing level by enhancing the

actual value of work at simple rate of 7% (seven percent) per annum, calculated from the date of completion to the date of Bid / Tender opening.

#### **6.7.3.2 Particular Construction experience:**

##### **A. The applicant should have:**

1. Successfully completed similar works during last seven years ending last day of month previous to the one in which applications are invited should be either of the following: -
  - a) Three similar completed works costing not less than the amount equal to 40 (forty) percent of the estimated cost (excluding GST); or
  - b) Two similar completed works costing not less than the amount equal to 50 (fifty) percent of the estimated cost (excluding GST); or
  - c) One similar completed work costing not less than the amount equal to 80 (eighty) percent of the estimated cost (excluding GST); and
2. Definition of “similar work” should be clearly defined.
  - a) The pre-qualification criteria specified in the tender document should neither be made very stringent nor very lax to restrict/ facilitate the entry of bidders.

Note : Guidelines issued are illustrative and the Port may suitably modify these guidelines for specialized jobs/works, if considered necessary. However, it should be ensured that the PQ criteria are exhaustive, yet specific and there is fair competition. It should also be ensured that the PQ criteria are clearly stipulated in unambiguous terms in the bid documents.

3. The applicant should also have achieved the minimum annual production value of the key construction activities (e.g. dredging, piling, or earthworks etc) stipulated.
4. Sub-Contractors' experience and resources shall not be taken into consideration in determining the bidder's capacity in compliance of the Qualifying Criteria.

##### **B. Similarity of work**

The similarity of work shall be pre-defined based on the physical size, complexity, methods/ technology and/ or other characteristics described, and scope of works.

- ii) Completion shall be based on Completion certificate or a Provisional Completion certificate issued for the work.

- iii) For contracts under which the applicant participated as a joint venture member or sub-contractor, only the applicant's share, by value, shall be considered to meet this requirement.
- iv) For arriving at cost of similar work, the value of work executed shall be brought to current cost level by enhancing the actual value of work at simple rate of 7% (seven percent) per annum, calculated from the date of completion to the date of Bid/tender opening.
- v) Certificate for 'Completion/Provisional Completion' of project/work/asset should contain 'financial value of work done'.

#### **6.7.3.3. Financial Capabilities**

The applicant should have:

- (i) access to, or possess available liquid assets and other financial means (independent of any contractual advance payments) Sufficient cash flows to meet the construction requirements for the subject contract, (minimum amount can be specified);
- (ii) Adequate sources of finance to meet the cash flow requirements of works currently in progress and for future contract commitments; and
- (iii) Financial soundness as established by audited balance sheets and/ or financial statements.
- (iv) Average Annual Financial Turnover of the bidders during the last three years ending 31<sup>st</sup> March of the previous financial year should be at least 30% of the estimated cost.

#### **6.7.3.4. Personnel Capabilities**

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

Criteria of acceptability should be based on:

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

#### 6.7.3.5. Equipment Capabilities

The applicant should own, or have assured access (through hire, lease, purchase agreement, other commercial means) to the specified key items of equipment, in full working order, and satisfy that, based on known commitment; it will be available for timely use on the proposed contract.

(The pass-fail criteria adopted should be limited only to those bulky or specialised items that are critical for the type of project to be implemented - say heavy lift cranes and piling barges, dredgers, asphalt mixing plants), and so on. Contractors may not own the specialised items of equipment, and may rely on specialist sub-contractors or equipment-hire firms.

#### 6.7.3.6. Available Bid Capacity

The bidder should possess the bidding capacity as calculated by the specified formula. The formula generally used is:

Available bid capacity =  $A \times M \times N - B$ , where

- vi)  $A$  = Maximum value of engineering (Civil/ Electrical/ Mechanical as relevant to work being procured) works executed in any one year during the last five years (updated to current cost level by enhancing the actual value of work at simple rate of 7% (seven percent) per annum, calculated from the date of completion to the date of Bid/Tender opening), taking into account the completed as well as works in progress.

$M$  = Multiplier Factor (usually 1.5)

$N$  = Number of years prescribed for completion of the work in question.

$B$  = Value (updated at the current price level) of the existing commitments and ongoing works to be completed in the next 'N' years.

**6.7.3.7. Pre-qualification of JV**

Maximum number of Partners in JV shall be limited (say- Three) and all the JV partners are "jointly and severally responsible and liable" in a contract. For prequalification, the JV should fulfil the criteria specified in the pre-qualification document. The attributes to be evaluated will be the same as for individual contractors; however, certain parameters up to the specified limits have to be essentially met by them collectively, some by the lead partner, and some by the other partner, as briefly described below:

1. Qualifying factors to be met collectively:
  - (i) annual turnover from construction;
  - (ii) particular construction experience and key production rates;
  - (iii) construction cash flow for the subject contract;
  - (iv) personnel capabilities; and
  - (v) equipment capabilities;
2. Qualifying factors for lead partner:
  - (i) Annual Turnover from Construction;
  - (ii) particular construction experience;
  - (iii) financial capability to meet cash flow requirement of subject contract –not less than of 50 (fifty) per cent of the respective limits prescribed in case of individual contractors may be accepted;
  - (iv) adequate sources to meet financial commitments on other contracts;
  - (v) financial soundness;
3. Qualifying factors for other partner: Same as for lead partner except that for the factors specified in (2) (iii) above, a lower limit of 25 (twenty-five) per cent may be accepted instead of 50 (fifty) per cent.

**6.7.3.8. Disqualification**

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

1. made misleading or false representations in the forms, statements, affidavits and attachments submitted in proof of the qualification requirements; and/ or;
2. Records of poor performance during the last five years, as on the date of application, such as abandoning the work, rescission of the contract for reasons which are attributable to non-performance of the contractor, inordinate delays in completion,



consistent history of litigation resulting in awards against the contractor or any of the constituents, or financial failure due to bankruptcy, and so on.

Note : The rescission of a contract of venture JV on account of reasons other than nonperformance, such as the most experienced partner (major partner) of JV pulling out;

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

#### **6.7.4. Advertisement and Notification:**

The invitation for PQB shall be advertised in the same manner as a normal tender, ensuring the widest possible coverage. The PQC and evaluation criterion should be notified clearly in the PQB documents. A minimum period of 21 (twenty-one) days may be allowed for the submission of PQBs. In the case of urgency, duly approved by Competent Authority, the time limit may be reduced to 14 (fourteen) days. The PQB documents should also indicate

- a) Scope of work (in physical as well monetary terms);
- b) Pre-qualification criteria for single contractors and joint ventures;
- c) Disqualification clause for misleading statements, or the applicant found to be ineligible on the basis of facts;
- d) Various questionnaires and forms, required to be answered and filled by the prospective applicant, in support of pre-qualification;
- e) Form of affidavit by the applicant in certification of the statements made and information given by him;
- f) Indicative requirements of qualifications and experience of key personnel for the project;
- g) Indicative requirements of annual production rates of key items of work;
- h) Indicative requirements of major plant and equipment;
- i) Indicative quantities of major items of work;
- j) Description of the project area, its climate and language, site of work and means of access; and
- k) Key plan of project area along with the site plan.

#### 6.7.5. Evaluation

At least in high value and critical procurements, the credentials regarding experience and past performance, submitted by the bidder, may be verified as per PQC criteria, as far as reasonably feasible, from the parties for whom work has been claimed to be done. The department shall evaluate the qualifications of bidders only in accordance with the PQC specified and shall give due publicity to the particulars of the bidders that are qualified on the relevant portals/ websites.

#### 6.7.6. Subsequent Works Tender

The pre-qualification shall be valid for such period as may be specified in the pre-qualification document and for a single subsequent procurement within this period, except when it is determined that engaging in fresh pre-qualification shall not result in enhanced competition.

- i) During the period of such validity, the Port shall invite bids for procurement (Request for Proposals – RfP) from pre-qualified bidders and all other bids may be treated as unsolicited offers which are normally rejected.
- ii) In case bids are not invited within such a period, fresh pre-qualification shall be done.
- iii) It is desirable that the time gap between the prequalification approval and floating of the linked main procurement tender is less than six months.
- iv) EoI should clearly specify the duration for which the pre-qualification criteria is valid.
- v) After the expiry of such duration whenever a subsequent procurement shall be carried out, fresh pre-qualification criteria shall be incorporated in such tender documents.

#### 6.7.7. Pre-Qualification Bidding – Risks and Mitigations

The Following are the Risks in Pre-qualification Bidding system. However on exercising care, the risks can be mitigated.

##### i) Potential Misuse

- a) Risk: PQB has the potential of getting misused or being applied without considering the restrictive nature of competition. PQC should be relevant to

the quality requirements and neither is very stringent nor very lax to restrict/ facilitate the entry of bidders. These criteria should be clear, unambiguous, exhaustive and yet specific. Also, there should be fair competition.

- b) Mitigation: Lay down criteria when prequalification in single stage or two stage bidding is warranted. Also lay down model PQC criteria for different types of procurements. There must also be an understanding of the size, capacity and competencies of contractors in India and in the Global marketplace.

## ii) Dangers of Anti-competitive bidding:

- a) Risk: In a two stage PQB, shortlisted bidders are announced, there is high possibility of these bidders forming a cartel and quoting anti-competitive prices in the second stage of bidding. Two stage PQB should be done only in appropriately justified situations.
- b) Mitigation: Alternatively, Single Stage multiple envelope system may be used for prequalification, in which chances of anti-competitive behaviour and time-taken is significantly lesser.

## iii) Contentious and Disputes:

- a) Risk: Both the successful and unsuccessful bidders tend to view PQB process as a means for creating rights/ privileges/ entitlement for them by way of hair-splitting, contentious or viciously legalistic interpretations of PQC criteria, disregarding the very rationale of the PQB and PQC.
- b) Mitigation: In the PQC a caveat against such tendencies may be included, asserting the right of procuring agency to interpret the PQC on common usage of terminologies and phrases in public procurement instead of legalistic and hair-splitting judgements and that their decision in this regard would be final.

## 6.8. Empanelment of contractors

### 6.8.1. Empanelment

Ports may empanel/ register contractors of those specific goods and services which are required by them regularly by following the laid down procedure (Refer Appendix-WM-S1/A3). Performance of such empanelled contractors should be reviewed periodically. The list of registered contractors shall be updated on a regular basis. The category/ class of contractors may be upgraded/ downgraded or contractors may be de-listed based on their performance. Empanelment of contractors shall be done in a fair and

equitable manner, preferably online after giving due publicity. The practice of inviting bids for works tenders only from empanelled contractors may be confined to tenders up to certain threshold value, as decided by the project executing authorities.

## 6.9. Electronic Procurement (e-Procurement)

Rule 160 of GFR 2017 makes it mandatory for all Ministries/ Departments /Ports to receive all bids through e-procurement portals in respect of all procurements. Ports 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 i.e. Central Public Procurement Portal (CPPP).

- i) Ports may either use CPPP or engage any other service provider following due process.
- ii) There are other service providers in Public Sector (e.g. MSTC) and Private sector which can be utilized for e-Procurement.
- iii) In individual case where national security and strategic considerations demands confidentiality,
- iv) Ports may exempt such cases from e-procurement after seeking due approvals
- v) Details about the process of e-procurement are available from the service providers.
- vi) The step-by-step e-tendering process followed by KPL is given at Appendix-WM-S1/A1

## Chapter-7

### MODES OF TENDERING

#### 7.1 Modes of Tendering

The Primary objective of every engineer/department of the Port shall be to get the best possible quality work done within reasonable price and time keeping in view the safety and life of the assets. 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. Port may also publish its own Schedule of Procurement Powers (SOPP) delegating such powers within the entity.

The various modes of procurement that can be used in public procurement of works are:

- i) Open Tender Enquiry
- ii) Global Tender Enquiry
- iii) Limited Tender Enquiry
- iv) Single Tender Enquiry or selection by nomination
- v) Award of Work through Quotations.

#### 7.2 Open Tender Enquiry (OTE)

In Open Tender Enquiry, an attempt is made to attract the widest possible competition by publishing the NIT simultaneously on the designated websites and if required in the press (newspapers and trade journals). 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 for Estimated Cost of Work value of Rs. 10 lakhs to Rs. 60 lakhs (amended GFR Rule 139 – 10-7-2024)

As a general rule, all the tenders for Civil/ Electrical/ Marine and other works tenders of value more than Rs.60 lakhs shall be through National Competitive Bidding (NCB)

through eProcurement/ Tendering. In the case of NCB (Offline Bidding) a Tender Notice shall be advertised (if required) at least in one leading National English Newspapers and in one Local Daily for tender value exceeding Rs.10 lakhs and for tender value less than Rs.10 lakhs, the advertisement can be in one national and one vernacular daily. The tender notice should also to be published in KPL's website for details of Notice Inviting Tender (NIT).

#### 7.2.1 Terms and Conditions

- a) Participation should not be restricted to only Bidders enlisted with the Port. Bidders already enlisted are also free to participate. However, a requirement that successful un-enlisted Bidders may have to get enlisted with the Port, before contract is placed on them.
- b) GFR 2017 (Rule 159) makes it mandatory for all Autonomous Bodies to publish their tender enquiries, corrigenda thereon and details of bid awards on the Central Public Procurement Portal (CPPP) and has dispensed with print-advertisements in Newspaper etc. However, if need be, Port may follow the existing procedure to attract more bids from the local/national bidders by publishing the NIT in the Newspapers as stated above.
- c) The advertisements for invitation of tenders should give the complete web address from where the bidding documents can be downloaded.
- d) It should be ensured that the NIT on the website is easily searchable and visible, not hidden under layers of clicks. The matter should not be left entirely to the website or media publicity alone.
- e) The Port should also post the complete bidding document in its web site and on CPPP to enable prospective bidders to make use of the document by downloading from the web site.
- f) The tender documents should be prepared on the basis of the relevant approved SBD for the category of procurement.
- g) In order to promote wider participation and ease of bidding, no cost of tender document may be charged for the tender documents downloaded by the bidders; and

- h) Tender documents should be available for download free of cost up to the last date of submission of tenders. The Sale / availability for downloading of tender documents against NIT should not be restricted and should be available freely.
- i) It should be also ensured that there is no impediment to issue/ access of bid documents.
- j) If the tender document is a priced one, there should be clear instructions by way of Office Memorandum/circular, for the tenderers in the document (which has been downloaded) to pay the amount by demand draft/NEFT/RTGC etc. along with the tender.
- k) The tender documents, shall be priced minimally, if at all priced keeping in view the value of the tender as also the cost of preparation and cost of publicity of the tender documents, subject to the exemption granted to MSMEs or NSICs etc.
- l) EMD should be sufficient to ensure that bidders honour their bids but at the same time should not be large enough to reduce competition subject to the exemption granted to MSMEs or NSICs etc.
- m) The due date fixed for opening of the tender shall be minimum 21 (twenty-one) days from the date of advertisement which may vary, taking into account the nature of work and completion time.
- n) The due date may be subsequently extended with the approval of the Competent Authority, only if it is felt necessary to have better competition.
- o) The Port 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. However, this procedure is not applicable in case of e-procurement.
- p) A limited or open tender which results in only one effective offer shall be treated as a single tender enquiry situation, with relevant powers of approval etc

### 7.3. Global Tender Enquiry (GTE)

Global Tender Enquiry is similar to Open Tender Enquiry 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. The point of balance between

Value for Money and cost/ complexity of procedure is further aggravated as compared to OTE. As per the Government policies, Make in India, development of local industry also needs to be kept in mind. Hence, it may be viable only in following situations:

- a) Where required Technology/ specifications/ quality are not available within the country and alternatives available in the country are not suitable for the purpose;
- b) Very high value contracts (procuring entities may adopt threshold limit e.g. above Rs 200 crore) or where 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 where participation of International bidders would enhance value for money.

### 7.3.1 Terms and Conditions

- i) Publishing of tenders may be done as described in case of OTE above. In addition, in GTE tender copies of NIT should be circulated to Indian Embassies in relevant countries and embassies of those countries in India and
- ii) 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;
- iii) 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 or a mix of any of these currencies;
- iv) GTE tender documents must contain technical specifications which are in accordance with national requirements or else based on an international trade standard;
- v) Escalation of costs due to forex rate variation during implementation to be analysed.
- vi) Procurements should preferably be made directly from the manufacturers. Either the agent on behalf of the foreign principal or the foreign principal directly could bid in a tender, but not both.
- vii) In cases where agents participate in a tender on behalf of one manufacturer, they should not be allowed to quote on behalf of another manufacturer along with the first manufacturer.



- viii) Commissions and scope of services to/ by the agents should be explicit and transparent in the bids/ contracts.
- ix) The due date fixed for opening of the tender shall be usually about four to six 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.
- x) The due date may be subsequently extended with the approval of the Competent Authority only to promote better competition and also considering account delivery requirement.

### **7.3.2 Procedure to be followed for GTE up to Rs. 200 crores**

7.3.2.1. No Global Tender Enquiry shall be invited up to Rs. 200 crores (Rule 161 of GFR, 2017 Amended vide DoE OM No. F.12/17/2019-PPD dated 15.05.2020) or such limit as may be prescribed by the Department of Expenditure from time to time. In exceptional cases where the Port feels that there are special reasons for inviting GTE, for tenders below such limit, it may record its detailed justification and seek prior approval for relaxation from the Competent Authority specified by the Department of Expenditure.

#### **7.3.2.2. Procedure to be followed for Approvals of GTE**

The Following procedure to be followed by the Port for getting the approvals from DoE for a particular proposal beyond the powers / guidelines.

- i) Domestic open tender must be floated to identify the domestic manufacturers/ service providers for the items/ services for which approval is being sought for issuance of Global Tenders
- ii) These details shall cover tender number, date of opening, number of offers received, details of offers received, reasons why domestic suppliers were not considered etc.
- iii) The proposal for approval shall be submitted by the Port through Ministry of Shipping, Ports & Waterways (Administrative Ministry) The proposals directly submitted by Port, will not be entertained.
- iv) The proposals shall be submitted along with duly filled prescribed format.

**7.3.2.3. Exemptions / Clarifications**

- a) On procurement of spare parts of the equipments / Plants & Machinery etc. on nomination basis from Original Equipments Manufacturers (OEMs) or Original Equipment Suppliers (OES) or Original Part Manufacturers (OPMs) as no competitive tenders are invited in such cases (Notified vide OM No. 12/17/2019-PPD issued by Department of Expenditure dated 29.10.2020).
- b) On procurement of services like Annual Maintenance Contract (AMC) and auxiliary/ add-on components for existing equipments/ Plant & Machinery etc. which are procured from OEM/ OES/ OPM on nomination basis, as no competitive tenders are invited in such cases (Notified vide OM No.F.4/1/2021-PPD issued by Department of Expenditure dated 01.09.2021).

**7.3.2.4 Guidelines for resorting to GTE**

Market assessment should be done by the Port. Only after no Indian manufacturer /Contractor is found, a GTE should be issued.

**7.3.2.5 Certificates to be issued**

- a) Confirmation of non-availability in India of particular equipment/ consumables of foreign origin through GeM and other sources.
- b) Certification that locally available alternatives with equivalent specifications are not suitable

**7.4. Limited Tender Enquiry (LTE)**

LTE is a restricted competition procurement, where a preselected list of bidders (enlisted with the Port along with those enlisted with other Public Works Organisations/ Works PSUs) is directly approached for bidding; Bids from uninvited bidders are treated as unsolicited and are normally not entertained except in special circumstances. *This mode provides a short and simple procedure, but may not provide as good a Value for Money as in case of open tendering – still a good balance for procurements below a threshold.* LTE procedures should be default mode of procurement when the estimated value of procurement is less than Rupees Ten lakhs (Amended GFR Rule 139 dt 10-7-24) or when limited numbers of tenderers are known to possess requisite skills, technology and resources, by reason of their high complex or specialized nature, or for works.

#### 7.4.1. Terms and Conditions

- a) Copies of the bidding documents should be sent free of cost (except in case of priced specifications/ drawings) directly by speed post/ courier/ e-mail to firms which are enlisted bidders/ contractors.
- b) Port should also mandatorily publish its limited tender enquiries on Central Public Procurement Portal (CPPP). Apart from CPPP, the Port should publish the tender enquiries on the Port web site.
- c) The unsolicited bids, if any should not be accepted; however, Ports should evolve a system by which interested firms can enlist and bid in next round of tendering. However, under the following exceptional circumstances, these may be considered for acceptance at the next higher level of competency:
  - i) Inadequate Competition
  - ii) Non-availability of suitable quotations from enlisted bidders
  - iii) Urgent demand and capacity/ capability of the firm offering the unsolicited being known, etc.
- d) A simplified Bid Document should be used, instead of a detailed Bid Document.
- e) The minimum number of bidders to whom LTE should be sent is more than three.
- f) In case less than three approved bidders/ contractors are available, LTE may be sent to the available approved bidders/ contractors with approval of the Competent Authority, duly recording the reasons.
- g) The requirement should then be marked for development of more sources by the concerned section / department.

#### 7.4.2. Precautions in adopting LTE

The following precautions to be taken in adopting LTE

- a) Maintenance of list of enlisted suppliers is a sine-qua-non for LTE. The List of enlisted vendors needs to be reviewed periodically to ensure adequate number of qualified suppliers.

- b) To ensure sufficient response, in addition to emails to selected vendors, web-based publicity should be given for limited tenders, with suitable clarifications that unsolicited bids shall not be considered.
- c) Adequate time should be given for submission of quotes, which may be up to three weeks.
- d) A limited or open tender which results in only one effective offer shall be treated as a single tender enquiry situation, requiring with relevant powers of approval etc.
- e) Suppliers or contractors should be selected in a non-discriminatory manner.
- f) All past successful vendors/ bidders should invariably be invited.
- g) In case it is proposed to exclude any enlisted/ approved vendor/ contractor from being shortlisted for inviting LTE, detailed reasons, such as failure in supply, should be duly recorded and approval of the Competent Authority be taken before exclusion.
- h) The selection of bidders should be with due diligence, to ensure that bidders who do not meet eligibility criteria do not get shortlisted.
- i) At the evaluation stage, in LTE, passing over of a duly shortlisted bidder on grounds of poor past performance or eligibility may raise questions about transparency.

### **7.5. Single Tender Enquiry (STE) or Selection on Nomination**

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

- a) There is an urgent need for the work and engaging in competitive tendering process would, therefore, be impractical, provided that the circumstances giving rise to the urgency were neither foreseeable by Port officers nor the result of dilatory conduct on its part.
- b) Works that represent a natural continuation of previous work carried out by the firm when considering the limited size of the additional work in relation to the original procurement and the reasonableness of the price it will be cost

effective to resort to single source procurement. However, the incremental work should not be more than 25 (twenty-five) percent of the original contract value;

- c) In case of an emergency situation, situations arising after natural disasters, situations where timely completion of the work is of utmost importance subject to the reason for such decision being recorded and approval of the competent authority obtained.
- d) Situations where execution of the work may involve use of proprietary techniques or only one contractor has requisite expertise.
- e) Under some special circumstances, it may become necessary to select a particular Agency where adequate justification is available for such single-source selection in the context of the overall interest of the Port.

#### **7.5.1. Terms and Conditions**

- a) The reasons for a STE and selection of a particular firm must be recorded and approved by the Competent Authority as per the delegation of powers prior to single tendering. Powers of procurement of STE are more restricted.
- b) The Port shall ensure fairness and equity, and shall have a procedure in place to ensure that: the prices are reasonable and consistent with market rates for work of a similar nature; and the required work is not split into smaller sized procurements.
- c) All works/purchase/ consultancy contracts awarded on nomination basis should be brought to the notice of MD/Chairman/Board of Directors as the case may be at suitable intervals.

#### **7.6. Award of Work through Quotations**

Award of work through quotations shall be resorted only in emergent cases and suitable reasons shall be recorded.

- i) Use of quotations up to Rs 5 (Five) lakh in each instance shall be adopted for procurement of readily available goods that are not specially produced to the particular specifications and for which there is an established market.
- ii) Procurement entity shall not divide its procurement into separate contracts to bring the amount less than the amount set forth for such purpose.

- iii) Procurement entity shall request quotations from as many contractors/suppliers as practicable but positively from at least three contractors/ suppliers. Each contractor/supplier from whom a quotation is requested, shall clarify whether any elements and other than the charges for the goods (transportation and insurance charges, duties) are to be included in the price (excluding GST).
- iv) Each contractor or supplier is permitted to give only one price quotation and is not permitted to change its quotation.
- v) Execution of works/ services up to Rs.50,000/- are permitted to be made by the User Group/ Service Group / Project Execution Group on Work Order basis by obtaining at least three quotations from three independent agencies. The department may process the quotes and award works. No Tender Evaluation Committee is required to process the quotes. EMD and Security Deposit are not required in such cases.

## **7.7. Award of works in stalled contracts**

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

7.7.2. Notwithstanding anything in the GFR or the Manual, Port should devise methods (including limited/ single tenders) to deal with part completed contracts, wherever the work is abandoned by the contractor mid-way. However, for issuance of limited/single tenders in such cases, at least 20% of work should have been billed by the contractor who has abandoned the work. Procurement approval of such limited/single tender should be at the next higher level, or such level as may be prescribed.

## Chapter-8

# PREPARING BID DOCUMENTS

### 8.1. Bid Document

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.

#### 8.1.1. In case of a limited tender

- a) Full set of Standard Bid Document need not be enclosed
- b) The tender format should have the "terms and conditions of tender" printed on the obverse side.
- c) Since, all enlisted bidders, who normally are invited to quote in such limited tenders, have already acknowledged acceptance of "general conditions of contract" as part of the enlistment application, which are applicable to such procurements, in addition to "terms and conditions of tender" on the obverse of tender form.
- d) Specifications and drawings or any other document may be enclosed wherever necessary with the limited tender form.

#### 8.1.2. Standard Bid Documents

Standard Bid Documents would be complete in itself but may be slightly different for various categories of works. The SBD must necessarily address the following essential aspects:

- i) Description of the subject matter of procurement, its specifications including the nature, quantity, time and location where the construction is to be effective, any incidental services to be performed.;

- ii) Limitation or preference for participation by bidders in terms of the government policies in accordance with Public Procurement (Preference to Make in India), Order 2017 dated 28.05.2018 issued by Department of Industrial Policy & Promotion etc.);
- iii) Earnest money / Performance Guarantee / Security Deposit and the mode of payment of the same and exemptions thereof (if any) as per government policies in accordance with Public Procurement.
- iv) Eligibility and qualification criteria to be met by the bidder.
- v) The qualification criteria should take care of the bidder's past performance, experience, technical competence, financial strength to handle the contract successfully, compliance with environmental protection regulations/ Environment Management System and so on;
- vi) Submission of documentary evidence to demonstrate qualifications of the bidder.
- vii) The procedure for preparation and submission of tenders by the bidders including date, time and place for obtaining, submitting and opening of the bids;
- viii) Suitable provisions for enabling a bidder to seek clarification/ question the bidding conditions, bidding process and/ or rejection of its bid. Names and contact details of IEM in case of Integrity Pact;
- ix) Criteria for determining the responsiveness of bids. (criteria for evaluating the bids on a common platform and the criteria for awarding the contract to the responsive bidder.
- x) Bidder should be made aware that the work site is within the protected area of the docks or elsewhere and draw his attention to the existing regulations regarding restriction of entry and exit of men and materials.
- xi) Provision for third party inspection for all projects costing above Rs.10 Cr to be incorporated.
- xii) Suitable provision for settlement of disputes, if any, emanating from the resultant contract.
- xiii) Essential terms of the Works contract including a suitable clause mentioning that the resultant contract will be interpreted under Indian laws.



- xiv) The names, designations and addresses of one or more officers or employees of the port who are authorized to receive / send communications directly in connection with the Bid proceedings.
- xv) Any formalities that will be required once a tender has been accepted for procurement contract to enter into force.

## **8.2. Preparation of Bid Documents**

### **8.2.1. General**

Bid document may differ from one work to another. But every bid document should consider the following.

- a) The bid documents must be based on relevant Standard Bidding Documents for the Type of Contract (Lump Sum, Item Rate etc); Estimated Value range, Bidding System (Single Envelope/ Two Envelope/ PQB) etc.
- b) SBD for e-procurement would be slightly different from the traditional SBD.
- c) To ensure uniformity, the standard provisions in most sections of the SBD are to be used unaltered.
- d) Any modification to suit a unique requirement of the specific procurement in these documents is to be done through variable sections such as Appendix to Instructions to Bidders or Special Conditions of Contract.
- e) In the absence of its own SBD, Port may follow the SBD of other Public Works like CPWD or follow the approved current Tender document.
- f) Before floating the tender, the Bid Document should be got approved by the Competent Authority.

### **8.2.2. Contents of Bid Documents**

The set of Bid Documents would generally comprise the following

1. Bid Reference
2. Notice Inviting Tender (NIT)
3. Section-1 - Instructions to Bidder/Tenderer

4. Section-2 - Form of Bid, Contractor's Bid and Qualifications, Questionnaire
5. Section-3 - Part-I : Contract Data  
Part-II: General Description of Work and other conditions.
6. Section-4 - Part-I : General Conditions of Contract (GCC)  
Part-II : Special Conditions of Contract (SCC)
7. Section-5 - Specifications of materials/ works
8. Section-6 - Schedule of Drawings
9. Section-7 - Forms of Securities and other Formats
10. Section-8 - BOQ – Price Bid

### 8.2.3. Special Conditions of Contract (SCC)

Any additions, deletions, or variations to the GCC felt necessary for a particular project shall be done by an appropriate entry in the SCC. Conditions of a special nature and project-specific conditions shall be rationally incorporated. Special conditions shall be approved by the authority competent to accept the tender. While drafting SCC, the circumstances warranting them shall be duly considered, including but not limited to the following:

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

#### 8.2.4. General principles of preparing Tender Documents

The tender document is the fundamental document in the public procurement process since it becomes part of the contract agreement post award of the contract. All necessary provisions governing the contract should be clearly provided in the tender document.

- a) Technical specifications, drawings, commercial terms and conditions including payment terms, obligations of the Port and the contractor timeframe/milestones for execution of the project, tax implications, compliance framework for statutory and other norms, reporting on progress/ quality of the work, dispute resolution.
- b) Provisions/ clauses in the tender document should be clear to avoid differences in interpretation and possible time overrun, cost overrun and quality compromises.
- c) Comprehensive survey & solid investigation report, area grading & mapping of underground facilities, where project is to be executed, may be made available and made part of tender document.
- d) Model Tender Documents issued by the DoE if any may be used, with due customisation.
- e) In tenders containing General Conditions of Contract (GCC), additional/ special conditions to be incorporated in the tender document on need basis.
- f) The GCCs should not be altered and changes, if any, in conditions of contract should only be made through the Special Conditions of Contract.
- g) Identification of milestones may be done in an optimal and sequential manner and the same may be stipulated in the tender document along with enabling provisions.
- h) Payment terms prescribed in the tender document should be such that the payment made to contractors at every stage is commensurate to quantum of work done, subject to any requirements for initial mobilization.
- i) Port management may issue instructions regarding appropriate delegation of authority for approval of deviations, variations and changes in the scope of the contract.
- j) Provision of price variation, wherever considered appropriate, as well as methodology for calculation of the same shall be clearly stipulated in the tender document.

- k) Quality Assurance Plan (QAP) may be incorporated in the tender document/ contract. Schedule of visit by various levels of officials should also form part of the QAP.
- l) Technical and Financial eligibility Criteria for the bidders are important in the public procurement process. They shall be clear and fair, having regard to the specific circumstances of the procurement.
- m) Appropriate parameters should be prescribed in the eligibility criteria for bidders, to enable selection of the right type of bidders in public interest, balancing considerations of quality, time and cost.
- n) Open online tendering should be the default method to ensure efficiency of procurement. Port officers should also keep the experience criteria broad based so that bidders with experience in similar nature of works in various sectors can participate.
- o) Pre-bid conference may be conducted for large value tenders (Value as defined/decide by the Port from time to time by way of a separate circular). The Place and time of pre-bid conferences should be mentioned in the tender document and/ or publicized through the website of the Port and/ or through newspaper publication.

#### **8.2.5. NIT and EMD clauses in Tender Document**

The tender document is the fundamental document in the public procurement process since it becomes part of the contract agreement post award of the contract. All necessary provisions governing the contract should be clearly provided in the tender document.

Tender documents comprising the following important clauses shall be prepared and approved by the concerned Head of the division for all quotations, open / limited tenders. The NIT shall only be issued after the authority competent to invite the tender has approved the draft tender. Tender documents shall be carefully prepared and thoroughly scrutinised for any typographical errors and all necessary clauses.

#### **8.2.6. Particulars to be furnished in the NIT**

Notice for NIT shall invariably include, the following information

- i) Name of the work.
- ii) Location of the work.

- iii) Estimated value of the work.
- iv) Amount of Earnest Money to be deposited and the form/mode in which the EMD should be furnished.
- v) Cost of tender documents (which shall be non-refundable)
- vi) Validity period of the offer.
- vii) Period of completion of the work.
- viii) Place where the tender documents will be available for purchase.
- ix) Mode of payment of cost of tender documents.
- x) Last date and time upto which tender documents will be downloaded.
- xi) Last date and time of receipt of tenders
- xii) The place and time where the completed tender documents are to be submitted and opened, subsequently.

#### **8.2.7. Bid Validity**

- a) A bid shall remain valid for the period mentioned in the ITB / Amended ITB [normally 90 (ninety) days for OTE and 120 (one hundred and twenty) days for GTE].
- b) In exceptional circumstances, the consent of the bidder may be requested in writing for an extension to the period of bid validity.
- c) Such requests should preferably be made much before the expiry of the bid validity.
- d) The bid security provided shall also be suitably extended.
- e) A bidder accepting the request and granting extension shall not be permitted to modify his bid.
- f) Reasons for seeking extension of bid validity should be recorded by the procuring officers at the time of taking such decisions itself.

#### **8.2.8. Bid prices**

- a) The contract shall be for whole works based on the priced bill of quantities submitted by the Bidder.
- b) The bidder shall fill in rates and prices both in figures and words for all items of the work described in Bill of quantities, in case any difference in rates quoted

in figures and words, the rate quoted in words will be considered for evaluation and award. Items for which no rate or price is entered by the bidder will not be paid by the Employer when executed and shall be deemed to have been covered by the other rates and prices in the Bill of quantities. Corrections, if any, shall be made by crossing out, initialing, dating and rewriting.

- c) All duties, taxes and other levies payable by the Contractor (except GST) under the contract, or for any other cause shall be included in the rates, prices and total Bid price submitted by the Bidder.
- d) The rates and prices quoted by the Bidder shall be fixed for the duration of the Contract and shall not be subject to adjustment on any account. OR
- e) The rates and prices quoted by the bidder are subject to adjustment during the performance of the contract in accordance with the provisions of the NIT/Tender Document Conditions.

#### **8.2.9. Currencies of Bid and Payment**

The unit rates and the prices shall be quoted by the Bidder entirely in Indian Rupees. In the cases of global bids, if the unit rates/prices are in terms of foreign currency, then the exemption can be taken with the approval of competent authority.

#### **8.2.10. Bid Security/ Earnest Money Deposit (EMD)**

To safe guard against a bidder's withdrawing or altering its bid during the bid validity period in the case of OTE and GTE tenders, bid security [(Earnest Money Deposit (EMD))] is to be obtained from the bidders along with their bids. Any bid not accompanied by the requisite bid security shall be rejected as non-responsive in accordance with provisions of the bidding document.

- a) The amount of bid security should generally be between One to Two per cent of the estimated value of the goods to be procured.
  - i) For works estimated to cost up to Rs ten crore or as notified from time to time: 2% (Two percent) of the estimated cost
  - ii) For works estimated to cost more than Rs ten crore or as notified from time to time : Rs. Twenty lakhs plus 1% (one percent) of the estimated cost put to tender in excess of Rs. ten crore.

- iii) The amount of bid security, rounded off to the nearest hundreds of Rupees, as determined by the port, is to be indicated in the bidding documents.
- iv) Petty works costing Rs. 25,000 or less the concerned Engineer at his discretion, dispense with the conditions for calling for earnest money.
- v) For special tenders like Tax Free Bond / equity related, engagement of professionals, empanelment of facilities, etc., the exemption from EMD can be considered with the approval of competent authority.
- b) The Bid Security may be obtained in the form of demand draft, or Bank Guarantee from any of the Commercial Banks or payment online in an acceptable form, safeguarding the port's interest in all respects.
- c) The bid security is normally to remain valid for a period of 45 (forty-five) days beyond the final bid validity period. In case of BG, it can be for 3 months to six months.
- d) In appropriate cases, in place of a Bid security, Port may consider asking Bidders to sign a Bid securing declaration accepting that if they withdraw or modify their Bids during the period of validity, or if they are awarded the contract and they fail to sign the contract, or to submit a performance security before the deadline defined in the request for bids/ request for proposals document, they will be suspended for the period of time specified in the request for bids/ request for proposals document from being eligible to submit Bids/ Proposals for contracts with the concerned department of the port. Such relaxation shall be with the approval of the Competent Authority.
- e) In appropriate cases, Submission of the bid security may be waived with the Competent Authority's approval in the case of indigenization / development tenders, limited tenders and Single Tender.
- f) The benefit of Exemption of EMD to all Micro and Small Enterprises (MSE) will be allowed. Tenderer Shall upload with their offer, the proof of their being MSME registered with appropriate authorities specified by Ministry of MSME.
- g) Bid securities of the unsuccessful bidders should be returned at the earliest after expiry of the final bid validity period and latest by the 30<sup>th</sup> day after the award of the contract.
- h) Bid security should be refunded to the successful bidder on receipt of a performance security within 15 days.

- i) However, in case of two stage bidding, Bid securities of unsuccessful bidders during first stage i.e. technical evaluation etc. should be returned within 30 days of declaration of result of first stage i.e. technical evaluation etc.
- j) A bidder's bid security will be forfeited if the bidder
  - i) withdraws or amends its/ his tender before the expiry of the Bid validity period or before the issue of LOA whichever is earlier.
  - ii) impairs or derogates from the tender in any respect within the period of validity of the tender;
  - iii) If the bidder does not accept the correction of his bid price during evaluation; and
  - iv) If the successful bidder fails to sign the contract or furnish the required performance security within the specified period. In such cases, Port may debar him from the future contracts for certain period (say 2 years)

#### 8.2.11. Performance Guarantee

To ensure due performance of the contract, performance security [or Performance Bank Guarantee (PBG)] is to be obtained from the successful bidder who is awarded the contract. Performance security should be for an amount of Three (3) to ten (5) per cent of the value of the contract (Rule 171(i) of GFR 2017 amendment dated 1-1-2024). In works contract it is usual to take five percent of contract value Performance Security.

- a) The time within which the Performance security shall be submitted by the Contractor has to be mentioned in the Tender document. The specified period can be extended by the proponent department at their discretion with the approval of the Competent Authority.
- b) Performance security may be furnished in the form of demand draft, bank guarantee issued/ confirmed from any of the commercial bank in India or online payment in an acceptable form, safeguarding the port's interest in all respects.
- c) In case of a JV, the BG towards performance security shall be provided by JV Company.
- d) In case of GTE tenders, the performance security should be in the same currency as the contract and must conform to Uniform Rules for Demand Guarantees (URDG 758) – an international convention regulating international securities (A set of rules developed by the International Chamber of Commerce first adopted in 1992. The latest version URDG 758 provides a framework for harmonizing international trading practices and establishes agreed-upon rules



for independent guarantees and counter-guarantees among trading partners for securing payment and performance in worldwide commercial contracts).

- e) Submission of Performance Security is not necessary for a contract value up to Rs. one lakh.
- f) Performance Security is to be furnished within the specified 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 contractor, including Defect Liability Period (DLP). In case of JV the Performance Security has to be furnished within 28 days after notification of the award.
- g) The performance security will be forfeited and credited to the port's account in the event of a breach of contract by the contractor.
- h) It should be refunded to the contractor without interest, after he duly performs and completes all obligations under the contract but not later than 365 days of completion of the Defect Liability Period (DLP).
- i) Return of Bid/ Performance Securities should be monitored and delays should be avoided.
- j) If feasible, the details of these securities may be listed in the eProcurement Portal, so as to make the process transparent and visible.

#### 8.2.12. Retention Money

In addition to Performance Guarantee (usually five percent), Contracts for works usually provide for a percentage (usually five percent) of each running bill (periodic/ interim payment) to be withheld as Retention money until final acceptance. However, the Performance Guarantee plus Retention money should not exceed 10% (Refer GFR 2017 Rule 171(i) amendment dated 1-1-2024)

- a) The earnest money instead of being released may form part of the security deposit if requested by the Contractor.
- b) A sum @ 10% of the gross amount of the bill shall be deducted from each running bill of the contractor, till the sum along with the sum of EMD adjusted amount reaches 5% of the Contract value.

- c) The contractor may, at his option, replace the retention amount with an unconditional BG from a bank acceptable to the Concerned department of the port at the following stages:
  - i) After the amount reaches half the value of the limit of retention money; and
  - ii) After the amount reaches the maximum limit of retention money, one-half of the retention money (or BG, which replaced retention money) shall be released on the issue of the taking-over certificate;
  - iii) If the Taking Over Certificates (TOCs) are issued in parts, then in such proportions as the engineer may determine, having regard to the value of such part or section.
  - iv) The other half of the retention money (or BG, which replaced the retention money) shall be released upon expiration of 365 days after the DLP of the works or final payment, whichever is earlier, on certification by the engineer.
- d) The Bank Guarantee submitted against Retention Money shall initially be valid up to the stipulated date of completion of the work plus maintenance /Defect Liability period as defined in General Conditions of Contract (GCC) which shall be extended further time to time depending upon extension of contract granted under provisions of relevant clauses.
- e) In the event of different defect liability periods being applicable to different sections or parts, the expiration of defect liability period shall be the latest of such periods.

#### **8.2.13. Offers without prescribed Bidding Documents of KPL**

The condition "Offer sent without having the prescribed bidding document of KPL and/or without complying with the terms and conditions of bidding document for submitting the offer, will be ignored straightway" should be inserted in all tender notices.

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## Chapter-9

### PUBLICATION OF BID DOCUMENTS

#### 9.1. Publication of Bid Documents

It is mandatory for all Ports to publish their tender enquiries, corrigenda thereon and details of bid awards on the Central Public Procurement Portal (CPPP) and also on their own website/ Portal. GFR 2017 has dispensed with advertisements in Newspapers.

- a) In exceptional circumstances, Port may issue the advertisement in newspapers as deemed fit. Such advertisement should also consist of the link of website from where the detailed advertisement and bidding document can be seen and downloaded.
- b) Individual cases where confidentiality is required, for reasons of national security, would be exempted from the mandatory e-publishing requirement. The decision to exempt any case on the said grounds should be approved by the MD/Chairman of the Port with the concurrence of the Head of the Finance in each such case. Statistical information on the number of cases in which exemption was granted and the value of the concerned contract should be intimated on a Quarterly basis to the Board of Directors.
- c) In order to promote wider participation and ease of bidding, no cost of tender document may be charged for the tender documents downloaded by the bidders.
- d) To ensure competition, attention of all likely tenderers, for example, enlisted vendors, past contractors and other known potential contractors, should be invited to the NIT through email/ SMSs/ letters. In e-procurement, the website may be programmed to generate these alerts automatically.
- e) In case of procurement through a limited tender, the NIT may be uploaded on CPPP Portal and Port's website with a note stating:

"This notice is being published for information only and is not an open invitation to quote in this limited tender. Participation in this tender is by invitation only and is limited to the selected Port's enlisted contractors. Unsolicited offers are liable to be ignored. However, contractors who desire to participate in such tenders in future may apply for enlistment with Procuring Entity as per procedure."

- f) Printouts of the tenders published on the website should be collected and kept on record as a proof of publicity.
- g) The complete details of the dates, on which advertisements actually appeared on the website, should be indicated while sending cases to higher authorities.
- h) For procurement of highly technological and complex works, tender submission dates may be extended by the Port in order to reply queries in the pre-bid meetings or any other justifiable reason.

## **9.2. Issue/ Availability and Cost of tender documents**

The sale/ availability for downloading of tender documents against NIT should not be restricted. Tender documents should preferably be sold/ available for download up to the date of submission of tenders. The Department should also post the complete tender document in its web site and on CPPP to enable prospective tenderers to make use of the document downloaded from the web site.

- a) The advertisement for invitation of tenders should give complete web-address from where bid documents can be downloaded.
- b) In case of offline tenders, the concerned department 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.

### **9.2.2. Exemption from Payment of Tender Fee**

The firms registered with NSIC/MSME will be exempted from payment of tender fee irrespective of the monetary limit mentioned in their registration certificate provided they furnish evidence that they are registered for the items they intend to quote against KPL tenders.

### **9.2.3. Purchase of Bidding Documents by Agents in India**

In respect of International Competitive Bidding (ICB), against GTE, the Agents in India, duly authorized by their foreign principals, will be allowed to purchase bidding documents in Indian currency through Bank Draft drawn in favor of KPL provided such foreign principal/supplier remit the cost of bidding documents in foreign currency equivalent to Indian Rupees through Bank draft / Banker's cheque in favor of KPL along with their offer before due date.

Demand Drafts received from Indian Agents for the purchase of bidding documents shall be deposited immediately. On receipt of requisite tender fee in foreign currency, the tender

fees in Indian currency received from authorized agent in India will be released by Finance department under intimation to concerned Head of Tender Processing Group and the tender fees received in foreign currency will be accepted and deposited in the bank.

#### **9.2.4. Cancellation of Tender - Refund of Tender Fee**

In the event, a particular tender is cancelled, the tender fee if any will be refunded to the concerned bidder.

### **9.3. Eligibility and Qualifications of Bidders**

#### **9.3.1. Eligibility of Bidders**

- i) All eligible bidders meeting the eligibility criteria as defined in Instructions to Bidders can participate in the tender. The applicant should be a private or government-owned legal entity.
- ii) Bidder should have valid registration with Employees Provident Fund organization under 'EPF and Miscellaneous Provisions Act, 1952' and the valid registration with Employee State Insurance (ESI),
- iii) For Works with an estimated value of say - Rs. 10 (ten) crore, Joint Ventures may be allowed. Maximum number of partners in JV shall be limited (say – three). In case of JV, all the partners shall be jointly and severally liable for the successful completion of the work.
- iv) A firm that has been engaged by Port to provide consultancy services for the preparation or implementation of a project, and any of its affiliates (associates, subsidiary, JV partner), shall not be eligible for subsequently providing goods or works (other than a continuation of the firm's earlier consultancy services) for the same project.
- v) A firm determined non-performing by the Port shall not be eligible to bid during the period so determined.
- vi) The bidder must not have in his employment:
  - a) The near relations (defined as first blood relations, and their spouses, of the bidder or the bidder's spouse) of persons involved in decision making in awarding the contract.

- b) Without Board's permission, any person who retired as Class-1 officer of the concerned department within last two years.

### 9.3.2. Qualification of Bidders

Qualification of bidders is done on Pre-qualification Bidding basis or on post-qualification basis. In both cases Qualification criteria needs to be laid down in the Bid Document. The Pre-Qualification Criteria (PQC) are based on Technical / Financial capability of the bidder.

- a) It is of utmost importance to develop new contractors and also to provide avenues to Subcontractors, since they may not get opportunities to accumulate the required credentials to compete in normal tenders.
- b) To enable a window of entry for such Start-ups and subcontractors, in small value contracts (e.g. repair contracts up to Rs. 30 lakh), the requirements regarding General Construction Experience, Particular Construction Experience and Available Bid Capacity may not be insisted upon provided the bidders fulfil other criteria regarding Financial/ Personnel/ Equipment capabilities.
- c) However, to avoid overstretching of their resources, no such contractors may be allowed to hold more than 2 contracts under relaxed credentials, at any given time.

### 9.4. Clarification of Tender Documents

A prospective bidder requiring clarification on the tender documents may notify the Port in writing, well before the due date of Pre-bid meeting and a response must be sent by Port in writing regarding the clarifications sought prior to the last date of Submission of the tenders. Copies of the query of any bidder and clarification issued must be uploaded in the Port's/CPPP website without mentioning the name of the bidder

### 9.5. Amendment of Tender Documents

At any time prior to the date of submission of bids, the Port may, whether at their own initiative or in response to a clarification sought by a prospective bidder, amend bid documents by issuing a corrigendum.

- a) The corrigendum shall be published on CPPP and/or the Port's website.

- b) 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, it is better to prepare a revised tender and the time and date of submission of tenders are also to be extended suitably.
- c) Depending on the situation, such an amendment may also need fresh publication adopting the same procedure as for publication of the original tender enquiry. This is very critical as the amendment may lead to any new bidder meeting the qualifying criteria and publicity is required to ensure a level playing field.

## 9.6. Pre-bid Conference

In case of turnkey contract(s) or contract(s) of special nature for procurement of sophisticated and costly work/ services/ equipment or wherever felt necessary, a suitable provision is to be kept in the bidding documents for inviting the bidders or their official representatives to attend pre-bid conference at a specified place and time, for clarifying issues and clearing doubts, if any, about the specifications/ Terms of Reference and other allied technical/ commercial details of the work, services, plant, equipment and machinery etc.

- a) Bidders should be asked to submit written queries in advance of the conference by fixing a date for its receipt.
- b) Discussions can be held in the Pre-bid meeting on the queries received in advance wherever possible. However, the clarifications issued in writing shall prevail.
- c) After the conference, Minutes of the pre-bid meeting including all the questions and replies shall be prepared and approved by the competent authority.
- d) In order to bring clarity to replies, all questions/ answers and needed amendments should be merged in the sequence of clauses in the bidding document.
- e) It is a good practice to consolidate all queries received either as part of pre-bid meeting or just after issuing bidding documents and deal with in comprehensive way.
- f) Final replies, including the text of the questions raised and the responses given, shall be published in the CPPP/Port's website.

- g) The techno-commercial requirements may be revised if considered necessary by issue of a formal corrigendum which shall be Published in the CPPP/Port's website.
- h) These pre-bid queries / replies shall be published along with the bid documents on the appropriate website including CPPP.
- i) After the issue of clarifications/ modifications consequent to the pre-bid meeting, minimum time (say one/two weeks) should be given for submission of bids.

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## Chapter-10

### SUBMISSION OF BIDS (Tenders)

The concerned department of the port shall fix a place and a specific date and time as the deadline for the submission of tenders. The bid shall be submitted by the bidder well before the deadline (original or extended as the case may be) for submission (to avoid rush in internet traffic). The use of offline mode of tendering shall be done only under the circumstances where exemptions for e-Procurement are provided as per extant instructions.

#### 10.1. Part 1 Technical Bid

The technical bid shall be hardbound (in other than e-Procurement) and all pages serially numbered. Hardbound implies such binding between two covers through stitching or otherwise whereby it may not be possible to replace any paper without disturbing the document. In e-Procurement, the submission would be online. The Technical bid submission should contain the following:

- i) Covering Letter for Submission of Bids
- ii) Bid security for an amount and in form as specified in NIT/Tender clauses and a Bid Security Declaration.
- iii) Power of attorney
- iv) Qualification information and supporting documents (if prequalification has been done, original qualification will be updated);
- v) Evidence of access to a revolving line of credit in case financed by Banks etc;
- vi) Undertaking for making available the required key equipment as specified;
- vii) Undertaking for making available the required key personnel as specified;
- viii) Annual audited statements of turnover;
- ix) Current contract commitments;
- x) Financial data;
- xi) Additional information regarding litigation, debarment, arbitration, and so on;

- xii) Joint Venture (JV) agreement (MoU or a letter of intent to create a JV in case of award of Contract) in case the bidder is a JV;
- xiii) Proposed methodology and programme for execution of work duly supported by equipment planning and Quality Assurance procedures proposed to be adopted by the bidder; and
- xiv) Affidavit concerning Submission of Bid and abiding by Bid Conditions.
- xv) Bank account details for refund of EMD and/or Payment of Bills
- xvi) BG format for Advance Payment if applicable in the tender

## 10.2. Part II Financial Bid

Financial bid shall contain the following:

- i) Form of bid – duly filled in and signed on each page; and
- ii) Priced BOQ – duly filled in and signed on each page. Each part will be separately sealed and marked as per instructions.

## 10.3. Sealing and Marking of Tenders

In case of Manual tenders, the tender document has to indicate the total number of tender sets (e.g., in duplicate or in triplicate etc) required to be submitted. In case bids are asked in a number of copies, the tenderer has to seal the original and each copy of the tender in separate envelopes, duly marking the same as "original", "duplicate" and so on and also marking these as mentioned above.

- a) In case of two envelope bidding system, the techno-commercial bid and financial bid should be sealed by the tenderer in separate inner covers duly marking these as 'Techno-commercial Bid' and 'Financial Bid' and marked with the address of the Tender issuing office/department and the tender reference number on the envelopes.
- b) The bidder shall put DD / Pay order towards cost of tender documents if downloaded from the web site of Notice Inviting Tender, hereof in one envelope and properly sealed and mark as "Cost of tender documents".
- c) The envelopes shall
  - i) be addressed to -----Kamarajar Port Limited, Chennai.

- ii) bear the following identification:

Bid for -----

Bid Reference No: -----

Name and Address of the Bidder

- d) The sentence "NOT TO BE OPENED" before..... (due date & time of tender opening) are also to be put on these envelopes and these sealed inner covers are to be put in a bigger outer cover which should also be sealed and duly super scribed in a similar manner.
- e) the inner envelopes shall indicate the name and address of the bidder to enable the bid to be returned unopened in case it is declared late, pursuant to respective Clause, or the bid is declared non responsive.
- f) If the outer envelope is not sealed and marked properly as above, the Concerned department of the port will not assume any responsibility for its misplacement, premature opening, late opening etc.
- g) In the event of the specified date to submission of bids declared a holiday for the port, the Bids will be received upto the appointed time on next working day.
- h) The Port may extend the deadline for submission of bids by issuing an amendment in accordance with Clause, in which case all rights and obligations of the Employer and the bidders previously subject to the original deadline will thereafter be subject to the deadline as extended.
- i) In case of tender document being downloaded from the web site, at the time of submission of (the hard copy of) the tender document, the tenderer shall give an undertaking that no change have been made in document, he shall be issued a printed set of document under acknowledgement with a condition that the printed version of the Port Tender Document will be treated as authentic tender and if any discrepancy is noticed at any stage between the Port's tender document and the one submitted by the tenderer, the conditions mentioned in the port's printed document shall prevail.

Besides, the tenderer shall be liable for legal action for the lapses

- j) The details regarding the submission of bids should also form a part of the ITB and AITB in the tender documents; all the above instructions are to be suitably incorporated in the tender documents.

#### **10.4. Withdrawal, Substitution and Modification of Tenders**

In case of Manual 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.

- a) Any such request received after the prescribed date and time of receipt of tenders will not be considered.
- b) No bid may be withdrawn in the interval between the deadline for submission of bids and expiration of the period of bid validity.
- c) Withdrawal of a bid during this period will result in forfeiture of the bidder's bid security (EMD) and other sanctions.

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## Chapter-11

### RECEIPT AND OPENING OF BIDS

#### 11.1. Receipt of Bids

The following guidelines should be adhered to for receipt and custody of bids:

- a) In e-procurement, all tenders uploaded by tenderers are received, safeguarded and opened online on the portal. No submission shall be allowed in e-Procurement after the submission deadline.
- b) In offline tenders, receipt and custody of bids shall be done in a transparent manner to maintain the credibility of the process.
- c) The concerned department of the port shall maintain tender boxes for receiving the bids at suitable locations which would facilitate security and easy access to bidders.
- d) If required, Tender boxes should be separate for each day of the week of tender opening and should be sealed by the Tender Opening Committee (TOC) of the day. The tender box shall have two locks. Key of one lock will be with the head of the office and the other key with the official nominated by him;
- e) 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. In no circumstances, the cover of the tenders shall be opened or damaged by the concerned officer.
- f) Bids received by courier shall be deposited in the tender box by the Dispatch Section till the date and time of bid submission.
- g) Bids sent by facsimile or email are to be ignored and rejected.; and
- h) The tender received by the concerned department of the port after the deadline for the submission of tender, shall not be opened and shall be returned to the contractors or contractors that submitted it.

**11.1.1. Tender Register**

In case of manual tenders, all Tenders received by concerned officer will be recorded in a Tender register. The Diary Section will put date and time of the receipt on each envelope of tender and hand over the same on day-to-day basis on written acknowledgement by the concerned officer for having received the same. In no circumstances the cover of tenders should be opened or destroyed by concerned officer.

A Tender register which should be authenticated and paginated, shall be maintained to record

- a) Name of the work
- b) Tender No.
- c) Name of the parties to whom the tender enquiry was issued / tenders were sold

**11.2. Opening of Bids****11.2.1. Ensuring collection of all the correct submitted bids**

In case of manual tenders, the Tender Opening Committee must ensure that all the bids submitted for the subject tender are collected and opened.

- a) At a prescheduled date and time, the TOC 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.
- b) All bids should be collected from the tender box.
- c) Bids for tenders not opening on that day should be put back into the box and the box resealed.
- d) Wrongly dropped tenders with appropriate endorsement should be put into the appropriate box or sent to the Tender Evaluation Committee (TEC) concerned, if the date of opening is over.
- e) 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.

- f) TOC should ensure and demonstrate that bid envelopes are duly sealed and untampered.
- g) Late bids should be separately counted but kept aside and not opened.
- h) In the case of an advertised tender enquiry or limited tender enquiry, late bids should not be considered;

#### **11.2.2. Opening of Bids/Tenders**

With the introduction of Digital mode of Tendering process, the procedure of Receiving and Opening of Bids is not being used by the Ports. In the Digital mode, the tenders are opened by the authorized persons and the documents are downloaded. The Procedure of Numbering and Opening of bids is automatically followed by the E-Portal. However, in exceptional cases, where physical tendering process is followed, the below mentioned procedure needs to be followed.

On the due date and appointed time, as mentioned in the bid document, the Tender Opening Committee (TOC) - comprising one officer each from the concerned department of the port and Finance, will open the bids in the presence of the intending bidders or their representative. In the event of the specified date for Bid/Tender opening declared a holiday by the Employer, the Bids will be opened at the appointed time and location on the next working day.

- a) A record of opening of bids will be maintained, including signatures of bidders present.
- b) The authorised representatives of bidders, who intend to attend the tender opening in OTE/ GTE, are to bring with them letters of authority from the corresponding bidder. The prescribed format for the letter of authority for attending the Tender opening should be given in the bidding document.
- c) All bid-opening activities should be carried out demonstrably before such a gathering.
- d) The bidder's name, the bid prices and conditional and unconditional discount, if any will be announced by the concerned department of the port during opening of bids.
- e) Envelopes marked —"WITHDRAWAL" shall be opened and read out first. Bids for which an acceptable notice of withdrawal has been submitted pursuant to Clause shall not be opened.

- f) The Technical bids or the first envelop only will be opened by the TOC and after following all the necessary Tender opening procedures, the Financial bids of all the bidders shall be kept in a separate envelope superscribing it as the "Financial Bid – Tender No.----- Not to be opened until \_\_\_\_". The TOC shall sign on the envelope and get the signatures of all the bidders or their representatives who attended the meeting. The Financial bids of those bidders who have not submitted EMD etc, shall be kept separately and handed over to the concerned department for its return/rejection without opening.
- g) The prescribed format for the Tender opening attendance sheet and report is given at Annexure WM-S1/2;
- h) After opening, every tender shall be numbered serially (say 3/ 14 – if it is the third bid out of 14 total), initialed, and dated on the first page by the TOC.
- i) Each page of the price schedule or letter attached to it shall also be similarly initialed, particularly the prices, delivery period, and so on, which shall also be circled and initialed along with the date.
- j) Any other page containing significant information should also be dealt with similarly.
- k) Blank tenders, if any, should be marked accordingly by the TOC.
- l) The original (and duplicate, if any) copies in a tender set are to be marked accordingly by the TOC.
- m) As the bids are to be submitted in hardbound form, signing of covering letters and index page by all the committee members is sufficient;
- n) Erasure/ cutting/ overwriting/ use of whitener/ columns left unfilled in tenders, if any, shall be initialed 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.
- o) Wherever quantity/ amount is written only in figures, the TOC should write them in words.
- p) 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.



- q) Similarly, the absence of discounts should be marked with "no discounts noted;"
- r) The Tender Opening Officers will encircle the rates and terms and conditions and put their initials
- s) The TOC 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.
- t) No clarifications by tenderers should be entertained or allowed to be recorded during the Tender Opening.
- u) It should be understood that TOC has no authority to reject any tender at the tender opening stage.
- v) A Tender Opening report 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. (Refer Annexure – WM S1/3)
- w) The tenders that have been opened, list of the representatives attending the tender opening, and Tender Opening report are to be handed over to the nominated purchase officer and an acknowledgement obtained for him.

### **11.3. Ensuring submission of EMD**

- a) The Tender Opening committee shall ensure that the Bidder has submitted EMD as stipulated in the Tender. Any bid not accompanied by the requisite bid security shall be rejected as non-responsive in accordance with provisions of the bidding document.
- b) The Tender Opening committee shall enter the details of EMD received, viz, Name of bidder, the Banker's cheque or Demand Draft No./date/name of the bank that issued the DD, amount of the instrument etc. In case of Bank Guarantee, name of the bidder, BG No./date/name of the Bank that issued the instrument, validity of BG etc.

- c) After the Tender Opening process is over, the committee shall hand over the DD/BG as the case may be to the proponent department for further handing over the same to Finance department under acknowledgment.
- d) The Finance department shall deposit the DDs in to the bank account and monitor for its realization. In case of BG, the same shall be got verified from the issuing bank by the Finance Department.

#### 11.4. Sources and Verification of Bank Guarantees

Bank Guarantee for Bid Security (EMD) or Performance Guarantee (Security Deposit) should be irrevocable and operative Bank Guarantee (BG) as per format enclosed in the Bid Document and should be issued by a Scheduled Commercial (i.e. Indian or Foreign Banks included in the Second Schedule of Reserve Bank of India Act, 1934 excluding Co-operative banks or Regional Rural Banks).

- a) In case of foreign bidders or in case of GTE, if Bank Guarantee is from a foreign bank branch situated outside India, the Bank Guarantee must be issued through any of the Scheduled Commercial Bank.
- b) In case BG is issued directly by a bank outside India, it should be executed on Letter Head of the Bank and should be advised and made payable through their Indian Branch/Corresponding Bank in India.
- c) The Issuing Bank should also state the name and designation of the next Higher Authority of the Officials who have issued the Bank Guarantee.
- d) Bank guarantees submitted by the tenderers/ contractors as EMD/ performance securities need to be immediately verified from the issuing bank before acceptance.
- e) There may not be any need to get the Bank Guarantee vetted from legal/ finance authority if it is in the specified format.
- f) 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);
- g) The confirmation from the issuing branch of the bank is obtained in writing though registered post/ speed post/ courier/email.
- h) The bank should be advised to confirm the issuance of the BGs specifically quoting the letter of Port 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;
- i) 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.
- j) As far as possible organizations should follow e-verification of bank guarantees as per the procedure prescribed by Reserve Bank of India.
- k) Bank guarantees, either received in physical form or electronic form, should be verified for its genuineness following prescribed method for the same and the Port Finance officers should do due diligence on genuineness of the Bank Guarantees before acceptance of the same.

### **11.5. Safe Custody and Monitoring of Securities**

A suitable mechanism for safe custody and monitoring of EMDs and performance securities and other instruments should be evolved and implemented by the concerned department of the Port.

- a) Necessary action shall be taken on time for extension or encashment or refund of EMDs and performance securities.
- b) 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.
- c) Extension of bank guarantees and other instruments, where warranted, should be sought immediately and implemented within their validity period.

- d) Bank Guarantee should never be handed over to the contractor for propose of extension of validity.
- e) System of monitoring of securities and other instruments may be considered to be computerised with automatic alerts about lapse of validity etc.
- f) For release of BGs, the proposal shall be forwarded by the executing department with its recommendations in accordance with the contract conditions, for approval by the Competent Authority with the concurrence of the Finance Division.

## **11.6. Goods and Services Tax (GST)**

11.6.1. A detailed clause regarding GST may be included in the bid documents, in consultation with the Head of Finance, stipulating inter-alia that all the bidders/ tenders should ensure that they are GST compliant and their quoted tax structure /rates are as per GST Law.

- a) The bid and contract must show the GST Tax Rates and GST Amount explicitly and separate from the bid/ contract price (exclusive of GST).
- b) Asking for a bid-price inclusive of taxes/ GST would be a violation of the GST Act.
- c) Bid format may be suitably modified accordingly.
- d) Any variation in tax structure/rate due to change in the rates of GST shall be dealt with under Statutory Variation Clause.
- e) In case contractor is not liable to be registered under GST Act, contractor shall be paid "Amount of work executed excluding GST amount duly deducting all other leviable taxes

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## Chapter-12

# EVALUATION OF BIDS

### 12.1. Evaluation of Bids – Primary considerations

The evaluation of Bids is one of the most significant areas of Tender process. 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 Port may include quality, price, technical merit, aesthetic and functional characteristics, environmental characteristics, running costs, cost- effectiveness, post construction service and technical assistance, delivery date and delivery period or period of completion etc.

- a) No criteria shall be used for evaluation of tenders that cannot be verified or not stated in the contract, with the exception of provisions of laws in force.
- b) No hearsay information or hitherto undeclared condition should be brought in while evaluating the tenders.
- c) Similarly, no tender enquiry condition (especially the significant/ essential ones) should be overlooked/ relaxed while evaluating the tenders.
- d) The aim should be to ensure that no tenderer gets undue advantage at the cost of other tenderers and/ or at the cost of Concerned department of the port.
- e) Information relating to evaluation of tenders and the Tender Evaluation Committee's (TEC's) deliberations should be confidential and not be shared with persons not officially connected with the process.
- f) The process of tender evaluation proceeds is described in the subsequent paras.

### 12.2. Formation of Tender Evaluation Committee (TEC)

In procurements above a threshold, evaluation shall always be carried out by a Tender Evaluation Committee consisting of three or more members with requisite experience and competence. Members include i) the Head or Deputy Head of the proponent department or his representative, ii) the Head of the user department or his representative and iii) Head of Finance or his representative. The TEC members can be nominated by the

Competent Authority on a case-to-case basis or nominate a Permanent committee for such matters. External experts may also be appointed / called in post approval to assist the TEC. The HoD / representative of Proponent department will work as a convener of the TEC.

- a) Every Concerned department of the port shall lay down clearly the powers, jurisdiction and composition of different levels of Tender Evaluation Committee and corresponding Accepting Authority for different categories of works and different threshold values of procurements. Such an arrangement ensures checks & balances in the Tender Evaluation Process.
- b) TEC should not be very large as it may slow down the evaluation process.
- c) TEC cannot have tender accepting authority as a TEC member.
- d) No member of the tender evaluation committee should be reporting directly to any other member of such committee in case estimated value of the procurement exceeds Rs. 50 lakh (Rule 173 (xxii), GFR 2017).
- e) Though the GFR stipulates this provision only when the estimated value of the procurement exceeds Rs. 50 lakhs, it is desirable that the same provision should be followed in the constitution of all committees irrespective of the value of work.
- f) There is no need to constitute any other committee for technical evaluation, preliminary evaluation etc.
- g) There is no need to have a TEC below a threshold value decided by the Port Management (by means of a separate circular). The delegated officer of the proponent department in consultation with the user department may evaluate the bids by carrying out all the steps of evaluation and recommend the work to the Lowest bidder by recording reasons and decisions on the file itself. He may ask for a Technical Suitability report from User Departments, if so needed.

In direct acceptance cases; the proponent department will receive the bids opened along with other documents from the tender opening officials and are responsible for safe-custody of the documents and for processing involved at all steps in finalizing the Evaluation.

### 12.3. Confidentiality of Process

- a) Information relating to the examination, clarification, evaluation and comparison of bids, and recommendations for the award of a contract, shall not be disclosed to bidders or any other person not officially concerned with such a process until the award to the successful bidder has been announced.
- b) From the time of Tender Opening to the time of contract award, no bidder shall contact the Concerned department of the port on any matter related to the bid, except on request and prior written permission.
- c) Any effort by the bidder to influence the Concerned department of the port in bid evaluation, bid comparison or contract award decisions will vitiate the process and will result in the rejection of the bidder's bid. Such conditions, incurring in (a) & (b) above shall be embedded in the Instructions to Bidders (ITB).

### 12.4. Preparation of Comparative Statement and Briefing Note

The representative of the Proponent department shall prepare a Comparative statement of all the bids in the same sequence of the bid numbers given at the time of opening bids. The 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.

- a) The comparative statement so prepared should be signed by the concerned officers of the proponent department. If required, it may also be vetted by the Finance for correctness of information.
- b) It is also a good practice, to prepare a briefing note by the member of Proponent department of TEC for guidance of other TEC members, before first TEC meeting is held.
- c) In case of large projects, the briefing note shall also be vetted by Finance.

### 12.5. Preliminary Examination

The Tender Evaluation committee shall have a preliminary examination of the bids before detailed evaluation is taken up. The preliminary examination shall be for responsiveness for EMD, discrepancies in documents submitted/uploaded, minor infirmity or non-conformity and shortfalls.

### 12.5.1. Unresponsive Tenders

Tenders that do not meet the basic requirements specified in the bid documents are to be treated as unresponsive (both during Techno-commercial evaluation and Financial Evaluation in case of Two Envelope bidding) and ignored. All tenders received will first be scrutinised by the TEC to see whether the tenders meet the basic requirements as incorporated in the Bid document and to identify unresponsive tenders, if any. Unresponsive offers may not subsequently be made responsive by correction or withdrawal of the non- conforming stipulation. 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 tender has not been properly signed by an authorized signatory (accredited representative) holding Power of Attorney in his favour. The Power of Attorney does not have a provision inter alia to bind the bidder for all acts of the PoA holder in case of disputes.
- iii) The required EMD has not been provided or exemption from EMD is claimed without acceptable proof of exemption;
- iv) There is no material deviation or reservation. A material deviation or reservation is one (a) which affects in any substantial way the scope, quality or performance of the Works; (b) which limits in any substantial way; the Employers' rights or the Bidder's obligations under the contract; or (c) whose rectification would affect unfairly the competitive position of other Bidders presenting responsive Bids.
- v) The bidder is not eligible to participate in the bid as per laid down eligibility criteria (example: the tender enquiry condition says that the bidder has to be a enlisted contractor but the tenderer is not a enlisted contractor);
- 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 Concerned department of the



port's operators for operating the equipment. The tenderer has, however, quoted only for supply of the equipment).

#### **12.5.2. Discrepancies between Original and Scanned Copies**

Discrepancies between Original and Additional/ Scanned Copies of a Tender. Discrepancies can be observed in responsive tenders between the original copy and other copies of the same tender set. In such a case, the text, and so on, of the original copy will prevail.

- a) 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 Concerned department of the port's observation, the tender is liable to be rejected.
- b) 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 and statutory certificates if any) should be asked for in e-Procurement.

#### **12.5.3. Minor Deviation/Infirmary/ Irregularity/ Non-conformity**

During the preliminary examination, some minor infirmity and/ or irregularity and/ or nonconformity may also be found in some tenders. Such minor issues could be :

- a) Missing pages/ attachment or illegibility in a submitted document;
- b) Non-submission of requisite number of copies of a document.
- c) Submission of the amendment to Bank Guarantee, but omitted to submit the same in the main Bid Document. (The court ruled that this is a minor irregularity).
- d) Such minor issues may be waived provided they do not constitute any material deviation and financial impact and, also, do not prejudice or affect the ranking order of the tenderers.
- e) 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, by the specified date, his tender will be liable

to be rejected. Depending on the outcome, such tenders are to be ignored or considered further.

#### **12.5.4. Clarification of Bids/ Shortfall Documents**

During evaluation and comparison of bids, the port may, at their discretion, ask the bidder for clarifications on the bid. The request for clarification shall be given in writing by email/registered/ speed post, asking the 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. However

- a) No change in prices or substance of the bid including specifications, shall be sought, offered or permitted.
- b) No post-bid clarification at the initiative of the bidder shall be entertained.
- c) 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.
- d) The clarifications should be sought only on basis of the recommendations of the TC. (Example: if the Permanent Account Number, GSTN number 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).
- e) For submission of documents relating to qualification criteria, related shortfall documents only should be asked for and considered. (For example, if the bidder has submitted a contract without its completion/ performance certificate, the certificate can be asked for and considered).
- f) However, no new contract should be asked for so as to qualify the bidder).

#### **12.6. Evaluation of Responsive Bids**

- a) In case of single stage single envelope bidding, the evaluation of qualification of bidders, technical, commercial and financial aspect is done simultaneously.
- b) In single stage multiple envelopes, initially the techno-commercial bids only would be opened and evaluated. Once the bidder successfully meets the qualification criteria and techno-commercial aspects, their Financial bid would be opened for selecting the L1 bidder.

- c) In case of manual tenders, financial bids of unsuccessful bidders would be returned unopened to them.
- d) In two stage bids, since the PQB/ EOI stage is already over the response to the second Stage bidding only is evaluated

## **12.7. Evaluation of Techno-commercial Bid**

In evaluation of the techno-commercial bid, conformity of the eligibility/ qualification, technical and commercial conditions 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.

- a) 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.
- b) All the financial bids may preferably be put in a large envelope, 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.

### **12.7.1. Evaluation of eligibility/ qualification Criteria**

It is utmost essential to see that 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 the port'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 Concerned department of the port.

### **12.7.2. Evaluation of Technical Suitability**

The description, specifications, drawings and other technical terms and conditions are examined by TC in general and technical member(s) of the TC in particular. Nobody outside the TC should be allowed to determine this evaluation. Even if an external expert's advice and report is obtained, it is still the responsibility of the technical member(s) in particular and the TC in general to accept/ reject or modify the evaluation contained in such a report/ evaluation.

- a) 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.
- b) Exceptions/ deviation form submitted by the tenderer.
  - i) It is important to judge whether the exception/ deviation is minor or major.
  - ii) 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.
  - iii) Exceptions/ deviations should not grant the tenderer any undue advantage vis-à-vis other bidders.

#### **12.7.3. 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 of the port.

#### **12.7.4. Considering Minor Deviations**

Bids which are not materially deviated, may be considered substantially responsive. Court has consistently taken a view that organizations can consider and allow minor deviations, which do not amount to material deviations.

- a) A material deviation, reservation, or omission which should not be waived are
  - i) Affecting, in substantial way, the scope, quality or performance of the works/ services specified in the contract;
  - ii) Limits, in substantial way, inconsistent with the tendering documents, the port's rights or the tenderer's obligations under the contract;
  - iii) If rectified, would unfairly affect the competitive position of other tenderers quoting substantially responsive tenders.

### 12.7.5. Declaration of Technically Compliant Bidders

TEC should prepare a report with recommendation of successful/unsuccessful bidders after evaluating the techno-commercial bid (Refer Annexure – WM S1/4)

After obtaining the approval of Competent Authority, the results of the Techno-commercial bid evaluation can be uploaded in the CPPP/GeM portal/KPL website.

### 12.7.6. 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. The concerned department of the port should ensure a decision within 15 (fifteen) days of the receipt of the representation. The following points are to be remembered in addressing such issues.

- a) Bidding documents should explicitly mention the name, designation and contact details of officers nominated to receive representations in this regard.
- b) Only a directly affected bidder can represent in this regard:
- c) Only a bidder who has participated in the concerned procurement process i.e. prequalification, bidder enlistment or bidding, as the case may be, can make such representation
- d) In case pre-qualification bid has been evaluated before the bidding of technical bid, an application for review in relation to the technical bid may be filed only by a bidder has qualified in pre-qualification bid;
- e) Following decisions of the concerned department of the port in accordance with the provision of internal guidelines shall not be subject to review:
  - i) Determination of the need for procurement;
  - ii) Selection of the mode of procurement or bidding system;
  - iii) Choice of selection procedure;
  - iv) Provisions limiting participation of bidders in the procurement process;
  - v) The decision to enter into negotiations with the L1 bidder;

- vi) Cancellation of the procurement process except where it is intended to subsequently retender the same requirements;
- vii) 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
- viii) Complaints against specifications except under the premise that they are either vague or too specific so as to limit competition may be permissible.

## 12.8. Evaluation of Financial Bids

Financial bids of the qualified bidders can be opened only after the TC report on Technical bid evaluation is accepted by the Competent Authority. It is utmost importance that the authenticity, integrity and sanctity of unopened Financial Bids must be ensured, before their opening.

- a) Price bids are opened in the presence of technically qualified bidders, who are willing to attend the Tender Opening, at a pre-publicized date, time and place or on the portal in case of e-procurement.
- b) In single envelope/ cover tender, TEC may proceed to evaluate the price bid also along with the technical qualifications in one go.
- c) All responsive bids are evaluated by the TEC with a view to select the lowest (L1) bidder (the lowest evaluated, substantially responsive bid) which meets the eligibility/ qualification criteria and techno-commercial aspects.

### 12.8.1. Unresponsive Tenders

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.

### 12.8.2. 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 by defining the treatment of bids in the tender documents in the manner indicated below:

- a) In case of discrepancy between the unit price and total price (which is obtained by multiplying the unit price by the quantity, or the total price is not worked out by bidder), the unit price shall prevail and the total price corrected accordingly;

- b) If there is an error in a total corresponding to the addition or subtraction of subtotals, the sub-totals shall prevail and the total shall be corrected; and
- c) If there is a discrepancy between words and figures, the amount in words shall prevail.
- d) 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 Concerned department of the port's observation, the tender is liable to be rejected.

### 12.8.3. Correction of Bids

Tender document should indicate that the evaluated bid prices will be adjusted after taking into account: (a) correction for errors; (b) adjustments for any acceptable variations, deviations; and (c) adjustments to reflect any discounts or other modifications offered.

- a) Unless announced beforehand explicitly in the tender documents, the quoted price should not be loaded on the basis of deviations in the commercial conditions.
- b) If it is decided to incorporate such clauses, these should be unambiguous and clear – and thereafter there should be no relaxation during evaluation.
- c) Variations, deviations, or alternative offers and other factors which are in excess of the bidding documents or otherwise result in unsolicited benefits for the contractor should not be taken into account in bid evaluation.
- d) All duties, taxes (except GST) and other levies payable by the bidder under the contract or for any other cause shall be included in the rates, prices and total bid price is considered for evaluation.
- e) Bids should be checked for any arithmetical errors.
- f) The arithmetical corrections will be done by the representatives of the Finance Division and the concerned (technical) division in the committee.
- g) In cases other than eProcurement, the quoted rates in the bids shall be protected with lamination by the committee, if not done by the bidders.
- h) In accordance with the corrections as approved by the TC, the amount stated in the bid will be adjusted with the concurrence of the bidder, and shall be

binding on him. If the bidder does not accept the corrected amount, the bid will be rejected and the bid security forfeited.

- i) If a bidder offers a rebate unilaterally after the closing date and time of the bid, it will not be taken into account for evaluating purpose by the Tender Evaluation Committee but if that bidder emerges as the lowest tender the rebate offered shall be taken into account by the TEC. The Tender Evaluation Committee's recommendations shall be submitted by the coordinating officer to the competent Authority for its consideration for seeking its approval.

## **12.9. Deliberations by the TEC and Time Schedule**

### **12.9.1. Timely Processing of Tenders**

Delays in finalising tender process deprive the public of the intended benefits and results in lost revenues and cost over-run. Currently, the Ports are generally awarding the contracts in 90 days from the date of tender opening for which the Ports are asking for a validity of offer by the contractors for 90 days. In order to further shorten the period for award of contract, the Ports should try to shorten the procurement decision period to 60 days from the date of opening of the tenders in most of the cases. Only in exceptional cases, like two cover/ two stage bidding the period may be extended. *However, in no case this time period should exceed 75 days.*

### **12.9.2. Time Schedule**

Complete Time schedule (tentative) of finalizing the Tender process from the date of issuing the tender to date of issuing the contract, should be published in the Bid Documents.

- a) 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.
- b) Any deviation from the schedule may be monitored and explained, by way of system of Management Reporting.
- c) As a check, the proposed schedule of tender process may be printed on the inside cover of the Proposal File, where actual date of completion of various stages may be recorded.
- d) It has been also noted that delay in decision making after opening of certain tenders is taking place because the Tender Evaluation Committee (TEC) is not meeting frequently.



- e) In order to ensure that most of the tenders are finalised at the earliest, Port may notify at least one day of every week for the TEC meeting.
- f) After the decision has been taken by the competent authority on the tender, such decision should be uploaded on the Central Public Procurement portal (CPPP) within three working days for greater transparency.
- g) These details shall also be uploaded on e-procurement portal or the website of the Port within three working days.

### **12.9.3. 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. 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 Port is unable to decide on the award of the contract within the original validity period, the concerned officer of the Port should seek the approval of the Competent Authority for extension of bid validity duly recording reasons for seeking extension. The following important points need to be remembered seeking extension.

- a) Before expiry of the original validity period, all the responsive tenderers should be requested to extend their tenders up to a specified period.
- b) The tenderers are also to be asked to extend their offers as it is, without any changes therein.
- c) Specific request also to be made to extend the validity of the EMD for the corresponding additional period.
- d) EMD of the tenderer should not be forfeited in case he does not agree to request of extension of validity.
- e) Tenderer agreeing to extend the validity shall not be permitted to change any terms, conditions of their original tenders.

### **12.9.4. Reasonableness of Prices**

In every recommendation of the TEC for award of contract, it must be declared that the rates recommended are reasonable. The comparison may be made with the similar contracts awarded elsewhere.

- a) The Last Purchase Price (LPP) maybe updated taking into consideration inflation during the interim period and geographical conditions etc.
- b) If the bid of the successful bidder is seriously unbalanced in relation to the Employer's estimate of the cost of work to be performed under the contract, the employer may require the bidder to produce detailed price calculations.
- c) Analysis for any or all items of the tendered bill of quantities to demonstrate the internal consistency of these rates with the execution method and schedules proposed.
- d) If, however, L1 rates are much lower than the estimated rates say by 10% the TEC shall examine to ensure, whether the rates are workable or not without compromising the quality and if required the rate analysis of the party shall be obtained and studied before recommending such offer.
- e) If the rates of the lowest bidder are abnormally high (+10% of the estimated rates), the TEC may ask lowest bidder for submission of rate analysis. In case the TEC is not satisfied with the analysis of higher rates, if considered necessary, TEC may recommend for negotiation with the L1 for reduction of the rates.

#### **12.9.5. Consideration of Abnormally Low / High Bids**

Abnormally Low or High Bid is determined with reference to the estimated cost and the BOQ given in the tender.

- a) 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.
- b) An Abnormally High bid is the one in which the bid price in combination with the other elements of the bid appears to be too high that the Port may have to compare the rates/prices to analyse the reasonableness of the offered price.
- c) In such cases Port may seek written clarifications from the Bidder, including detailed price analysis of its Bid price in relation to scope, schedule, resource mobilization, allocation of risks and responsibilities, and any other requirements of the bids document.

- d) If, after evaluating the price analyses, the port determines that the Bidder has *substantially failed* to demonstrate its capability to deliver the contract at the offered price, the port may reject the Bid/ Proposal.
- e) If the rates quoted against each item of BOQ are above or below the cost estimate by 25%, the rate is considered abnormal and the tender evaluation committee will study the reasons for such variation based on the clarification given by the Bidder.
- f) No extra Bank Guarantee or Security deposit to be stipulated for low bids from the bidder as this will cause further financial adversity to the bidder.
- g) As a safeguard, it should be closely monitored that final payments in such cases do not abnormally increase due to extra items.
- h) Further, there is no abnormal increase in quantities of the item for which contractors have initially quoted very high rates.

#### 12.9.6. Cartel Formation/ Pool Rates

It is possible that sometimes a group of bidders quote the same rate against a tender or abnormally high quote to take advantage of the situation or urgency of works by the Port. 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 tactics to avoid/ control true competition in a tender have been declared as an offence under the Competition Act, 2002. (amended by the Competition (Amendment) Act, 2007).

- a) Such practices should be severely discouraged with strong measures.
- b) In case of evidence of cartel formation, detailed cost analysis may be done by associating experts if necessary.
- c) Besides, suitable administrative actions can be resorted to, such as rejecting the offers, reporting the matter to trade associations, the Competition Commission etc., and requesting them, inter-alia, to take suitable strong actions against such firms.
- d) New firms may also be encouraged to get themselves enlisted for the subject goods to break the monopolistic attitude of the firms forming a cartel.
- e) Changes in the mode of procurement (post qualification instead of pre-qualification) and packaging/ slicing of the work may also be tried.

- f) A warning clause may also be included in the bid documents to discourage the bidders from indulging in such practices.

#### 12.9.7. Negotiations

A. Normally, there should be no negotiation. Negotiations should be a rare exception rather than the rule and may be resorted to only in exceptional circumstances. Negotiations should not be allowed to be misused as a tool for bargaining with L1 with dubious intention or to delay in decision making or to avoid awarding work to L1.

- a) If it is decided to hold negotiations for reduction of prices, they should be held only with the lowest acceptable bidder (L1), who is techno-commercially responsive and on whom the contract would have been placed.
- b) Where a cartel/ pool rates are suspected, with the approval of the Competent Authority, negotiations may be held with the bidders, who had either not tendered originally or whose tender was rejected because of unresponsiveness of bid, unsatisfactory credentials, inadequacy of capacity or unworkable rates.
- c) The circumstances where negotiations may be considered could be:
  - i) Where the procurement is done on nomination basis;
  - ii) Procurement is from single or limited sources;
  - iii) Procurements where there is suspicion of cartel formation which should be recorded; and
  - iv) Where the requirements are urgent and the delay in re-tendering for the entire requirement due to the unreasonableness of the quoted rates would jeopardize essential operations, maintenance and safety, negotiations with L1 bidder(s) may be done for bare minimum quantum of requirements. The balance bulk requirement should, however, be procured through a re-tender, following the normal tendering process.
- d) The decision whether to invite fresh tenders or to negotiate and with whom, should be made by the tender accepting authority based on the recommendations of the TEC.
- e) Convincing reasons must be recorded by the authority recommending negotiations.

- f) The Competent Authority should exercise due diligence while accepting a tender or ordering negotiations or calling for a re-tender and a definite timeframe should be indicated.
- g) Normally all counter offers are considered negotiations by other means. The principles of negotiations should apply to such counter offers. (For example, a counter offer to L1, in order to arrive at an acceptable rate, shall amount to a negotiation. However, any counter offer to L2, L3, and so on (at the rates accepted by L1) in case of splitting of quantities shall not be deemed to be a negotiation).
- h) After the Competent Authority or TEC has decided to call a specific bidder for negotiation, the following procedure should be adopted:
  - i) Negotiations must be carried out by the Competent Authority or TEC only;
  - ii) If the period of validity of the original offer expires before the close of negotiations, the period of validity of the original offer must be extended before negotiations;
  - iii) The tenderer to be called in for negotiations should be addressed as per the format of letter laid down in Annexure – WM S1/5.
  - iv) so that the rates originally quoted by him shall remain open for acceptance in the event of failure of the contemplated negotiation;
  - v) A negotiations meeting should be started only after obtaining a signed declaration from the negotiating contractor as per Annexure – WM S1/6; and
  - vi) 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 – WM S1/7. The revised bids so obtained should be read out to the tenderers or their representatives present, immediately after completing the negotiations.
  - vii) If necessary, the negotiating party may be given some time to submit its revised offer.
  - viii) In case, the selected bidder prefers to send a revised bid instead of being present at the negotiation, the offer should be taken into account.
  - ix) In case a bidder does not submit the revised bid, its original bid shall be considered.

**B. Dealing with Tied bids in the tendering process**

- a) In case the lowest tendered amount (estimated cost + amount worked on the basis of percentage above/below) of two or more tenderers is same, possibility of splitting the tender equally to both/all tenderers may be explored.
- b) In case splitting is not possible, such lowest tenderers may be asked to submit sealed revised offer in the format of letter (Annexure-WM-S1//7) with revised percentage above/below on estimated cost of tender including all sub sections/sub heads or a rebate on overall tendered quote, as the case may be in case of offline tenders.
- c) In case of Online tenders, such tenders may be invited in the Reverse auction method.
- d) However, such tenderers may be instructed that the revised percentage quoted above/below on tendered cost or on each sub section/sub head should not be higher than the percentage quoted at the time of submission of tender. Similarly, the tenderer has to offer rebate only on the tendered cost (in case of item rate tender) but in no case shall revise the tendered cost upwards.
- e) The lowest tender shall be decided on the basis of revised offers.
- f) In case a tenderer does not submit the revised bid, its original bid shall be considered for evaluation. In case all such tenderers refuse to submit revised offers, the lowest tender among such tenderers, shall be decided by draw of lots in the presence of Tender Evaluation Committee.
- g) If the revised tendered amount of two more tenderers received in revised offer is again found to be equal, the lowest tender, among such tenderers, shall be decided by draw of lots in the presence of Tender Evaluation Committee and those lowest tenderers who have quoted equal amount in the tenders.

Suitable provision needs to be incorporated in the tender document.

**12.9.8. Lack of Response**

Sometimes, against advertised/ limited tender cases, the port may not receive sufficient number of bids and/ or after analysing the bids, ends up with only one responsive bid or no responsive bids. Before retendering, the concerned department of the port is first to check whether, while floating/ issuing the enquiry, all necessary requirements and

formalities such as standard conditions, industry friendly specification, wide publicity, sufficient time for bidding, and so on, were fulfilled. If not, a fresh enquiry is to be issued after rectifying the deficiencies.

#### 12.9.9. Single Tender

In cases a Single tender is received against advertised / limited tender, or in cases where two or more tenders are received but after evaluation resulted in single responsive bid, the situation is 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.

- a) It has become a practice among some procuring entities to routinely assume that open tenders which result in single bids are not acceptable and to go for retender as a safe course of action. This is not correct.
- b) Re-bidding has costs: firstly, the actual costs of retendering; secondly the delay in execution of the work with consequent delay in the attainment of the purpose for which the procurement is being done; and thirdly the possibility that the re-bid may result in a higher bid.
- c) Lack of competition shall not be determined solely on the basis of the number of bidders.
- d) Even when only one bid is submitted, the process may be considered valid and contract may be awarded on the 'Single Offer' bidder provided the quoted price is reasonable. However restricted powers of Single tender mode of procurement would apply. The following conditions must be satisfied for placing order on a single bidder :
  - 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
- e) In case of price is not reasonable, negotiations may be considered as justifiable.
- f) Unsolicited offers against LTEs should be ignored.
- g) Ports should evolve a system by which interested firms can enlist and bid in next round of tendering.

**12.9.10. Rejection of All Bids/ Re-tender**

Port may cancel the process of procurement or rejecting all bids at any time before intimating acceptance of successful bid under circumstances mentioned below.

- a) In case where responsive bids are available, the aim should be to finalise the tender by taking mitigating measures.
- b) 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.
- c) After such rebid decision, all participating bidders should be informed and bids if not opened should not be opened but returned. In case of manual tenders, bids be returned unopened.
- d) Port may cancel the process of procurement or rejecting all bids and retender:
  - i) when none of the tenders is substantially responsive to the requirements,
  - ii) none of the bidders meets the minimum technical qualifying score
  - iii) effective competition is lacking. However, lack of competition shall not be determined solely on the basis of the number of bidders.
  - iv) the quantity and quality of requirements have changed substantially,
  - v) there is an un-rectifiable infirmity in the bidding process,
  - vi) the Bids'/ Proposals' prices are substantially higher than the updated cost estimate,
  - vii) the bidder, whose bid has been found to be the lowest evaluated bid withdraws,
  - viii) whose bid has been accepted, fails to sign the procurement contract as may be required,
  - ix) fails to provide the security as may be required for the performance of the contract,
  - x) otherwise withdraws from the procurement process.
- e) Approval for re-tendering should be accorded by the Competent Authority after recording the reasons/ proper justification in writing.
- f) The Concerned department of the port should review the qualification criteria, and technical and commercial terms of the tender before re-tendering and also consider wider publicity to attract an adequate number of responses.



- g) The decision of the port to cancel the procurement and reasons for such a decision shall be immediately communicated to all bidders that participated in the procurement process by email and/or in the Port's website.
- h) Before retendering, the concerned department of the port has first to analyse the reasons leading to retender and 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.

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## Chapter-13

# TENDER EVALUATION COMMITTEE REPORT

Tender Evaluation Committee duties are to be discharged personally by the nominated officers only. 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.

### 13.1. Confidentiality and 'No Conflict of Interest'

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

All technical, commercial and finance officials who are part of the evaluation process of the techno-commercial or financial 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 in the form of any liaison or relationship 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.

### 13.2. The Tender Evaluation Committee report

#### 13.2.1. TEC to make formal recommendations

The TEC has to make formal recommendations Annexure – WM S1/4 for the award of the contract to the bidder whose bid has been determined to be substantially responsive and the lowest evaluated bid, provided further that the bidder is determined to be qualified to perform the contract satisfactorily and his credentials have been verified.

It is a good practice that TEC report contains the following:

- a) Description of the Tender
- b) Time and date of opening the bids and the period of validity
- c) Estimated cost of tender
- d) Members of the Committee,
- e) Any other member specifically nominated
- f) Salient features of the Tender
- g) Number of bids received
- h) Complaints from bidders if any

- i) Techno-Commercial Bid
  - i) Qualification criteria specified in the bid
  - ii) Definition of Similar works
  - iii) Method of allotting scores if any
  - iv) Evaluation of documents submitted by each bidder
  - v) Scoring for each eligible work if any
  - vi) Total score given to each bidder if applicable
  - vii) Deviation/ variation quoted by the bidder
  - viii) Condition if any stipulated by the bidder
  - ix) Counter offer of the bidder if any
  - x) Responsiveness of each bidder w.r.to Qualified/Unqualified
  - xi) Summary of all Qualified / Unqualified bidders
  - xii) Recommendation to open successful bids and/or returning unsuccessful bids
- j) Financial Bid
  - i) Approval of the Competent Authority to open the Price bid
  - ii) Ensure whether all the bids approved by the Competent Authority are opened and presented to TEC
  - iii) The multiplications against each BOQ and correction of Total if any,
  - iv) Deviation/ variation quoted by the bidder
  - v) Condition if any stipulated by the bidder
  - vi) Counter offer of the bidder if any
  - vii) Discounts if any offered by the bidder
  - viii) Determining the final quote of the bidder.
  - ix) Method of allotting scores if any
  - x) Total score given to each bidder if applicable
- k) Final summary of the bid with ranking of the Qualified bids such as L1, L2, L3 and so on.
- l) Recommendations of the TEC.

#### 13.2.2. Declaration by TEC members

All TEC members should sign a declaration at the end of their reports/noting stating that,

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

GFR 2017 [Rule 173 (xxii)] mandates that in case a Tender Committee is constituted to purchase or recommend the procurement, no member of the purchase Committee should

be reporting directly to any other member of such Committee, to ensure independent expression of views.

### **13.2.3. TEC Recommendations for approval**

The recommendations of TEC are to be submitted by the Proponent department for approval to the tender accepting authority stating :

- i) Offers have been invited in accordance with this manual and after following fair and reasonable procedures in prevailing circumstances;
- ii) He is satisfied that the 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.

### **13.2.4. Handling Dissent among Tender Evaluation Committee**

TEC deliberations are best held across the table and not through circulation of notes. All members of the TEC should resolve their differences through personal discussions instead of making to and fro references in writing.

- a) In cases where it is not possible to come to a consensus and differences persist amongst TEC 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.
- b) The final recommendations should be that of the majority view. However, such situations should be rare.
- c) Competent Authority can overrule such dissent notes after recording reasons for doing so clearly. His decision would be final.
- d) In cases where the Competent Authority does not agree with the majority or unanimous recommendations of the TEC, he should record his views and, if possible, firstly send it back to TEC to reconsider along the lines of the tender accepting authority's views.
- e) However, if the TEC, after considering the views of the Competent Authority, sticks to its own earlier recommendations, the tender accepting authority can finally decide as deemed fit, duly recording detailed reasons.
- f) He will be responsible for such decisions. However, such situations should be rare.

## Chapter-14

### AWARD OF WORK

The TEC report needs to be perused by the HOD/Authorised officer of the Proponent department, and make a proposal to the Competent Authority for approval. The concurrence of the Finance department should be taken wherever necessary. After due approvals Letter of Intent (LOI) or Letter of Award (LOA) shall be placed on the successful L1 bidder.

#### 14.1. Letter of Intent (LOI)

Under circumstances beyond control of the Port, it may become necessary to convey the acceptance of the offer by a "Letter of Intent" (LOI) within the validity period of the offer. The LOI shall contain the followings:

- a) that the contractors offer (i.e. the tender submitted by him) has been accepted in principle.
- b) that the contract period shall commence from the date of issuance of notice to proceed with works.
- c) that a formal Work Order (WO) will follow and
- d) that the LOI (if issued) will form a part of the Contract Agreement.

#### 14.2. LOA to Successful Bidder

Prior to the expiry of the period of bid validity, the successful bidder shall be notified in writing by a registered letter /email or any other acknowledgeable and foolproof 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 or emailed to the proper mail of the bidder.

- a) The LOA shall give the reference to the tender number, date of opening, the awarded price, time of completion, performance security deposit to be submitted and so on. (Refer for Model LoA at Annexure – WM S1/8)
- b) In respect of contracts upto Rupees ten lakh, where tender documents include the General Conditions of Contract (GCC), Special Conditions of Contract (SCC) and scope of work, the letter of acceptance will result in a binding contract.

- c) In respect of contracts with estimated value more than Rupees ten lakh, a Contract Agreement should be executed, with all necessary clauses to make it a self-contained contract.
- d) A simple one-page contract can be entered into by attaching copies of the GCC and SCC, and details of scope and specifications, offer of the tenderer and letter of acceptance.
- e) Contract document should be invariably executed in cases of turnkey works or agreements for maintenance of equipment, provision of services etc.
- f) In case any preference is given to Contractors/suppliers under 'Make in India' guidelines, a declaration shall be obtained from the Contractor (Refer Annexure - WM-S1/9) meeting the requirement of minimum Local content (50%) as defined in above orders
- g) A contract register shall be maintained by each proponent department wherein each contract/ work order issued shall be entered. The serial number in the register shall be the contract number. The register shall contain the Serial Number, date, particulars of works, contract price, name of the contractor, scheduled date of completion etc. On completion of the contract the details such as actual date of completion and the final bill amount etc shall also be entered.

### 14.3. Publication of Tender Results

#### Publication of Tender Results and Return of EMD of Unsuccessful Bidders:

GFR 2017 (Rule 159) makes it mandatory to publish details of Bid award on the CPPP, website of the concerned Port and eProcurement Portal. The successful contractor's bid security shall be adjusted (if requested by the contractor) against the SD or returned as per the terms of the tender documents.

All the other unsuccessful bidders shall be promptly notified and their bid refunded at the earliest except that of L2 bidder. Upon the successful bidder furnishing the signed agreement and performance security, bid security of L2 bidder shall be returned without interest within 30 (thirty) days of notice of award of contract.

#### 14.4. Bidder's right to question rejection

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.

- a) The tenderer is to be permitted to send his representation in writing.
- b) Bidding documents should explicitly mention the name, designation and contact details of officers nominated to receive representations in this regard.
- c) The concerned department of the port should ensure a decision within 15 (fifteen) days of the receipt of the representation.
- d) Only a directly affected bidder can represent in this regard:
- e) Only a bidder who has participated in the concerned procurement process i.e. prequalification, bidder enlistment or bidding, as the case may be, can make such representation
- f) In case pre-qualification bid has been evaluated before the bidding of technical/ financial bids, an application for review in relation to the technical/ financial bid may be filed only by a bidder has qualified in pre-qualification bid;
- g) 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
- h) Following decisions of the concerned department of the port in accordance with the provision of internal guidelines shall not be subject to review:
  - i) Determination of the need for procurement;
  - ii) Selection of the mode of procurement or bidding system;
  - iii) Choice of selection procedure;
  - iv) Provisions limiting participation of bidders in the procurement process;
  - v) The decision to enter into negotiations with the L1 bidder;
  - vi) Cancellation of the procurement process except where it is intended to subsequently retender the same requirements;

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

#### **14.5. Performance Security**

The contractor receiving the LOA 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 and/or blacklisting will be taken against the contractor.

#### **14.6. Acknowledgement of Contract by Successful Bidder**

After the successful bidder is notified that his bid has been accepted, the contractor should acknowledge and unconditionally accept the work order and enter into an agreement with the Port within 14 (fourteen) days from the date of issue of the contract in case of Open Tender Enquiry and 21 (twenty-one) days in case of Global Tender Enquiry.

- a) Such acknowledgements may not be required in low value contracts, below Rs one lakh or when the bidders offer has been accepted in entirety, without any modifications.
- b) If both parties (Concerned department of the port and the contractor) simultaneously sign the contract across the table, further acknowledgement from the contractor is not required.
- c) It should also be made known to the successful tenderer that in case he does not furnish the required performance security or does not accept the contract within the stipulated target dates, such non-compliance will constitute sufficient ground for forfeiture of its EMD and processing the case for further action against it including black listing and debarring.
- d) The words "for and on behalf of the Board / Chairman / MD " should follow the designation appended below the signature of the officer only authorized on this behalf.



## 14.7. Framing of Contract

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

- i) Any agreement shall be issued strictly as per approved TEC recommendations, be vetted by the Finance and approved by Competent Authority.
  - a) The terms of contract must be complete, precise, definite and without any ambiguities.
  - b) The terms should not involve an uncertain or indefinite liability, except in the case of a cost-plus contract or where there is price variation in the contract.
  - c) No contract involving an uncertain or indefinite liability or any condition of an unusual character should be entered into without the previous concurrence of the Finance and approval of the Competent Authority
- 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 above a threshold value, requiring the contractor to, without charge, replace, repair or rectify defective goods/ works/ services;
  - c) All contracts for supply of goods should reserve the right of the Port to reject goods which do not conform to the specifications;
  - d) Payment of all applicable taxes by the contractor; and
  - e) 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.
  - f) The determination of date of commencement of work shall be indicated in the tender document.
- iii) Standard forms of contracts should be invariably adopted, except in following cases:

- a) 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 Competent Authority is to be obtained; and
- b) Copies of all contracts and agreements for purchases of the value of Rs. 25 (twenty-five) lakh and above, and of all rate and running contracts entered into by the Departments should be sent to the CVO.

#### 14.8. Works / Procurement Records

The Proposal / award of works 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 formulation, publishing and issue/ uploading; Tender Opening; Bids received; correspondence and documents (including Technical Evaluation and TC report) relating to prequalification, evaluation, Award of Contract; and finally the contract copy, should be kept on the file.

- a) 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.
- b) 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.
- c) In contract management volume, copies of successful bid, Tender Evaluation Committee Report & Contract may also be kept for ready reference, besides correspondence and documents relating to Contract Management and its closure.
- d) These documents can be very valuable at the time of arbitration, dispute, court proceedings, claims etc. and hence needs to be safeguarded.

#### 14.9. Risks and Mitigation measures in award of contract

- a) **Discriminating against a Best Value Bid:** In case a bidder's bid (not in the good books of the concerned department of the port) becomes the best value bid as per the evaluation criteria, some of the following actions may have risks

of misuse. There is also a reverse risk in these actions if a favorite becomes best value bid:

- b) **Unwarranted rebidding:** Rejecting all bids and calling for rebidding on the pretext of prices being high, change of specifications, budget not being available, and so on.

**In case a procurement is rebid more than once,** approval of one level above the Competent Authority may be taken.

- c) **Sudden quantity reduction/ increase or splitting of quantity work at the time of award:** Many organisations have provisions for change/ splitting in the bid quantity at the time of award. Some organisations vary quantity even without such provisions.

**Bid conditions must specify a limit** beyond which originally announced quantity/ scope cannot be reduced/ increased. If parallel contracts are envisaged, clear criteria for the splitting may be specified in the bid documents beforehand.

- d) **Unwarranted negotiations:** negotiations are called without justification. Sometimes a counter-offer is made to discourage lowest acceptable bidder.

Normally, there should be no post-tender negotiations. In certain exceptional situations, for example, procurement of proprietary items, items with limited sources of supply, and items where there is suspicion of a cartel formation, negotiations may be held with L-1. In case of L-1 backing out, there should be re-tendering.

- e) **Unwarranted delays in finalizing or varying the terms of preannounce contract agreement:** even after the TC recommendations are accepted, signing of the contract is delayed on one pretext or the other. Although there is a standard contract form in the bid documents, the contract may be drafted in a fashion to favour or discourage the successful bidder.

**A target timeline of finalisation of procurement** should be laid down. Delays and reasons thereof should be brought out before the Competent Authority on the file at the time of TC's acceptance or contract signing. The contract should be strictly as per the bid conditions and accepted offer.

f) **Cartel Formation**

- i) **Anti-competitive practices:** Bidders, that would otherwise be expected to compete, secretly conspire to frustrate the port's attempts to get Value for Money in a bidding process. Anti-competitive conspiracies can take many forms. Sometimes the officers involved in procurement may be part of such collusion.
- ii) **Bid coordination:** The bidders collude to quote same or similar rates that are much higher than the reasonable price to force the Concerned department of the port to settle the procurement at exorbitant prices.
- iii) **Cover bidding:** Cover bidding is designed to give the appearance of genuine competition by way of supporting bids for the leading bid rigger.
- iv) **Bid suppression:** Bid suppression means that a company does not submit a bid for final consideration in support of the leading bid rigger.
- v) **Bid rotation:** In bid-rotation schemes, conspiring firms continue to bid but they agree to take turns being the winning (i.e., lowest qualifying) bidder in a group of tenders of a similar nature.
- vi) **Market allocation:** Competitors carve up the market and agree not to give competitive bids for certain customers or in certain geographic areas.

These strategies, in turn, may result in patterns that procurement officials can detect and steps can be taken to thwart such attempts. Such anti-competitive activities come under the purview of the competition law, where there is provision of stringent penalties. Regular training should be held for officers involved in procurement to detect and mitigate such practices and also use of the competition law against such bidders.

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## **WORKS MANUAL**

### **APPENDICES TO SECTION-1**



## Appendix-WM-S1/A1

**1 INSTRUCTIONS FOR ONLINE BID SUBMISSION****ONLINE E-TENDER**

**“------(Name of tender) ---- at Kamarajar Port”**

Bidders to follow the following procedure to submit the bids online through the e-Procurement portal [www.eprocure.gov.in](http://www.eprocure.gov.in).

The bidder shall **obtain e-token from a licensed Certifying Authority of National Information Centre (NIC) such as MTNL/SIFY/TCS / nCode/eMudhra to get access for Online Bid Submission through the e – Procurement site <https://eprocure.gov.in>**

- (i) Bidder should do the registration in the tender site using the “Click here to Enroll” option available.
- (ii) Bidder can use “My Space” area to update standard documents in advance as required for various tenders and use them during bid submission. This will facilitate the bid submission process by reducing time.
- (iii) Bidder should read the tenders published in the site and download the required documents / tender schedules for the tenders.
- (iv) Bidder then logs into the site by giving the user id/password chosen during registration and password of the DSC/e token.
- (v) Only one DSC should be used for one bidder. If a bidder uses more than one DSC token, the bid would summarily be rejected.
- (vi) Bidder should read the Tender schedules carefully and submit the documents as per the Tender.
- (vii) If there are any clarifications, the same may be clarified as per the tender conditions.
- (viii) Bidder should take into account the corrigenda, if any published before submitting the bids online.
- (ix) Bidder must in advance prepare the bid documents to be submitted as indicated in the tender schedule and they should be in the required format. If there are more than one document, they can be clubbed together.
- (x) Bidder selects the tender which he is interested using search option & then moves it to my favourites folder.

- (xi) From the folder, appropriate tender can be selected and all the details can be viewed.
- (xii) The bidder should read the terms & conditions and accept the same to proceed further to submit the bids.
- (xiii) The Bidder has to select the payment option as offline to pay the EMD and tender document cost as applicable.
- (xiv) The details of the DD instrument / any other accepted instrument, physically sent, should tally with the details available in the scanned copy and the data entered during bid submission time. Otherwise, the bid submitted will not be acceptable.
- (xv) The bidder has to enter the password of the DSC / e-token and the required bid documents have to be uploaded one by one as indicated.
- (xvi) The bidder has to submit the relevant files required as indicated in the cover content. In case of any irrelevant files, the bid will be rejected / will not be accepted by the system.
- (xvii) The tendering system will give a successful bid updating message and then a bid summary will be shown with the bid no., the date and time of submission of the bid and all other relevant details. The bidder has to submit the relevant documents required as indicated in the cover content. In case of any irrelevant files, the bid will be rejected.
- (xviii) The bid summary has to be printed and kept as an acknowledgement as a token of the submission of the bid.
- (xix) The bid summary will act as a proof of bid submission for the subject tender and will also act as an entry point to participate in the Tender Opening date.
- (xx) For any clarifications regarding the Tender, the bid number can be used as a reference.
- (xxi) Bidder should log into the site well in advance for bid submission so as to submit the bid in time (i.e.) on or before the bid submission time. If there is any delay, due to other issues, bidder only is responsible.
- (xxii) Each document to be uploaded online for the tenders should be less than 2 MB. If any document is more than 2MB, it can be reduced by scanning at low resolution and the same can be uploaded.
- (xxiii) The time settings fixed in the server side & displayed at the top of the tender site, will be valid for all actions of requesting, bid submission, Tender Opening etc., in the e-tender system. The bidders should follow this time during bid submission.
- (xxiv) All the data being entered by the bidders would be encrypted using PKI encryption techniques to ensure the secrecy of the data. The data entered will not be viewable



by unauthorized persons during bid submission & cannot be viewed by any one until the prescribed date & time of Tender Opening.

- (xxv) The confidentiality of the bids would be maintained. Secured Socket Layer 128-bit encryption technology is used. Data storage encryption of sensitive fields is done.
- (xxvi) Any document that is uploaded to the server is subjected to symmetric encryption using a generated symmetric key. Further this key is subjected to asymmetric encryption using buyer's public keys. Overall, the submitted tender documents become readable only after the tender opening by the authorized individual.
- (xxvii) For any queries, the bidders are asked to contact by mail [cphp-nic@nic.in](mailto:cphp-nic@nic.in) or by phone 1-800-233-7315 well in advance.
- (xxviii) Tenderer is required to submit their tender through online in the form of Two Cover System on or before the scheduled bid due date of closing and time as notified in Online Bid Reference. The tender received after the due date and time will not be entertained.
- (xxix) Tender Document can be submitted online only in the designated e-procurement portal [eprocure.gov.in](http://eprocure.gov.in) on or before the due date and time. The time of opening of technical bid will be as notified in the Online Bid Reference.
- (xxx) Tenderer should submit the tender as per the Conditions of Contract.

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## Appendix-WM-S1/A2

**2 PREFERENCE TO MAKE IN INDIA**

1. To encourage 'Make in India' and promote manufacturing and production of goods and services in India with a view to enhancing income and employment, Department of Promotion of Industry and Internal Trade (DPIIT), Ministry of Commerce and Industry, Government of India, issued Public Procurement (Preference to Make in India), Order 2017. The order is issued pursuant to Rule 153 (iii) of GFR, 2017. The Order is applicable on the procurement of Goods, Works and Services. For the purpose of this Order:-
  - a) 'L1' means the lowest tender or lowest bid or the lowest quotation received in a tender, bidding process or other procurement solicitation as adjudged in the evaluation process as per the tender or other procurement solicitation.
  - b) '*Margin of purchase preference*' means the maximum extent to which the price quoted by a "Class-I local supplier" may be above the L1 for the purpose of purchase preference. It has been fixed as 20 (twenty) percent.
  - c) '*Nodal Ministry*' means the Ministry or Department identified pursuant to this order in respect of a particular item of goods or services or works.
  - d) '*Procuring entity*' means a Ministry or department or attached or subordinate office of, or autonomous body controlled by, the Government of India and includes Government companies as defined in the Companies Act.
  - e) '*Works*' means all works as per Rule 130 of GFR- 2017, and will also include '*turnkey works*'.
2. **Eligibility of 'Class-I local supplier'/ 'Class-II local supplier'/ 'Non-local suppliers' for different types of procurement**
  - a) In procurement of all goods, services or works in respect of which the Nodal Ministry/ Department has communicated that there is sufficient local capacity and local competition, only 'Class-I local supplier', shall be eligible to bid irrespective of purchase value.
  - b) Only 'Class-I local supplier' and 'Class-II local supplier', shall be eligible to bid in procurements undertaken by procuring entities, except when Global tender

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

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

### 3. Purchase Preference

- a) Subject to the provisions of the Order and to any specific instructions issued by the Nodal Ministry or in pursuance of the Order, purchase preference shall be given to 'Class-I local supplier' in procurements undertaken by procuring entities in the manner specified here under.
- b) In the procurements of goods or works, which are covered by para (i)(b) above and which are divisible in nature, the 'Class-I local supplier' shall get purchase preference over 'Class-II local supplier' as well as 'Non-local supplier', as per following procedure:
  - (i) Among all qualified bids, the lowest bid will be termed as L1. If L1 is 'Class-I local supplier', the contract for full quantity will be awarded to L1.
  - (ii) If L1 bid is not a 'Class-I local supplier', 50 (fifty) percent of the order quantity shall be awarded to L1. Thereafter, the lowest bidder among the 'Class-I local supplier' will be invited to match the L1 price for the remaining 50 (fifty) percent quantity subject to the Class-I local supplier's quoted price falling within the margin of purchase preference, and contract for that quantity shall be awarded to such 'Class-I local supplier' subject to matching the L1 price. In case such lowest eligible 'Class-I local supplier' fails to match the L1 price or accepts less than the offered quantity, the next higher 'Class-I local supplier' within the margin of purchase preference shall be invited to match the L1 price for remaining quantity and so on, and contract shall be awarded accordingly. In case some quantity is still left uncovered on Class-I local suppliers, then such balance quantity may also be ordered on the L1 bidder.
- c) In the procurements of goods or works, which are covered by para (i)(b) above and which are not divisible in nature, and in procurement of services where the bid is evaluated on

price alone, the 'Class-I local supplier' shall get purchase preference over 'Class-II local supplier' as well as 'Non-local supplier', as per following procedure:

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

#### **4. Applicability in tenders where contract is to be awarded to multiple bidders**

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

- a) In case there is sufficient local capacity and competition for the item to be procured, as notified by the nodal Ministry, only Class I local suppliers shall be eligible to bid. As such, the multiple suppliers, who would be awarded the contract, should be all and only 'Class I Local suppliers'.
- b) In other cases, 'Class II local suppliers' and 'Non local suppliers' may also participate in the bidding process along with 'Class I Local suppliers' as per provisions of the Order.
- c) If 'Class I Local suppliers' qualify for award of contract for at least 50 (fifty) percent of the tendered quantity in any tender, the contract may be awarded to all the qualified bidders as per award criteria stipulated in the bid documents. However, in case 'Class I Local suppliers' do not qualify for award of contract for at least 50 (fifty) percent of the tendered quantity, purchase preference should be given to the 'Class I local

supplier' over 'Class II local suppliers' / 'Non local suppliers' provided that their quoted rate falls within 20 (twenty) percent margin of purchase preference of the highest quoted bidder considered for award of contract so as to ensure that the 'Class I Local suppliers' taken in totality are considered for award of contract for at least 50 (fifty) percent of the tendered quantity.

- d) First purchase preference has to be given to the lowest quoting 'Class-I local supplier', whose quoted rates fall within 20 (twenty) percent margin of purchase preference, subject to its meeting the prescribed criteria for award of contract as also the constraint of maximum quantity that can be sourced from any single supplier. If the lowest quoting 'Class-I local supplier', does not qualify for purchase preference because of aforesaid constraints or does not accept the offered quantity, an opportunity may be given to next higher 'Class-I local supplier', falling within 20 (twenty) percent margin of purchase preference, and so on.
  - e) To avoid any ambiguity during bid evaluation process, the procuring entities may stipulate its own tender specific criteria for award of contract amongst different bidders including the procedure for purchase preference to 'Class-I local supplier' within the broad policy guidelines stipulated in sub-paras above.
5. **Exemption of small purchases:** Notwithstanding anything contained in paragraph (i), procurements where the estimated value to be procured is less than Rs. 5 lakhs shall be exempt from the Order. However, it shall be ensured by procuring entities that procurement is not split for the purpose of avoiding the provisions of this Order.
  6. **Minimum local content:** The 'local content' requirement to categorize a supplier as 'Class-I local supplier' is minimum 50 (fifty) percent. For 'Class-II local supplier', the 'local content' requirement is minimum 20 (twenty) percent. Nodal Ministry/ Department may prescribe only a higher percentage of minimum local content requirement to categorize a supplier as 'Class-I local supplier' / 'Class-II local supplier'. For the items, for which Nodal Ministry/ Department has not prescribed higher minimum local content notification under the Order, it shall be 50 (fifty) percent and 20 (twenty) percent for 'Class-I local supplier' / 'Class-II local supplier' respectively.
  7. **Requirement for specification in advance:** The minimum local content, the margin of purchase preference and the procedure for preference to Make in India shall be specified in the notice inviting tenders or other form of procurement solicitation and shall not be varied during a particular procurement transaction.

8. **Government E-marketplace:** In respect of procurement through the Government e-marketplace (GeM) shall, as far as possible, specifically mark the items which meet the minimum local content while registering the item for display, and shall, wherever feasible, make provision for automated comparison with purchase preference and without purchase preference and for obtaining consent of the local supplier in those cases where purchase preference is to be exercised.
9. **Verification of local content:**
  - a The 'Class-I local supplier' / 'Class-II local supplier' at the time of tender, bidding or solicitation shall be required to indicate percentage of local content and provide self-certification that the item offered meets the local content requirement for 'Class-I local supplier' / 'Class-II local supplier', as the case may be. They shall also give details of the location(s) at which the local value addition is made.
  - b In cases of procurement for a value in excess of Rs. 10 crores, the 'Class-I local supplier' / 'Class-II local supplier' shall be required to provide a certificate from the statutory auditor or cost auditor of the company (in the case of companies) or from a practicing cost accountant or practicing chartered accountant (in respect of suppliers other than companies) giving the percentage of local content.
  - c Decisions on complaints relating to implementation of this Order shall be taken by the competent authority which is empowered to look into procurement-related complaints relating to the procuring entity.
  - d Nodal Ministries may constitute committees with internal and external experts for independent verification of self-declarations and auditor's/ accountant's certificates on random basis and in the case of complaints.
  - e Nodal Ministries and procuring entities may prescribe fees for such complaints.
  - f False declarations will be in breach of the Code of Integrity under Rule 175(1)(i)(h) of the General Financial Rules for which a bidder or its successors can be debarred for up to two years as per Rule 151 (iii) of the General Financial Rules along with such other actions as may be permissible under law.
  - g A supplier who has been debarred by any procuring entity for violation of the Order shall not be eligible for preference under the Order for procurement by any other procuring entity for the duration of the debarment. The debarment for such other

procuring entities shall take effect prospectively from the date on which it comes to the notice of other procurement entities, in the manner prescribed under paragraph (h) below.

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

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

- a) Every procuring entity shall ensure that the eligibility conditions in respect of previous experience fixed in any tender or solicitation do not require proof of supply in other countries or proof of exports.
- b) Procuring entities shall endeavour to see that eligibility conditions, including on matters like turnover, production capability and financial strength do not result in unreasonable exclusion of 'Class-I local supplier' / 'Class-II local supplier' who would otherwise be eligible, beyond what is essential for ensuring quality or creditworthiness of the supplier.
- c) Procuring entities shall review all existing eligibility norms and conditions with reference to sub-paragraphs (viii) (a) and (b) above.
- d) Reciprocity Clause
  - (i) When a Nodal Ministry/Department *identifies* that Indian suppliers of an item are not allowed to participate and/ or compete in procurement by any foreign government, due to restrictive tender conditions which have direct or indirect effect of barring Indian companies such as registration in the procuring country, execution of projects of specific value in the procuring country etc., it shall

provide such details to all its procuring entities including CMDs/CEOs of PSEs/PSUs, State Governments and other procurement agencies *under their administrative control and GeM* for appropriate reciprocal action.

- (ii) *Entities of countries which have been identified by the nodal Ministry/ Department* as not allowing Indian companies to participate in their Government procurement for any item related to that nodal Ministry shall not be allowed to participate in Government procurement in India for all items related to that nodal Ministry/ Department, except for the list of items published by the Ministry/ Department permitting their participation.
  - (iii) The stipulation in (2) above shall be part of all tenders invited by the Central Government procuring entities stated in (1) above. All purchases on GeM shall also necessarily have the above provisions for items identified by nodal Ministry/ Department.
  - (iv) State Governments should be encouraged to incorporate similar provisions in their respective tenders.
  - (v) The term 'entity' of a country shall have the same meaning as under the FDI Policy of DPIIT as amended from time to time.
- e) Specifying foreign certifications/ unreasonable technical specifications/ brands/ models in the bid document is restrictive and discriminatory practice against local suppliers. If foreign certification is required to be stipulated because of non-availability of Indian Standards and/or for any other reason, the same shall be done only after written approval of Secretary of the Department concerned or any other Authority having been designated such power by the Secretary of the Department concerned.
- f) "All administrative Ministries/Departments *whose procurement exceeds Rs. 1000 Crore per annum* shall notify/ update their procurement projections every year, including those of the PSEs/PSUs, for the next 5 years on their respective website."
- 11. Action for non-compliance of the Provisions of the Order:** In case restrictive or discriminatory conditions against domestic suppliers are included in bid documents, an inquiry shall be conducted by the Administrative Department undertaking the procurement (including procurement by any entity under its administrative control) to fix responsibility for the same. Thereafter, appropriate action, administrative or otherwise, shall be taken



against erring officials of procurement entities under relevant provisions. Intimation on all such actions shall be sent to the Standing Committee.

12. **Assessment of supply base by Nodal Ministries:** The Nodal Ministry shall keep in view the domestic manufacturing / supply base and assess the available capacity and the extent of local competition while identifying items and prescribing the higher minimum local content or the manner of its calculation, with a view to avoiding cost increase from the operation of this Order.
13. **Increase in minimum local content:** The Nodal Ministry may annually review the local content requirements with a view to increasing them, subject to availability of sufficient local competition with adequate quality.
14. **Manufacture under license/ technology collaboration agreements with phased indigenization**
  - a) While notifying the minimum local content, Nodal Ministries may make special provisions for exempting suppliers from meeting the stipulated local content if the product is being manufactured in India under a license from a foreign manufacturer who holds intellectual property rights and where there is a technology collaboration agreement / transfer of technology agreement for indigenous manufacture of a product developed abroad with clear phasing of increase in local content.
  - b) In procurement of all goods, services or works in respect of which there is substantial quantity of public procurement and for which the nodal ministry has not notified that there is sufficient local capacity and local competition, the concerned nodal ministry shall notify an upper threshold value of procurement beyond which foreign companies shall enter into a joint venture with an Indian company to participate in the tender. Procuring entities, while procuring such items beyond the notified threshold value, shall prescribe in their respective tenders that foreign companies may enter into a joint venture with an Indian company to participate in the tender. The procuring Ministries/Departments shall also make special provisions for exempting such joint ventures from meeting the stipulated minimum local content requirement, which shall be increased in a phased manner.
15. **Powers to grant exemption and to reduce minimum local content:** The administrative Department undertaking the procurement (including procurement by any entity under its administrative control), with the approval of their Minister-in-charge, may by written order, for reasons to be recorded in writing,

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

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

**16. Directions to Government companies:** In respect of Government companies and other procuring entities not governed by the General Financial Rules, the administrative Ministry or Department shall issue policy directions requiring compliance with this Order. (xv) **Standing Committee.** A standing committee is hereby constituted with the following membership:

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

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

- 17. Removal of difficulties:** Ministries /Departments and the Boards of Directors of Government companies may issue such clarifications and instructions as may be necessary for the removal of any difficulties arising in the implementation of the Order.
- 18. Ministries having existing policies:** Where any Ministry or Department has its own policy for preference to local content approved by the Cabinet after 1<sup>st</sup> January 2015, such policies will prevail over the provisions of the Order. All other existing orders on preference to local content shall be reviewed by the Nodal Ministries and revised as needed to conform to this Order, within two months of the issue of this Order.
- 19. Transitional provision:** The Order shall not apply to any tender or procurement for which notice inviting tender or other form of procurement solicitation has been issued before the issue of this Order. (*Rule 153 of GFR 2017*)

## Appendix-WM-S1/A3

## 3 ENLISTMENT OF CONTRACTORS

## 1. Development of New Sources and Registration/ Enlistment of Contractors

1.1. The terms 'enlistment' and 'registration' may be differentiated as follows: --

- i) **Registration:** Simply registering the contractor, without any verification.
- ii) **Enlistment:** Including the name of the contractor in the list of after verification of credentials.

**1.2 Registration:** Ports shall register the prospective contractors on their e-procurement portal or in the CPPP (in case they do not have their own e-procurement portal) before submitting their bids. The contractor may be an Individual, Sole proprietorship firm, partnership firm, limited liability partnership, private or public limited company. For registration, the Port shall capture *at least*– (i) Name of contractor, (ii) Address and Contact details, (iii) Permanent Account Number (PAN), (iv) Details of digital signature certificate (DSC) and (v) GSTIN. Depending on the requirement of respective procurement portal, the Port can capture any other information, as may be considered necessary.

## 1.3. Categories for Enlistment

In case of procurement of works, the Port shall enlist firms as contractors in different categories of works (Civil, Electrical, Horticulture, Furniture, Nursery etc). The contractor may be a Private, Partnership, Pvt Ltd, Corporate, PSU or a Joint Venture company.

## 1.4. Class of Enlistment (Tendering Limits)

Enlistment should be done by Class of the firms (Grade A, B, and so on) on their capability for executing contract orders of different monetary limits in the relevant category of requirements. The monetary limits should be carefully fixed keeping in view the banker's reports, capacity and capability of the firm and other financial information indicated in the balance sheets, profit and loss statements:

*(A sample classification - Source CPWD website)*

Class	Tendering Limit	Class	Tendering Limit
Class-I (Super)	Rs 500 crore	Class-II	Rs 5 crore
Class-I (AAA)	Rs 200 crore	Class-III	Rs 1.5 crore
Class-I (AA)	Rs 100 crore	Class-IV	Rs 60 lakh
Class-I (A)	Rs 50 crore	Class-V	Rs 15 lakh
Class-I	Rs 20 crore		

### 1.5. General Principles of Enlistment

Enlistment of contractors shall be done in a fair and equitable manner, through online after giving due publicity. A set of rules for enlistment of contractors shall be approved by the Chairman from time to time and enlistment shall be done accordingly. A list of enlisted contractors shall be maintained at tender cell, copies of which shall be made available to divisional offices. Performance of such enlisted contractors should be reviewed periodically. The list of enlisted contractors shall be updated once in every three years.

### 1.6. Procedure for Enlistment

Enlistment of contractors should be done by keeping fundamental principles of public procurement in view (especially the transparency principle - transparency, fairness, equality, competition and appeal rights) with the approval of Competent Authority after carefully assessing and verifying credentials, capability, quality control systems, past performance, financial background, and so on, of the contractor/ service provider(s).

- a) Bids for Pre-qualification Registration (PQR) shall be invited on open advertisement basis.
- b) Details of the procedure for enlistment of new firms may be uploaded on the website and also published in the form of a booklet for information of the contractors. Timeframes and criteria for enlistment of new contractors may be clearly indicated;
- c) Possible sources for any category/ group of requirements can be identified based on internal and external references. Data of new contractors can be obtained from the response received from contractors, open tender advertisements, pre-qualification bids, Expression of Interest (EOI), against various enquiries on the website, dedicated websites, exhibitions, buyer-seller meets, various publications of BIS, trade journals, and so on. The e-procurement portal does pre-registration of contractors online. Such data can be a source of information on prospective contractors;
- d) New contractor(s) may be considered for enlistment at any time, provided they fulfil all the required conditions. For any larger scale or critical enlistment of contractors, Procuring Entity should call for EOI by publicising its need for development of sources. The stages to be followed together with the applicable guidelines for EOI have been detailed in Section-1.

- e) The Competent Authority as per DoP may also expand the panel so formed by getting lists of such panels from Government organizations like CPWD, Ports, Railways for similar works subject to verification by KPL's designated Committee.
- f) While registering the firms, an undertaking may be obtained from them that they will abide by the rules and regulations enclosed with the application with a clear warning that, in case of transgression of the code of integrity, their names are likely to be deleted from the list of contractors, besides any other penalty or more severe action as deemed fit; and the fact of a tenderer having been empanelled will not automatically confer a right on him to be considered for the award of the contract unless he fulfills all necessary conditions for the work in consideration.
- g) Along with the new / renewal application for enlistment, the contractors should also be asked to declare that, if awarded a contract in any Limited Tender Enquiry in which they participate, they bind themselves to abide by the KPL's General Conditions of Contract (GCC). Such GCC should be part of the application.

#### 1.7. Eligibility for enlistment

- a) Any firm, situated in India or abroad, which is in the business of providing goods/ works/ services of specified categories of interest, shall be eligible for enlistment;
- b) Contractors should possess valid Digital Signature Certificate (DSCs) Class III b with the company name at the time of enlistment/ renewal, so as to enable them to participate in e-procurements
- c) Firm, against whom punitive action has been taken, shall not be eligible for re-enlistment during the currency of punitive action. Enlistment requests may not be entertained from such firms, stakeholders of whom have any interest in de-enlisted/ banned firms;

#### 1.8. Steps followed for enlistment

- a) The application form, complete in all respects and prescribed documents shall be submitted by the firms to the registering authority.
- b) The enlistment application form, duly filled-in, when received from the firms shall be scrutinized carefully for assessing the capacity and capability of the

firms including credentials, capability, quality control system, past performance, financial background, and so on, of the applicant.

- c) The Pre-Qualification bid shall be evaluated based upon the Bid Evaluation Criteria (BEC) duly recommended by the designated Committee.
- d) The panel's recommendation shall be approved by the functional HODs/Director based on the evaluation through score sheet on the areas like experience, qualification, financial strength which will be the part of BEC.
- e) Applicant, scoring less than the pre-determined percentage, shall not be qualified for empanelment.
- f) References shall be made to other firms of standing of whom the applicant firm claims to be a contractor.
- g) Likewise, the applicant firm's bankers may also be requested to advice about the financial standing of the firm.
- h) Enlistment of contractors should be done with the approval of CA. Enlistment should be for specific category of works.
- i) In cases where the firm is not considered capable and enlistment cannot be granted, the concerned authority shall communicate the deficiencies and shortcomings direct to the firms.
- j) Where a request for re- verification and review is made by the firm, along with any fee as prescribed and within the period prescribed by the department, review shall be undertaken.
- k) Requests for reverification after expiry of the said period would be treated as a fresh application and processing fee, if any prescribed, charged accordingly;
- l) It should be mentioned in the letter of enlistment that the enlistment is valid for a period of three years and would be considered for extension based (on application by the contractor/ service provider) on satisfactory performance of the firm. However, the enlistment would be initially treated as provisional and it would be treated as confirmed only after the firm has satisfactorily executed one contract of the relevant category and value from KPL .
- m) The extension of validity of enlistment is not a matter of right and KPL reserves the right not to extend such enlistment without assigning any reason;

- n) All Enlisted contractors should be allocated a unique enlistment number.
- o) Once the firms are enlisted, a circular shall be issued by the enlistment authority indicating the names and addresses of the enlisted contractors with details of the requirements and monetary value they will execute as well as the validity period, and so on, for which they are enlisted;

### **1.9. Performance Evaluation**

Performance and conduct of every enlisted contractor are to be watched by the concerned department. KPL should also reserve the right to remove firms who do not perform satisfactorily, even during the validity of enlistment (after giving due opportunity to the contractor to make a representation) if they fail to abide by the terms and conditions of the enlistment or fail to execute contracts on time or do substandard work or make any false declaration to any government agency or for any ground which, in the opinion of the government, is not in public interest;

The performance of empanelled contractors shall be evaluated by the concerned Tender Processing Group or any other committee designated for the purpose every year based on below listed criteria and submitted for appraisal of the Head of respective departments.

- a) Whether the contractor responded against enquiry invited by the Port.
- b) Whether Works have been executed successfully.
- c) Facilities committed during Registration / Empanelment vis-à-vis those periods / deployed for the contract / actual job and their adequacy.
- d) Quality of jobs executed.
- e) Delays if any, attributable solely to the contractor in completion of awarded jobs.
- f) Post contract response mechanism and performance

### **1.10 Removal from the approved list**

The name of the contractor may be removed from the approved list of contractors, by the enlisting authority, if it:

- a) Has, on more than one occasion, failed to execute a contract or has executed it unsatisfactorily; or
- b) Is proved to be responsible for constructional defects in two or more works; or
- c) If persistently violates any important conditions of the contract; or
- d) Fails to abide by the conditions of empanelment; or
- e) Is found to have given false particulars at the time of empanelment; or
- f) Has indulged in any type of forgery or falsification of records; or

- g) Changes constitution of the firm or Individual without prior approval of the empanelment authority; or
- h) Is declared or is in the process of being declared bankrupt, insolvent, wound up, dissolved or partitioned; or
- i) Persistently violates the labour regulations and rules; or
- j) Is involved in complaints of serious nature received from other departments which prima facie appear to be true.

A proposal backed up with relevant documentation/justifications to take disciplinary action shall be processed by the concerned group for approval of the concerned Head of Department.

#### **1.11. Extension of Period of Empanelment**

Action should be initiated for fresh empanelment at appropriate time so that the same is finalized before expiry of the existing empanelment period. In case such fresh empanelment has not been finalized for any specific reason, to be recorded, the extension of period of empanelment shall be obtained from the concerned Head of Services.

#### **1.12. General Conditions**

- a) The list of registered contractors shall be updated on a regular basis.
  - b) The category/ class of contractors may be upgraded/ downgraded or contractors may be de-listed based on their performance.
  - c) The practice of inviting bids for works tenders only from empanelled contractors may be confined to tenders up to certain threshold value, as decided by the Competent Authority of Port.
  - d) KPL shall retain its option to reassess firms already enlisted, at any later date, to satisfy itself about the current financial soundness/ credit worthiness, facilities available, and so on. Thereafter, KPL may decide to retain them as enlisted contractors for the requirements and monetary limit earlier considered or with necessary changes as deemed fit.
  - e) In case of adverse reports from the team of KPL, officers who reassess the firm, KPL shall delete such firm from the enlisted contractors list;
-



**WORKS MANUAL**  
**ANNEXURES TO SECTION -1**



Annexure-WM-S1/01

**1 FLOW OF PROCESS OF PROCUREMENT OF WORKS**

- 1) Planning of works or Receiving Indent from the User Department
- 2) Preparation of Preliminary Project Report (PPR) or Rough Cost Estimate
- 3) Acceptance of Necessity & issue of In-principle Approval
- 4) Preparation of Detailed Project Report (DPR) if applicable and Preliminary Estimates
- 5) Detailed designs, detailed estimates & technical sanction
- 6) Issue of Administrative Approval (A/A) & Expenditure Sanction (E/S
- 7) Appropriation of Funds
- 8) Preparation of Tender document
  - a) Open Tender beyond Rs.10 lakh
  - b) Limited Tender up to Rs. 10 lakh
- 9) Mode of Tendering
  - a) Single Stage System where feasible to work out schedule of quantity & formulate detailed specifications
  - b) Two Stage System where not feasible to work out detailed specifications
  - c) Pre-qualification Bidding (PQB)
- 10) Stages
  - a) First stage : solicit proposal relating to technical quality & other characteristics of construction
  - b) Second stage : Bids are invited from these bidders who fulfil prescribed technical/ financial criteria
- 11) Submission & Evaluation of Bids
- 12) Bids received within the time & date fixed for submission to be Opened
- 13) Preliminary examination of Bids to determine Bids which are responsive Bids
- 14) Preparation of Comparative Statement and Briefing Note
- 15) Evaluation of Responsive Bids and Determination of L1
- 16) Award of Work
- 17) Contract Management
- 18) Execution & Monitoring of Work
  - a) Quality Control   b) Time Monitoring   c) Financial Monitoring
- 19) Commissioning and Contract Closure
- 20) Disputes, Arbitration & Breach of Contract.

Annexure-WM-S1/2**2 TENDER OPENING ATTENDANCE SHEET**

KAMARAJAR PORT LIMITED

Bid (Techno-commercial/ Financial) Opening Attendance Sheet cum Report

Tender No. KPL/ \_\_/ \_\_/20\_\_ date \_\_\_\_\_

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

Signature of the Authorized representative of the Port

Annexure-WM-S1/3**3 TENDER OPENING REPORT****KAMARAJAR PORT LIMITED**

Tender No. \_\_\_\_\_ Title \_\_\_\_\_

Date of Opening \_\_\_\_\_ Total Number of tenders received \_\_\_\_\_

Bid No. / Total Bids	Bidder's Name	Bid Ref and Date (to be taken from the covering letter of Bidder)	Submiss ion of Requisite EMD (Y/ N)	Submission of other Mandatory Documents (a list can be prepared before hand to act as check list) (Y/ N)	Rate Quoted and Taxes/ Duties (in case of single bid or Financial bid)	Signature of Representative
1/ ---						
2/ --						
3/ --						

Signature, Date and Time Name and Designation of Tender Opening Officer	Signature, Date and Time Name and Designation of Tender Opening Officer	Signature, Date and Time Name and Designation of Tender Opening Officer
---	---	---

Annexure-WM-S1/4

**4 TENDER EVALUATION COMMITTEE REPORT**

KAMARAJAR PORT LIMITED

**Tender Evaluation Committee Report**  
(Techno-commercial/ Financial Bids)

Tender No. \_\_\_\_\_ Title \_\_\_\_\_  
Tender Published in \_\_\_\_\_ Date of publication / Extension (if any) \_\_\_\_\_  
Estimated cost \_\_\_\_\_ Bid Validity \_\_\_\_\_  
Tender Opening date \_\_\_\_\_ Total Number of tenders received \_\_\_\_\_

Members of the Tender Evaluation Committee:

1. Name and Designation \_\_\_\_\_
2. Name and Designation \_\_\_\_\_
3. Name and Designation \_\_\_\_\_
4. Name and Designation \_\_\_\_\_

**1. Salient Features of the Tender :**

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

**2. Preliminary Evaluation**

- a) Handling of any complaints received
- b) Responsiveness of bids and for minor corrections and clarifications

**3. Evaluation of Responsive Bids (Techno Commercial Bid)**

- a) Perusal of the Comparative statement prepared by the Proponent/user department

- b) Bid-wise deliberations
- c) Bid-wise recommendations
- d) Give a summary of recommended bids
- e) Record Concluding recommendations.

**4. Evaluation of Responsive Bids (Financial Bid)**

- a) Peruse the confirmation of the approval of the Competent Authority to open the price bid of the qualified bidders.
- b) Brief statement on opening of Financial bids.
- c) Perusal of the Comparative statement prepared by the Proponent/user department
- d) Evaluate price in the order of L1, L2, etc.
- e) Deliberations should be in the sequence of L1, L2, etc
- f) Bid-wise recommendation should be recorded
- g) Deliberate on Abnormally High/Low-rate quote
- h) Give a summary of recommended bids, award value, bid expiry date and special conditions, if any
- i) Mention that the rates recommended are considered reasonable (and basis for such determination
- j) Total value of the recommendations for determining level of acceptance authority. Mention that none of the TC members have any conflict of interest with the parties recommended for award.
- k) Give a summary of recommended bids
- l) Record Concluding recommendations
- m) Request acceptance of recommendations by competent authority

Signature, Date Name and Designation of Tender Evaluation Committee member	Signature, Date Name and Designation of Tender Evaluation Committee member	Signature, Date Name and Designation of Tender Evaluation Committee member
---	---	---

Annexure-WM-S1/5

**5 INVITATION FOR NEGOTIATIONS**

(On letterhead of the Port)

Registered A/ D or by Email

KPL/\_\_\_/\_\_\_/20\_\_\_/

Dt: \_\_\_\_\_

To

M/s \_\_\_\_\_

\_\_\_\_\_

Sub: Tender No KPL/\_\_\_/\_\_\_/20\_\_\_/ opened on -----for the -----

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.

Yours faithfully,

(Authorized Officer)

Enclosed:

- 1) Form of Declaration
- 2) Form of Revised offer



Annexure-WM-S1/6

**6 FORM OF DECLARATION ON NEGOTIATIONS**

(On company letterhead)

(To be signed and submitted before start of negotiations)

No: \_\_\_\_\_

Dt: \_\_\_\_\_

To  
The \_\_\_\_\_  
M/s. Kamarajar Port Limited,  
Chennai – 600001.

Sub: Tender No ----- opened on -----for the -----

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.

Yours faithfully,

Signatures of bidder, or officer authorised to sign the bid  
documents on behalf of the bidder (with seal)

Place \_\_\_\_\_

Date \_\_\_\_\_

Annexure-WM-S1/7

**7 FORMAT OF REVISED OFFER IN NEGOTIATIONS**

**Revised Offer in Negotiations**

(On company letterhead)

No. \_\_\_\_\_

Date \_\_\_\_\_

To

The \_\_\_\_\_

M/s. Kamarajar Port Limited

Chennai-600001.

Sir,

Sub: Tender No ----- opened on ----- for the supply of -----

Ref: Your invitation for negotiations no: ----- dated -----

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

1. 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 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.

Yours faithfully,

Signatures of bidder or

Officer authorised to sign the bid documents on behalf of the bidder

Encl : Contract Schedule

Annexure-WM-S1/8

**8 LETTER OF AWARD OF CONTRACT**

(On Port Letterhead)

KPL/\_\_\_/\_\_\_/20\_\_\_/

date \_\_\_\_\_

**Letter of Award of Contract**

**Confidential**

To .....  
.....

Sub: Tender Award of contract for contract no: ----- for the contract of -----

Ref: Your offer no. ----- against our tender no. ----- opened on -----

Dear Sir/ Madam

I am directed to inform you that after evaluating the bid documents submitted by you on-----  
-----Kamarajar Port Limited is pleased to inform you that you have been selected as the  
successful bidder for the supply/construction of ----- The total purchase/awarded  
price shall be Rs. ----- as indicated in your financial bid submitted on -----, in  
accordance with the procedures intimated in the relevant bid documents.

You/ your authorised representative is requested to be personally present at the \_\_\_\_ office of  
the Kamarajar Port at ----- for the signing of the contract by ----- In this  
respect, we also request you to submit the performance security of Rs. ----- (Rupees in  
words) by ----- On submission of the Performance Security you may apply for refund of  
EMD deposited by you for the above tender.

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. ----- shall be  
affixed on the enclosed agreement form. This notification concludes the legally binding contract  
between you and the Kamarajar Port Limited, till issue of a formal contract.

Yours truly,  
[Authorised Officer]

Annexure-WM-S1/9

**9 SELF DECLARATION UNDER PREFERENCE TO “MAKE IN INDIA”**

**CERTIFICATE**

In line with Government Public Procurement Order No. P-45021/2/2017-PP(BII) dtd. 16-09-2020, as amended from time to time and as applicable on the date of submission of tender, we hereby certify that we

M/s \_\_\_\_\_ (name of the Bidder) are local supplier meeting the requirement of minimum Local content (50%) as defined in above orders for the material against Tender NIT No \_\_\_\_\_ for the work of \_\_\_\_\_  
\_\_\_\_\_ Details of location at which local value addition will be made is as follows:

-----  
We also understand, false declarations will be in breach of the Code of Integrity under Rule 175(1)(i)(h) of the General Financial Rule for which for which a bidder or its successors can be debarred for up two years as per Rule 151 (iii) of the General Financial Rules along with such other actions as may be permissible under law. Seal and Signature of Authorized Signatory

Signature of the Bidder

Date:

Place:

Annexure-WM-S1/10

**10 MOU with the PWO/PSU for execution of work**

(The sample is for illustrative purpose only and the Port may change the format suiting to their requirement. If felt necessary, Port may also get the MOU document vetted from the legal cell)

THIS FORMAT IS TO BE USED ONLY WHEN A DEPOSIT WORK IS AWARDED TO A PSU ON COST PLUS BASIS

**MEMORANDUM OF UNDERSTANDING**

between

*KAMARAJAR PORT LIMITED*

and

*[Name of Project Management Consultant PWO/ PSU]*

for

Construction of *[Name of Work(s)]* at *[Name of Location(s) of Work]*

This, Memorandum of Understanding (hereinafter called "MoU") signed between Kamarajaar Port Limited (hereinafter called "Procuring Entity") represented by its GM (CS&BD) (hereinafter called "Chief Engineer") of one part,

And

*[Name of Project Management Consultant PWO/ PSU]* (hereinafter called "Project Management Consultant") represented by its Chief Engineer on other part.

'Procuring Entity' and 'Project Management Consultant' are also referred to individually as 'Party' and collectively as 'Parties' wherever the context so requires

Whereas 'Project Management Consultant' have agreed to undertake the work of Construction of abovementioned Work(s) at abovementioned location(s) for 'Procuring Entity' as a 'Deposit Work' on Project Management Consultant (PMC) basis.

**Now, therefore it is agreed between the Parties that:**

**A) Assigning of Work by 'Procuring Entity' to 'Project Management Consultant'.**

1. *{In case of MoU of collection of works or of framework nature 'Procuring Entity' will assign a work to the 'Project Management Consultant' through a letter after due approval of the competent authority. A work specific MoU would be signed along with approval of Preliminary Estimates.}. 'Procuring Entity' will provide all relevant available documents related to Land, Site Details, functional and space requirements (or Various Facilities, Special Requirements/ Features and Broad Specifications for specialised Equipments and Plants), Layout Plans etc for facilitating Project Execution by 'Project Management Consultant' along with A & E Consultants.*
2. 'Project Management Consultant' shall appoint, if any, competent Architectural and Engineering (A & E) Consultant commensurate with size and nature of the work after following due process.

**B) Approval of Preliminary Project Report (PPR) & Detailed Project Report (DPR)/ Preliminary Estimate (PE)**

3. Preliminary Project Report (PPR) shall be prepared by 'Project Management Consultant' based on functional & space requirements as intimated by 'Procuring Entity' and submitted to 'Procuring Entity' for its approval. *{It would be a joint endeavour on part of both 'Procuring Entity' and 'Project Management Consultant' in consultation with consultants & experts to develop Standard Plans & Specifications for Works & Services including Furniture, Equipments, Plants etc. pertaining to various categories of Works etc.}* (Applicable to framework MoUs or MoUs for collection of projects)
4. Based on approved PPR, 'Project Management Consultant' shall prepare Detailed Project Report (DPR)/ Preliminary Estimate (PE) consistent with their norms & standards, containing Milestones and commensurate activities to be accomplished against each Milestone & Baseline Programme in the form of CPM Network depicting clearly Dates of Start and Completion of the work *{along with Work specific draft MoU}* and submit it to 'Procuring Entity' along with all relevant input information, documents and Drawings etc. for approval of 'Procuring Entity', within 8 (eight) weeks of receipt of approval for PPR. 'Project Management Consultant' shall use relevant Schedule of Rates for the concerned location / project for framing the DPR/ PE. Non-DSR Items shall be incorporated in the Detailed Estimates only when these are not either readily available in DSR. Detailed reasons and justifications for including Non-DSR Items shall have to be furnished by 'Project Management Consultant'. 'Procuring Entity' shall accord approval to DPR/ PE *{and Work specific Draft MOU}* containing Milestones and commensurate activities to be accomplished against each Milestone & Baseline Programme in

the form of CPM Network and issue Administrative Approval (A/A) & Expenditure Sanction (E/S) in about 8 (eight) weeks of its submission by 'Project Management Consultant'.

5. On receipt of the A/A and E/S, the 'Project Management Consultant' shall prepare and accord Technical Sanction (TS) to detailed and coordinated design of all the Architectural, Civil, Electrical, Mechanical, Horticulture and any other services included in the scope of the sanction and of the Detailed Cost Estimates containing the detailed specifications and quantities of various items prepared on the basis of the schedule of rates maintained by CPWD or other Public Works Organizations.

### **(C) Release of Funds, Payment of Bills**

6. 'Project Management Consultant' has agreed to charge *[insert the Fee agreed]* for carrying out the assigned Deposit Work.

7. 'Procuring Entity' shall release Initial Deposit of 10% of the approved preliminary estimate amount to 'Project Management Consultant' within 2 (two) weeks of issuing A/A & E/S (and signing work specific MoU along with Milestones & Baseline Programme between Chief Engineers of 'Procuring Entity' & 'Project Management Consultant', whichever is later).

7.1 'Procuring Entity' shall release additional deposit up to 10 (ten) % of approved estimate amount to 'Project Management Consultant' within 2 (two) weeks of award of first major construction contract on the basis of specific request made by 'Project Management Consultant' in this regard along with proper reasons and justifications acceptable to 'Procuring Entity' for additional requirement of fund over and above already released initial deposit of 10 (ten) % of approved preliminary estimate amount in terms of Clause – 7 above.

8. After the Initial and Additional Deposit as per clause 7 and 7.1 above and subsequent release of Fund shall be in the form of recoupment of the expenditure made by 'Project Management Consultant' on the work as per monthly expenditure statements which shall be submitted in Monthly Expenditure Statement (MES) in a form similar to CPWD Form – 65 (Account of Deposit works). While submitting MES, and placing demand for release of fund in the form of recoupment of the monthly expenditure already incurred on the work, 'Project Management Consultant' will also submit a comprehensive report on progress of physical completion of various activities and Milestones vis-a-vis earlier planned activities/ Milestones for the overall completion of the specific work mutually decided between 'Procuring Entity' & 'Project Management Consultant' (and included as part of work specific MOU)<sup>55</sup> for enabling 'Procuring Entity' to keep effective check on utilization of fund as well as physical progress of the work.

9. The fund subsequent to Initial Deposits shall be released by 'Procuring Entity' to 'Project Management Consultant' within 4 (four) weeks of submission of request by 'Project Management Consultant' along with all documents as described in Clause - 8 above. As per the monitoring of physical and financial progress indicators, 'Procuring Entity' will take necessary steps for recoupment of the monthly expenditure incurred on the basis of the Fund Utilization Certificate.
10. If any fund requirement is specifically made by 'Project Management Consultant' after the work has been assigned to 'Project Management Consultant' for undertaking preconstruction activities related to the Project Execution etc., the same shall be released by 'Procuring Entity' within 2 (two) weeks of such specific demand provided the amount is within ceiling limit of Rs 25 (twenty-five) lakh. The amount so released to 'Project Management Consultant' shall be adjusted from, Initial Deposit amount.
11. 'Project Management Consultant' shall intimate 'Procuring Entity' about any excess expenditure likely to be incurred over and above the approved Projected Cost and also about possibility of time overruns, as soon as it comes to the knowledge along with reasons and justifications thereof for necessary approvals from 'Procuring Entity' before continuing/ incurring the extra/ additional expenditure.
12. The 'Project Management Consultant' shall be responsible for certifying and making payment of Bills of the Contractors/ Agencies engaged by them and make available Final Statement of Accounts in Standard Format to 'Procuring Entity' & also provide copies of Final Bills for all Contract Packages and other expenditure incurred related to Project Construction after the Completion of the Work. In addition, should 'Procuring Entity' ask for any other details from 'Project Management Consultant' regarding Utilization of Fund at any stage, Detailed Estimates, Technical Sanctions, Award of Works, Running Bills etc., the same shall be provided by 'Project Management Consultant' readily.
13. The 'Procuring Entity' shall settle compensation/ levies, if so required to be paid based on recommendation by 'Project Management Consultant' related to the Project works, under Workmen's Compensation Act or any other Act or Law of the Central or the State Government.

#### **(D) Execution of Work**

14. The 'Project Management Consultant' shall obtain necessary Statutory Approvals/ Permission/ Clearances/ Certificates from the concerned Local Bodies & Statutory Authorities like District Authorities, Municipal Corporation, Panchayati Raj Institutions, Town Planning Board, Electricity Board/ Fire Department, State/ Central Pollution Control Boards, State/ Central Environmental Authorities, Forest and Wild-life authorities etc (for e.g. removal of trees, re-



locating utilities; conversion of railway level crossings, laying of railway sidings needed by the work; rehabilitation and resettlement of persons affected by the work; traffic control; mining of earth and stone; interfering protected monuments; blasting permission, environmental/ forest/ wild-life clearances; and shifting of religious shrines etc) to start the work have been obtained. The 'Procuring Entity' shall be responsible for providing all assistance to 'Project Management Consultant' in this process.

15. Works shall not be awarded by 'Project Management Consultant' to contractors till all statutory approvals/ certificates/ permissions required for taking up the work, are in place.

16. 'Procuring Entity' shall make the work site available free from encumbrances to 'Project Management Consultant'. 'Procuring Entity' shall also ensure Availability of auxiliary services - like roads, power, water, solid & liquid waste disposal system, street lighting and other civic services. 'Project Management Consultant' shall provide necessary support in this process.

17. 'Project Management Consultant' shall permit 'Procuring Entity' to inspect or monitor the works, either itself or through Third party as and when it desires for assessing actual progress and quality of construction and any other aspects.

18. 'Procuring Entity' shall provide security clearance and ensure free access for 'Project Management Consultant' staff/ Employees and their workers working at Work site in case these are required. 'Project Management Consultant' shall provide necessary support in this process.

19. 'Project Management Consultant' shall ensure adequate availability of men & material by their contractors.

20. 'Project Management Consultant' shall ensure that it's Contractor(s) implement required Health, Safety & Environmental (HSE) practices at the Construction Sites and they also comply with all statutory obligations related to workmen deployed at the Construction Site. 'Project Management Consultant' will act as Principal Employer in respect of all Statutory Obligations related to workmen deployed at the site in execution of the work.

21. 'Procuring Entity' shall permit and facilitate to the 'Project Management consultant' all utilities required for construction e.g. drawl of Ground Water, obtaining electricity connection, putting up Labour Camps/ Huts inside the available space for facilitating construction by contractors engaged by 'Project Management Consultant'. 'Project Management Consultant' shall provide necessary support in obtaining permission, if any, of Local Bodies in this regard. The cost in this regard borne by 'Procuring Entity', if any, should not be duplicated as reimbursement by the 'Project Management Consultant'.

22. As soon as the work is allocated, 'Project Management Consultant' shall prepare and submit to 'Procuring Entity' an Integrated Programme Chart for the execution of work showing clearly all activities from the start of work to completion with details of manpower and other input information required for the fulfilment of the timelines given therein. 'Project Management Consultant' will intimate 'Procuring Entity', Project Team, both on - site and off-site, starting from Chief Engineer to Junior Engineer associated with execution of the work. The Programme Chart should inter-alia include descriptive note explaining sequence of the various activities, CPM Network Milestones etc. This will form Base Line Programme and the subsequent progress of the work shall be reviewed with reference to this during periodic Progress Review Meeting preferably monthly. Any increase in time period from the Base Line Value shall be construed as Time Overrun.

23. 'Project Management Consultant' shall be responsible for providing Physical Progress Reports to 'Procuring Entity' in the form of CPM (Critical Path Method) Network on monthly basis for reviewing of the progress of the work vis - a vis Base Line Programme and taking all necessary remedial actions, after taking into account 'Procuring Entity's observations made in respect of quality and progress of the work during the monthly/ periodic Project Review Meetings. To ensure timely completion of work as per mutually agreed time-schedule/ milestones and within agreed Cost.

24. 'Project Management Consultant' shall also be responsible for providing to 'Procuring Entity' Financial Progress Reports of the project and up to date Expenditure incurred on the work on monthly basis along with Certificate of Utilization of Fund against Fund earlier released to 'Project Management Consultant' by 'Procuring Entity'.

25. 'Project Management Consultant' shall be responsible for total Project Management including day-to-day supervision of works, maintenance of all project records and executing the works as per prescribed guidelines, their own Works Manual, Codes, Books of Specifications etc and also in accordance with relevant and extant provisions of General Financial Rules (GFR), 2017.

#### **(E) Project Management, Cost and Time Control**

26. 'Project Management Consultant' shall implement a system of 'Project Team Concept' with dedicated group of Engineers under single and unified command for implementation of projects from concept to completion and call composite tenders to reduce the number of packages for better management. 'Project Management Consultant' shall be obliged to adopt all the above said measures to successful completion of the works within Approved Cost and agreed Time period.

27. 'Project Management Consultant' shall be responsible for managing the Project from concept to commissioning effectively and efficiently to ensure desired/ proportionate pace of progress and completion of work is achieved progressively vis-à-vis approved Plans & Specifications and in Terms and Conditions of the MOUs and mutually agreed milestones and timelines and approved cost, taking with due diligence all required proactive remedial measures including provision of stringent and elaborate enforceable Clauses to this effect and also making time as the essence of contract in the Bid and Contract Documents. 'Project Management Consultant' shall provide for clauses in the contract and established procedure to recover liquidated damages from their contractors/ agencies. The liquidated damages recovered from the contractors for delay, if any, shall be credited to 'Procuring Entity' in the project accounts.

28. The approved Initial Project Cost & Timeline should not exceed during execution of the Project except for reasons like increase in cost index during construction period, revised specifications or extra work over approved estimate carried out at the request of 'Procuring Entity' etc. In case of either increase in earlier approved cost or timeline, detailed reasons and justifications, based on verifiable facts and figures, shall have to be provided by 'Project Management Consultant' along with comprehensive proposals for revision in earlier approved Project Cost & Timeline, which shall be intensively examined by 'Procuring Entity' in consultation with 'Project Management Consultant' before approval is accorded to their proposals. No additional expenditure over and above the earlier approved Project Cost shall be incurred by 'Project Management Consultant' without prior approval of 'Procuring Entity'. Upward Revisions in either Cost or Timeline should be an exception rather than a rule and for achieving this objective, all required efforts shall be made by 'Project Management Consultant'

29. At any time, it appears to 'Procuring Entity' that the actual progress of the work does not conform to the approved programme referred above and intimated to 'Project Management Consultant' by 'Procuring Entity', detailed reasons and justifications for such delays shall have to be provided by 'Project Management Consultant', which shall be examined by 'Procuring Entity' to re-Schedule the Programme, if any. Progress Review Meetings preferably monthly shall be held between 'Project Management Consultant' and 'Procuring Entity' for reviewing the progress of works based on Baseline Programme/ Milestones etc. and also for resolving co-ordination issues, if any including fixing priority of some works, facilities and services for their early completion and handing over to 'Procuring Entity' for putting item to use for intended purpose. A&E Consultants may also participate. 'Project Management Consultant' will also designate a nodal officer in respect of specific work for coordinating with 'Procuring Entity' and A & E Consultant. Such designated nodal officer shall be suitably empowered and authorized to take decisions in work related issues so that delays are minimized for achieving timely completion of work.

**(F) Disputes, Enquiries and Queries**

30. 'Project Management Consultant' shall be responsible for observing due diligence and adopting all possible measures at various stages of work execution so as to avoid Arbitration/ Litigation and other hindrances and the work is completed within optimum cost and time in hassle free environment

31. 'Project Management Consultant' shall be responsible for defending all Arbitration and Court Cases arising out of execution till the works end examining the Arbitration Award/ Decree of Court or Law/ liability by appropriate authority in 'Project Management Consultant' and forwarding the same along with a comprehensive report on the circumstance leading to the Arbitration/ Court Cases and the reasons and justification as to why an appeal against such awards/ decree was not considered necessary briefing out inter-alia details of the award and clear cut recommendations. The decision of the competent authority in 'Project Management Consultant' to accept The award or challenge the same in a Court of Law will be binding on the 'Procuring Entity'.

32. 'Procuring Entity' shall settle and pay the final claims which may be decreed by a Court of Law, Tribunal or by award of an Arbitration in relation-to the-deposit work, based on recommendations of 'Project Management Consultant'.

33. 'Project Management Consultant' shall be responsible for redressing and complying with the observations of CTE/ CVC, Auditors, Statutory Authorities, Local Bodies, Municipal Corporation etc. pertaining to the work under intimation to 'Procuring Entity'. Providing all work-related information promptly to 'Procuring Entity' for replying to Parliament Questions, queries from various Constitutional & Statutory Authorities.

**(G) Completion and Handing-over of Completed Work and Facilities**

34. 'Project Management Consultant' shall obtain work Completion/ Occupancy Certificates & Clearances for completed Work and Facilities before handing over the same to 'Procuring Entity' for putting them to functional use. 'Procuring Entity' shall provide all assistance in this process.

35. 'Project Management Consultant' shall hand over to 'Procuring Entity' or its Authorized Representative completed Work including all Services and Facilities constructed in accordance with the Approved Plans, Specifications fulfilling all techno-functional requirements agreed with 'Procuring Entity' along with Inventory, As built - Drawings, Maintenance Manual/ Standard

Operating Procedure ( SOP) for Equipments and Plants, all clearances /Certificates from Statutory Authorities, Local Bodies etc.

36. On completion of the work, a Project Completion Report (PCR) shall be submitted by 'Project Management Consultant' duly bringing out the Final Project Completion Cost, Total Time period taken to complete the work and also completed Project Components as against the approved Cost, Time and Project Components. The PCR shall be submitted along with Final Project Accounts including return of unspent balance amount to 'Procuring Entity' within one month of settlement of final bills of the contractors/ other agencies deployed on the work by 'Project Management Consultant'.

#### **(H) Termination of MoU**

37. If 'Procuring Entity' decides to terminate this MOU or decides to drop/ abandon the work after substantial preliminary work has been done by 'Project Management Consultant' on the work, both 'Project Management Consultant' and 'Procuring Entity' shall mutually decide the loss incurred by 'Project Management Consultant' for payment by the latter to the former. In case of abandonment of project/ work by 'Procuring Entity' during construction stage, 'Procuring Entity' shall pay to 'Project Management Consultant', after determining the value of the works, goods and contractors' documents and any other sums due to them for work executed in accordance with the MOU, to help liquidate only such liabilities as were squarely needed towards construction/ consultant agencies engaged on the work, in a fair and reasonable manner.

#### **(I) Miscellaneous**

38. **Disputes between 'Procuring Entity' and 'Project Management Consultants':** As dispute resolution mechanism for implementation of the provisions of this MoU, at the first instance the issues involved shall be brought before Chief Engineer of 'Procuring Entity' and concerned Chief Engineer of 'Project Management Consultant' for their resolution. In case, however, disputes/ differences between the parties do not get resolved, the matter shall be escalated to higher level in 'Procuring Entity', and 'Project Management Consultant', who shall be above the level of CE in the respective organizations. They shall submit a comprehensive report and recommendation to 'Procuring Entity' and 'Project Management Consultant' for facilitating final decision in the matter.

39. Individual and joint responsibilities of the Parties shall be as per clauses mentioned above.

40. No amendment in Terms & Conditions of the MoU shall be valid and effective unless it is in writing and duly signed by authorised representatives of 'Procuring Entity' and 'Project Management Consultant'. Each party shall give due consideration to any proposal for amendment/ modification made by other party with proper justifications thereof.

41. Provisions, if any, made in respect of deposit works in 'Project Management Consultant's Works Manual or Codes shall stand modified to the extent of the stipulations made in this MoU for execution of 'Procuring Entity' works by 'Project Management Consultant'.

Signatures and Witnesses

Date: \_\_\_\_\_ Place: \_\_\_\_\_

\_\_\_\_\_

Annexure-WM-S1/11

**11 DRAFT INTEGRITY PACT**

*(The Integrity Pact agreement shall be executed in Rs 100/- non judicial stamp paper and shall be enclosed along with original financial instrument and reach Kamarajar Port Limited (KPL) corresponding address before opening Technical bid as per date and time given in the Tender.)*

**GENERAL**

This pre-bid pre-contract Agreement (herein after called the Integrity Pact)  
BETWEEN

Kamarajar Port Limited, represented by the Chairman cum Managing Director, Kamarajar Port Limited, Chennai hereinafter referred to as “THE PRINCIPAL” / “EMPLOYER”

**AND**

..... represented by Shri .....  
hereinafter referred to as “The BIDDER / CONTRACTOR”.

**Preamble**

The Principal intends to award, under laid down organizational procedures, contract/s for ..... (Name of the Contract / Project / Stores equipment / item). The Principal values full compliance with all relevant laws and regulations, and the principles of economic use of resources, and of fairness and transparency in its relations with the Bidder/s and Contractor/s.

In order to achieve these goals, the Principal will appoint an External Independent Monitor who will monitor the tender process and the execution of the contract for compliance with the principles mentioned above.

NOW, THEREFORE,

To avoid all forms of corruption by following a system that is fair, transparent and free from any influence / prejudiced dealings prior to, during and subsequent to the currency of the contract to be entered into with a view to: -

Enabling the PRINCIPAL/EMPLOYER to obtain the desired said stores / equipment at a competitive price in conformity with the defined specifications by avoiding the high cost and the distortionary impact of corruption on public procurement, and

Enabling BIDDERS / CONTRACTORS to abstain from bribing or indulging in any corrupt practice in order to secure the contract by providing assurance to them that their competitors will also abstain from bribing and other corrupt practices and the PRINCIPAL/EMPLOYER will commit to prevent corruption, in any form, by its officials by following transparent procedures.

The parties hereto hereby agree to enter into this Integrity Pact and agree as follows:-

**Commitments of the PRINCIPAL/EMPLOYER**

The PRINCIPAL/EMPLOYER undertakes that no official of the Principal/Employer connected directly or indirectly with the contract, will demand, take a promise for or accept, directly or through intermediaries, any bribe, consideration, gift, reward, favour or any material or immaterial benefit or any other advantage from the BIDDER / CONTRACTOR, either for themselves or for any person, organization or third party related to the contract in exchange for an advantage in the bidding process, bid evaluation, contracting or implementation process related to the contract.

The PRINCIPAL/EMPLOYER will, during the pre-contract stage, treat all BIDDERS / CONTRACTORS alike, and will provide to all BIDDERS / CONTRACTORS the same information and will not provide any such information to any particular BIDDER / CONTRACTOR which could afford an advantage to that particular BIDDER / CONTRACTOR in comparison to other BIDDER / CONTRACTOR and could obtain an advantage in relation to the tender process or the contract execution.

All the officials of the PRINCIPAL/EMPLOYER will report to the Chairman cum Managing Director / Chief Vigilance Officer of Kamarajar Port Limited any attempted or completed breaches of the above commitments as well as any substantial, suspicion of such a breach.

If the PRINCIPAL/EMPLOYER obtains information on the conduct of any of its employees with full and verifiable facts and the same is prima facie found to be correct which is a criminal offence under the Indian Penal Code / Prevention of Corruption Act, or if there be a substantive suspicion in this regard, the Principal will inform its Chief Vigilance Officer and in addition can initiate disciplinary actions.

**Commitments of the BIDDER / CONTRACTOR**

The Bidder / Contractor commit himself to take all measures necessary to prevent corruption. He commits himself to observe the following principles during his participation in the tender process and during the post contract stage.

- a. The Bidder / Contractor will not enter with other Bidder / Contractors into any undisclosed agreement or understanding, whether formal or informal. This applies in particular to prices, specifications, certifications, subsidiary contracts, submission or non-submission of



bids or any other actions to restrict competitiveness or to introduce cartelization in the bidding process.

- b. The Bidder/Contractor will not commit any offence under the Indian Penal Code, 1860 / Prevention of Corruption Act, 1988 further the Bidder / Contractor will not use improperly, for purposes of competition or personal gain, or pass on to others, any information or document provided by the Principal as part of the business relationship, regarding plans, technical proposals and business details, including information contained or transmitted electronically.
- c. The Bidder / Contractor will not offer, directly or through intermediaries, any bribe, gift, consideration, reward, favour, any material or immaterial benefit or any other advantage, commission, fees, brokerage or inducement to any official of the Principal/Employer, connected directly or indirectly with the bidding process, or to any person, organization or third party related to the contract in exchange for any advantage in the bidding, evaluation, contracting and implementation of the contract.
- d. The Bidder/Contractor further undertakes that it has not given, offered or promised to give directly or indirect any bribe, gift, consideration, reward, favour, any material or immaterial benefit or any other advantage, commission, fees, brokerage or inducement to any official of the Principal/Employer or otherwise in procuring the Contract or forbearing to do or having done any act in relation to the obtaining or execution of the contract or any other contract with the Principal for showing or forbearing to show favour or disfavour to any person in relation to the contract or any other contract with the Principal.
- e. The Bidder / Contractor of foreign origin shall disclose the name and address of the Agents /representatives in India, if any. Similarly the Bidder/Contractor of Indian Nationality shall furnish the name and address of the foreign principals, if any.
- f. Bidder / Contractors shall disclose the payments to be made by them to agents or any other intermediary, in connection with this bid/contract.
- g. The Bidder / Contractor further confirms and declares to the Principal/ Employer that the Bidder / Contractor is the original manufacturer/integrator/ authorized government sponsored export entity of the stores and has not engaged any individual or firm or company whether Indian or foreign to intercede, facilitate or in any way to recommend to the Principal/Employer or any of its functionaries, whether officially or unofficially to the award of the contract to the Bidder / Contractor, nor has any amount been paid, promised or intended to be paid to any such individual, firm or company in respect of any such intercession, facilitation or recommendation.

- h. The Bidder / Contractor, either while presenting the bid or during pre-contract negotiations or before signing the contract, shall disclose any payments he has made, is committed to or intends to make to officials of the Principal/Employer or their family members, agents, brokers or any other intermediaries in connection with the contract and the details of services agreed upon for such payments.
- i. The Bidder / Contractor will not collude with other parties interested in the contract to impair the transparency, fairness and progress of the bidding process, bid evaluation, contracting and implementation of the contract.
- j. The Bidder / Contractor will not accept any advantage in exchange for any corrupt practice, unfair means and illegal activities.
- k. The Bidder / Contractor shall not use improperly, for purposes of competition or personal gain, or pass on to others, any information provided by the Principal/Employer as part of the business relationship, regarding plans, technical proposals and business details, including information contained in any electronic data carrier. The Bidder / Contractor also undertakes to exercise due and adequate care lest any such information is divulged.
- l. The Bidder / Contractor commits to refrain from giving any complaint directly or through any other manner without supporting it with full and verifiable facts.
- m. The Bidder / Contractor will not instigate third persons to commit offences outlined above or be an accessory to such offences.
- n. If the Bidder/Contractor or any employee of the Bidder/Contractor or any person acting on behalf of the Bidder/Contractor, either directly or indirectly, is a relative of any of the officers of the Principal/Employer, or alternatively, if any relative of an officer of the Principal/Employer has financial interest / stake in the Bidder / Contractor's firm, the same shall be disclosed by the Bidder / Contractor at the time of filing of tender. The term 'relative' for this purpose would be as defined in Section 6 of the Companies Act 1956.
- o. The Bidder / Contractor shall not lend to or borrow any money from or enter into any monetary dealings or transactions, directly or indirectly, with any employee of the Principal/Employer.
- p. A person signing Integrity Pact shall not approach the Courts while representing the matters to IEM and he/she will await their decision in the matter.
- q. In the event of any dispute between the management and the contractor relating to those contracts where Integrity Pact is applicable, in case, both the parties are agreeable, they may try to settle dispute through mediation before the panel of IEMs in a time bound manner. If required, the organization may adopt any mediation rules for this purpose.

**Previous Transgression**

The Bidder / Contractor declares that no previous transgression occurred in the last three years immediately before signing of this Integrity Pact, with any other company in any country in respect of any corrupt practices envisaged hereunder or with any Public Sector Enterprises in India or any Government Department in India that could justify Bidder / Contractor's exclusion from the tender process. If the Bidder / Contractor makes incorrect statement on this subject, the Bidder / Contractor can be disqualified from the tender process or the contract, if already awarded, can be terminated for such reason.

**Sanction for Violations**

Any breach of the aforesaid provisions by the Bidder / Contractor or any one employed by it or acting on its behalf (whether with or without the knowledge of the Bidder / Contractor shall entitle the Principal / Employer to take all or any one of the following actions, wherever required:-

- (i) To immediately call off the pre contract negotiations without assigning any reason or giving any compensation to the BIDDER / CONTRACTOR, However, the proceedings with the other BIDDER / CONTRACTOR (s) would continue.
- (ii) The Earnest Money Deposit (in pre-contract stage) and / or Security Deposit / Performance Bond (after the contract is signed) shall stand forfeited either fully or partially, as decided by the PRINCIPAL/EMPLOYER and the PRINCIPAL/EMPLOYER shall not be required to assign any reason therefore.
- (iii) To immediately cancel the contract, if already signed, without giving any compensation to the BIDDER / CONTRACTOR.
- (iv) To recover all sums already paid by the PRINCIPAL/EMPLOYER, and in case of an Indian BIDDER / CONTRACTOR with interest thereon at 2% higher than the prevailing Prime Lending Rate of State Bank of India , while in case of a BIDDER / CONTRACTOR from a country other than India with interest thereon at 2% higher than the LIBOR. If any outstanding payment is due to the BIDDER / CONTRACTOR from the PRINCIPAL/EMPLOYER in connection with any other contract for any other stores, such outstanding payment could also be utilized to recover the aforesaid sum and interest.
- (v) To encash the advance bank guarantee and performance bond / warranty bond, if furnished by the BIDDER / CONTRACTOR, in order to recover the payments, already made by the PRINCIPAL/EMPLOYER, along with interest.
- (vi) To cancel all or any other Contracts with the BIDDER / CONTRACTOR. The BIDDER / CONTRACTOR shall be liable to pay compensation for any loss or damage to the

PRINCIPAL/EMPLOYER resulting from such cancellation/ rescission and the PRINCIPAL/EMPLOYER shall be entitled to deduct the amount so payable from the money(s) due to the BIDDER / CONTRACTOR.

- (vii) To debar the BIDDER / CONTRACTOR from participating in future bidding processes of the Principal for a minimum period of five years, which may be further extended at the discretion of the PRINCIPAL/EMPLOYER.
- (viii) To recover all sums paid in violation of this Pact by BIDDER/CONTRACTOR(s) to any middleman or agent or broker with a view to securing the contract.
- (ix) In cases where irrecoverable Letters of Credit have been received in respect of any contract signed by the PRINCIPAL/EMPLOYER with the BIDDER / CONTRACTOR, the same shall not be opened.
- (x) Forfeiture of Performance Bond in case of a decision by the PRINCIPAL/EMPLOYER to forfeit the same without assigning any reason for imposing sanction for violation of this pact.
- (xi) The Bidder / Contractor accepts and undertakes to respect and uphold the Principal's absolute right to resort to and impose such exclusion and further accepts and undertakes not to challenge or question such exclusion on any ground, including the lack of any hearing before the decision to resort to such exclusion is taken. This undertaking is given freely and after obtaining independent legal advice.
- (xii) If the Bidder / Contractor can prove that he has restored /recouped the damage caused by him and has installed a suitable corruption prevention system, in such a case, it will be discretion of the Principal to revoke the exclusion prematurely.
- (xiii) The PRINCIPAL/EMPLOYER will be entitled to take all or any of the actions mentioned at Para (i) to (xii) above of this Pact also on the Commission by the BIDDER / CONTRACTOR or any one employed by it or acting on its behalf (whether with or without the knowledge of the BIDDER / CONTRACTOR), of an offence as defined in Chapter IX of the Indian Penal code, 1860 or Prevention of corruption Act, 1988 or any other statute enacted for prevention of corruption.
- (xiv) The decision of the PRINCIPAL / EMPLOYER to the effect that a breach of the provisions of this Pact has been committed by the BIDDER / CONTRACTOR shall be final and conclusive on the BIDDER / CONTRACTOR. However, the BIDDER / CONTRACTOR can approach the Independent Monitor (s) appointed for the purposes of this Pact.

**Fall Clause**

The BIDDER / CONTRACTOR undertakes that it has not supplied / is not supplying similar product / systems or subsystems at a price lower than that offered in the present bid in respect of any other Ministry / Department of the Govt. of India or PSU and if it is found at any stage that similar product / systems or subsystems was supplied by the BIDDER / CONTRACTOR to the Principal at a lower price, then that very price, with due allowance for elapsed time, will be applicable to the present case and the difference in the cost would be refunded by the BIDDER / CONTRACTOR to the PRINCIPAL / EMPLOYER, if the contract has already been concluded.

**Independent Monitors**

The Principal/Employer has appointed two Independent External Monitors (hereinafter referred to as Monitors)

1. Name & Particulars

2. Name & Particulars

- (a) The task of the Monitors shall be to review independently and objectively, whether and to what extent the parties comply with the obligations under this Pact.
- (b) The Monitors shall not be subject to instructions by the representatives of the parties and perform their functions neutrally and independently.
- (c) Both the parties accept that the Monitors have the right to access all the documents relating to the project / procurement, including minutes of meetings.
- (d) As soon as the Monitor notices, or has reason to believe, a violation of this pact, he will so inform the authority designated by the Principal and the Chief Vigilance Officer of Kamarajar Port Limited.
- (e) The BIDDER / CONTRACTOR(s) accepts that the Monitor has the right to access without restriction to all Project documentation of the PRINCIPAL including that provided by the BIDDER / CONTRACTOR. The BIDDER / CONTRACTOR will also grant the Monitor, upon his request and demonstration of a valid interest unrestricted and unconditional access to his project documentation. The same is applicable to Subcontractors. The Monitor shall be under contractual obligation to treat the information and documents of the Bidder / Contractor / Subcontractor(s) with confidentiality.
- (f) The Principal / Employer will provide to the Monitor sufficient information about all meetings among the parties related to the Project provided such meetings could have an impact on the contractual relations between the Principal and the Contractor. The parties offer to the Monitor, the option to participate in such meetings.

- (g) The Monitor will submit a written report to the designated Authority of Principal / Employer / Chief Vigilance Officer of Kamarajar Port Limited within 8 to 10 weeks from the date of reference or intimation to him by the Principal / Employer / Bidder / Contractor and should the occasion arise, submit proposals for correcting problematic situation.
- (h) As soon as the Monitor notices, or believes to notice, a violation of this agreement, he will so inform the Management of the Principal and request the Management to discontinue or to take corrective action, or to take other relevant action. The Monitor can in this regard submit non-binding recommendations. Beyond this, the Monitor has no right to demand from the parties that they act in a specific manner, refrain from action or tolerate action.
- (i) If the Monitor has reported to the Principal substantiated suspicion of an offence under the Indian Penal Code, 1860 / Prevention of Corruption Act, 1988 and the Principal / Employer has not, within reasonable time, taken visible action to proceed against such offence or reported to the Chief Vigilance Officer, the Monitor may also transmit this information directly to the Central Vigilance Commissioner, Government of India.
- (j) The word 'Monitor' would include both singular and plural.

#### **Facilitation of Investigation**

In case of any allegation of violation of any provisions of this Pact or payment of commission, the PRINCIPAL / EMPLOYER or its agencies shall be entitled to examine all the documents including the Books of Accounts of the BIDDER / CONTRACTOR and the BIDDER / CONTRACTOR shall provide necessary information and documents in English and shall extend all possible help for the Purpose of such examination.

#### **Other Provisions**

Changes and supplements as well as termination notices need to be made in writing. Side agreements have not been made.

If the Contractor is a partnership or a consortium, this agreement must be signed by all partners or consortium members.

#### **Law and Place of Jurisdiction**

This Pact is subject to Indian Law. The place of performance and jurisdiction is the seat of the PRINCIPAL / EMPLOYER.

#### **Other Legal Actions**

The actions stipulated in this Integrity Pact are without prejudice to any other legal action that may follow in accordance with the provisions of the extant law in force relating to any civil or criminal proceedings.

**Validity**

The validity of this Integrity Pact shall be from date of its signing and extend up to 5 years or the complete execution of the contract to the satisfaction of both the PRINCIPAL and the Bidder / Contractor including warranty period whichever is later. In case Bidder / Contractor is unsuccessful, this Integrity Pact shall expire after six months from the date of the signing of the contract.

If any claim is made/lodged during this time, the same shall be binding and continue to be valid despite the lapse of this pact as specified above, unless it is discharged/determined by the Kamarajar Port Limited.

Should one or several provisions of this Pact turn out to be invalid, the remainder of this Pact shall remain valid. In this case, the parties will strive to come to an agreement to their original intentions.

**Equal treatment of all Bidders / Contractors /Sub-Contractors**

- (a) The Bidder / Contractor undertakes to demand from all sub-contractors a commitment in conformity with this Integrity Pact, and to submit it to the Principal before contract signing.
- (b) The Principal will enter into agreements with identical conditions as this one with all Bidders / Contractors and Sub-Contractors.
- (c) The Principal will disqualify from the tender process all Bidder / Contractors who do not sign this pact or violate its provisions.

The parties hereby sign this Integrity Pact at \_\_\_\_\_ on \_\_\_\_\_.

The Principal represented  
by the CMD, Kamarajar Port Limited

BIDDER / CONTRACTOR

Name of the Officer  
Designation

Name  
Designation

Witness 1  
Name & address

Witness 1  
Name & address

Witness 2  
Name & address

Witness 2  
Name & address

Place:  
Date:

Place:  
Date:

Annexure-WM-S1/12**12 APPLICATION FOR APPROVAL OF GTE OF LESS THAN Rs.200 Crores**

(Format for seeking the approval of the Competent Authority for inviting Global Tender Enquiry for procurements less than Rs. 200 crores)

(i) Every page should be attested by the Port / Administrative Ministry

(ii) Proposals are to be simultaneously sent to the following:

- a) Cabinet Secretariat, email: [ca4-cabsec@gov.in](mailto:ca4-cabsec@gov.in)
- b) Department of Promotion of Industry & Internal Trade (DPIIT) email:
- c) Department of Expenditure, email:

**Table-1**

S.No	Particulars	Remarks
1	Name of the Ministry:	
2	Name of the Department:	
3	Name of the sub-ordinate office (if applicable):	
4	Detailed Description of the Item	
5	Use of the Item	
6	Life time of the item proposed (in years)	
7	Whether item is procured regularly? {If so, details of procurement of the said item over the past three years (three completed financial years or last three tenders and the current financial year) inclusive of supply details as per format given under table-2.	
8	Quantity required to be procured with justification for the quantity (States/UT/Region wise projection)	
9	Estimated procurement price along with basic of such estimation (International Price comparison chart)	



10	Justification to be submitted as under	
	a. Detailed justification for Global Tender and essentially of import (item wise)	
	b. Who are the (possible) vendors of the item under procurement, in the global (including India) market?	
	c. Whether the Department has tried and floated the tender to identify the domestic suppliers in the past financial year (If not, the reason thereof)	
	d. Capacity of all domestic local suppliers as per the domestic tender floated, if any	
11	What are technical alternatives available within country and whether they can be used ( <i>substituted</i> ) for the proposed item under GTE?	
12	Whether the Department had in the past attempted at development of local suppliers/ phased indigenization/ promotion of alternative technology having sufficient local suppliers. (If so, details thereof)	
13	Consequences of non-procurement of the item through GTE.	
14	Whether BIS standards are available for the items proposed under procurement. If not, the efforts made to operationalize such standards.	
15	Whether the department had published procurement plan for next 5 years, for the item under discussion?	

The above proposal is submitted, with the approval of the Secretary of the Administrative Department/ Ministry, for the consideration of the Competent Authority, as mandated by D/o Expenditure order dated 15<sup>th</sup> May, 2020 regarding Amendment in GFRs-2017, regarding Global Tender Enquiry.

Also, it is informed that the above proposal had been sent to Cabinet Secretariat (via Email ID: [ca4-cabsec@gov.in](mailto:ca4-cabsec@gov.in)), D/o Expenditure (via Email ID: [GTEnquiry-200@gov.in](mailto:GTEnquiry-200@gov.in)) and to DPIIT, for their consideration.

Stamp and Signature of the  
Authorized officer of the proposing Department

Name  
Designation  
Contact Number  
Email ID

**Table-2**

Details of procurement of the said item over the past three years (Three completed financial years and the current financial year) inclusive of supply details.

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

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Annexure-WM-51/13**13 MODEL CLAUSE/ CERTIFICATE TO BE INSERTED IN TENDERS**

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

**Model Clauses for Tenders (w.r.to order (Public Procurement No,1)**

I. Any bidder from a country which shares a land border with India will be eligible to bid in this tender only if the bidder is registered with the Competent Authority.

II. "Bidder" (including the term 'tenderer', 'consultant' or 'service provider' in certain contexts) means any person or firm or company, including any member of a consortium or joint venture (that is an association of several persons, or firms or companies), every artificial juridical person not falling in any of the descriptions of bidders stated hereinbefore, including any agency branch or office controlled by such person, participating in a procurement process.

III. "Bidder from a country which shares a land border with India" for the purpose of this

Order means: -

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

IV. The beneficial owner for the purpose of (iii) above will be as under:

1. In case of a company or Limited Liability Partnership, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has a controlling ownership interest or who exercises control through other means.

Explanation—

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

2. In case of a partnership firm, the beneficial owner is the natural person(s) who, whether acting alone or together, or through one or more juridical person, has ownership of entitlement to more than fifteen percent of capital or profits of the partnership;

3. In case of an unincorporated association or body of individuals, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has ownership of or entitlement to more than fifteen percent of the property or capital or profits of such association or body of individuals;

4. Where no natural person is identified under (1) or (2) or (3) above, the beneficial owner is the relevant natural person who holds the position of senior managing official;

5. In case of a trust, the identification of beneficial owner(s) shall include identification of the author of the trust, the trustee, the beneficiaries with fifteen percent or more interest in the trust and any other natural person exercising ultimate effective control over the trust through a chain of control or ownership.

V. An Agent is a person employed to do any act for another, or to represent another in dealings with third person.

VI. [To be inserted in tenders for Works contracts, including Turnkey contracts] The successful bidder shall not be allowed to sub-contract works to any contractor from a country which shares a land border with India unless such contractor is registered with

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

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

**Model Certificate for Tenders**

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

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

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

**Model Certificate for GeM:**

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

Annexure-WM-S1/14**14 EXAMPLE OF FORMULA FOR PRICE VARIATION**

*(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:-

$$P_a = P_o \left[ \frac{(F + a(M_1/M_o) + b(L_1/L_o))}{100} \right] - P_o$$

Where: -

$P_a$  is then adjustment amount payable to the supplier/Contractor (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  $P_o$ .
- 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,  $(M_1/M_o)$  and  $(L_1/L_o)$  should be multiplied by a correction factor of exchange rates  $(E_o/E_1)$  where  $E_o$  is the exchange rate country of M and L indices with reference to currency of price P. For example, if M&L are from India and P is in \$, then  $E_o$  is Number of Rs. in a \$ on base date and  $E_1$  is the exchange rate on determination date.
- Even if there is no price adjustment claim, supplier must submit all relevant data to prove that there is no downward variation. In any case he must submit a declaration as follows;

"It is certified that there has been no decrease in the price of price variation indices and in the event of any decrease of such indices during the currency of this contract we shall promptly notify the same to the purchaser and offer requisite reduction in the contract rate."

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# **KAMARAJAR PORT LIMITED**

## **WORKS MANUAL**

### **SECTION-2**

#### **Execution of Works**

(This Section deals with the Execution of works, Measurement, Payment and Completion of Works)

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## Abbreviations

AA	-	Administrative Approval
AHR	-	Abnormally High Rate
ALR	-	Abnormally Low Rate
BG	-	Bank Guarantee
BOQ	-	Bill of Quantities
CC	-	Completion Certificate
CMD	-	Chairman
DoE	-	Department of Expenditure
DLC	-	Defect Liability Certificate
DLP	-	Defect Liability Period
DOP	-	Delegation of Power
DPR	-	Detailed Project Report
DRM	-	Dispute Resolution Mechanism
EIC	-	Engineer In-Charge
EMD	-	Earnest Money Deposit
EOT	-	Extension of Time
EPC	-	Engineering Procurement and Construction
EPF	-	Employee Provident Fund
ES	-	Expenditure Sanction
ESI	-	Employee State Insurance
FC	-	Finance Concurrence
FM Clause	-	Force Majeure Clause
GFR	-	General Financial Rules
GCC	-	General Conditions of Contract
HoD	-	Head of Department
WR	-	Work request
IPC	-	Interim Payment Certificate
IWL	-	Inspection Work List

KPL	-	Kamarajar Port Limited
LD	-	Liquidated Damages
LOI	-	Letter of Indent
MB	-	Measurement Books
MD	-	Managing Director
MIS	-	Management Information System
NOA	-	Notice of Award
NOC	-	No Objection Certificate
OC	-	Occupancy Certificate
OEC	-	Outside Expert Committee
PBG	-	Performance Bank Guarantee
PCR	-	Project Completion Report
PMC	-	Project Management Consultant
POL	-	Petroleum Oil / Lubricants
PPP	-	Public Private Partnership
PQC	-	Pre-Qualification Criteria
RA Bill	-	Running Account Bill
SBD	-	Standard Bid Document
SCC	-	Special Conditions of contract
TC	-	Tender Committee
TS	-	Technical Sanction
WO	-	Work Order

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## GLOSSARY

**Engineer-in-Charge:** means the person designated to act for and on behalf of KPL for execution of the work as per the contract agreement and requirement of the User department

**Extra items:** The items of works that are not expressly or impliedly included in the original contract but are required for completion of the works provided the execution thereof is within the frame work of original contract.

**Extension of Time (EOT)** means the time extended to complete the contracted works beyond the scheduled time of completion as per contract. The EOT may with or without imposition of Liquidated damages as approved by the Competent Authority.

**Force Majeure (FM):** Delays in performance of contractual obligations due to conditions beyond the control of either parties like war, hostility, acts of public enemy, civil commotion, sabotage, serious loss or damage by fire, explosions, epidemics, strikes, lockouts or acts of God come under the legal concept of Force Majeure (FM).

**Liquidated Damages (LD):** Time and date of completion shall be essence of the contract. If the contractor fails to complete the contract or any part thereof within the period fixed for such completion in the schedule or at any time repudiates the contract before the expiry of such period, Port may, without prejudice to any other right or remedy available to him, recover damages for breach of the contract and recover from the Contractor liquidated damages and not by way of penalty, a sum equivalent to the percentage specified in the contract.

**Measurement Book:** Measurement Book is an important record where measurements are recorded for the work done by the contractor or for the materials received at site or the services rendered by the contractor in relation to a work.

**No claim certificate (NCC):** No claim Certificate means certificate issued by the Owner/Contractor after the Contract has expired and the contractor has performed all his Services as per the terms and conditions envisaged in this Contract and all undisputed payments of remuneration and reimbursable expenditures payable by the Owner/Contractor to the Contractor/Owner has been made.

**Performance Security or BG:** A performance security or a performance bank guarantee is defined as a type of financial guarantee to protect the port to cover any losses incurred in case the contractor fails to perform in accordance with the terms of contract.

**Substituted items:** The items which are taken up during construction of works in lieu of those already provided in the contract.

**Variation:** Variation means increase or decrease in the quantity of any work included in the BOQ of the contract

## Chapter-1

# COMMENCEMENT OF WORKS

### 1.1. Project Monitoring System

A competent Project Management Team shall be set up including training on Project Management to the team, if required.

- a) A system of project monitoring for each work shall be prepared before start of the work and same shall be available at site of work.
- b) 'Deadlines' or 'contractual milestones' should be set up and tabulated to facilitate monitoring of the progress of work.
- c) The work shall be monitored quarterly/ monthly basis by the Works Committee and a status report should be submitted to the MD/Chairman/Board as the case may be.
- d) All complex assignments require the use of proper project management tools that enable the contract management team (procuring entity, engineer, project manager, etc.) to collaboratively monitor the actual; physical and financial progress of the contract against the planned physical and financial schedule.
- e) The contract may also specify that the contractor engage certified project management professionals to train and monitor project progress (e.g.: PMI certified engineers).
- f) There are many project management tools and software programmes that are extremely useful for the contract management team. (Some of the common software programmes are: Microsoft Project and Portfolio Management (MS PPM) and Oracle Primavera P6 Professional Project Management (P6 PPM).

### 1.2. Fulfilling the Conditions Precedent

No work shall be commenced unless the conditions precedent have been fulfilled from both the Port side and the Contractor side.

#### 1.2.1. Port Obligations

1. The Port shall take all actions that are necessary to fulfil the obligations of the port well before award of the contract to avoid any delay which will attract delay claims

from the contractor, besides causing time and cost overruns. Hence, all or most conditions precedent shall be fulfilled before award of the LoA. The process of land acquisition shall be started by the port, well ahead and completed entirely, or at least substantially, by the time the contract is awarded. In case the land is available with the port, arrangements shall be made by the port officers to handover the possession of the land immediately after award of the contract.

2. The Port shall also seek requisite Statutory Approvals/ Permission/ Clearances/ Certificates from the concerned Local Bodies & Statutory Authorities so that the progress of work is not impeded and incidence of delay claims by the contractor avoided. (for e.g. removal of trees, re-locating utilities; conversion of railway level crossings, laying of railway sidings needed by the project; rehabilitation and resettlement of persons affected by the project; traffic control; mining of earth and stone; interfering protected monuments; blasting permission, environmental/ forest/ wildlife clearances; and shifting of religious shrines etc),

The following is the list of some authorities

- i) District Authorities,
  - ii) Municipal Corporation,
  - iii) Panchayati Raj Institutions,
  - iv) Town Planning Board,
  - v) Electricity Board
  - vi) Fire Department,
  - vii) State/ Central Pollution Control Boards,
  - viii) State/ Central Environmental Authorities,
  - ix) Forest and Wild-life authorities etc
3. As and when the Letter of Award / Work Order is issued by the authority accepting the tender, the Letter of Award/work order shall also indicate the Engineer-in-charge for the work, who will perform the functions and exercise the powers of Engineer-in-charge as per the conditions of the contract.

### **1.2.2. Contractor Obligations**

The contractor shall give all notices and obtain all other necessary permits and approvals as may be required for the construction of the contract works and shall pay for all such permits and approvals. The contractor, within the stipulated time, should submit to the engineer for his consent:



- (i) the work programme in such form and detail as the engineer reasonably prescribes;
- (ii) methods statement which the contractor proposes to adopt for execution of the works; and
- (iii) the quality assurance plan.

### **1.3. Commencement of Work**

After issue of LoA, and signing the contract and on being satisfied with Contractor's submission of documents etc., the engineer should instruct the contractor to 'commence the works' and provide to the contractor total or partial possession of the site as required.

### **1.4. Approval of Quarries and Borrow Areas and Materials**

The contractor will obtain approval of the engineer for each quarry and borrow area to be used in the project, prior to commencement of quarrying and/ or borrow area excavation activities. All materials (whether natural, processed, manufactured, or designed) proposed by the contractor to be used on the works shall be first approved by the engineer to comply with the requirements of specifications.

### **1.5. Sub-contracting**

The works contract may provide for the contractor to get specified works executed from sub-contractors included in the pre-qualification application or later agreed to by the Port engineer, with a caveat that the responsibility for all sub-contract work rests with the prime contractor.

- a) Sub-contracting will generally be for specialized items of work, such as reinforced earth retaining walls, pre-stressing works, and so on.
- b) Procurement of material, hire of equipment or engagement of labour will not mean sub-contracting.
- c) The total value of sub-contracting work will not exceed the per cent of the contract price as specified in the contract (say 25 (twenty-five) percent).
- d) Sub-contracting by the contractor without the approval of the Engineer-in-Charge shall be a breach of contract, unless explicitly permitted in the contract.

## 1.6. Safety at Work Site

The Contractor must ensure safety of workmen as well as safety for the general public during construction in and around work-site.

- a) He must follow the laws, codes and standards laid down in this regard.
- b) The work-men must be trained and provided protective gear, life-saving equipment and appropriate tools for their jobs.
- c) Special precautions must be taken if hazardous chemicals are used or stored at workplace (lead, silica, asbestos and wood/stone that will be cut and generate dust, construction materials containing zinc, cadmium, beryllium and mercury).
- d) Besides protection from noise and environmental pollution, public must also be safeguarded from falling through dug-up area, electrocution, flooding, falling objects, bridge-span dropping/ failures, crane falling/ overturning and damage to building from vibrations/ cave-ins from construction activities.
- e) Engineer must ensure that contractor does not adopt any short-cut in this regard.
- f) Most large contracts have a well-defined Safety Health & Environment (SHE) guideline embedded in the agreement.
- g) Appointment of site safety engineer by the contractor is a mandatory requirement in such cases.
- h) The engineer shall engage safety experts to carry out frequent SHE audits and mandate correct measures.
- i) Any other safety measures as directed by the Engineer-in-charge.

## Chapter-2

**ENGINEER-IN-CHARGE****2.1. Appointment of Engineer-in-charge**

As and when the Letter of Award is issued by the authority accepting the tender, the work order shall also indicate the Engineer-in-charge for the work, who will perform the functions and exercise the powers of Engineer-in-charge as per the conditions of the contract. The Engineer in charge is nominated by KPL as per the circulars issued from time to time. However, the Competent Authority may also nominate the Engineer-in-charge / Officer In-charge, based on the nature of work in the absence of positions as listed in the circular.

**2.2. Duties and Responsibilities of Engineer-in-charge**

The Engineer-in-Charge on receipt of the copies of the Letter of Award and the agreement will study the special conditions of the contract, specification and scope of the work to ensure that the work is executed strictly as per the tender conditions/ contract.

1. The Engineer-in-charge shall have the following duties and responsibilities
  - a) He shall plan the work in consultation with the contractor, to complete the same within the stipulated time and make available the work front to the contractor in time to enable him to execute the work without delay. A time schedule for completion of various stages of the work should be drawn up and got duly signed from the representative of the contractor.
  - b) As soon as the contractor or his authorized representative reports to Engineer-in-charge for taking up the possession at the site, he shall explain to the contractor about the procedure for obtaining entry passes and about the following statutory & Safety requirements.
    - i) Statutory Provisions
    - ii) Obtaining of Licence under the Contract Labour (R&A) Act 1970
    - iii) Coverage of the contractors' labourers under ESI Act, 1948 and EPF Act, 1952.
    - iv) Maintenance of various records and registers under the above statutory provisions including of maintenance of Wage register.

## v) Safety Requirements

- c) He shall appoint one or more site engineers to assist him.
- d) co-ordinate with the issue of materials under the scope of the owner's supply to the contractor in time.
- e) Make arrangement for providing land for temporary office, store, etc to the contractor and specify the substation for obtaining power and point for tapping water supply if it is to be provided by the Port. He shall ensure the installation of suitable meters to measure the power, utilities, water etc., wherever the same is in contractor's scope.
- f) He shall forward the request of the contractor for issue of entry passes to the labourers to the concerned department after obtaining due authorization. The contractor may also be advised to approach the concerned department for obtaining necessary entry passes after adhering to the required procedures.
- g) He will also obtain from the contractor a list of equipment, which is going to be deployed at the site and ensure that the equipment and manpower are sufficient for execution of the work as stipulated in the contract.
- h) He shall ensure the quality of materials and works as specified in the contract.
- i) He should not allow any variation in the terms and conditions of the contract at the time of execution of the contract. In case where deviations are required in the interests of the work, the same should be done with the approval of competent authority as per Delegation of Authority.
- j) He should also ensure that the quantum of work executed is as per Contract. No increase in the quantity / value of work done beyond the quantity and value mentioned in the contract should be allowed. In case, increase is unavoidable in the interest of the job to be executed, proper approval from competent authority is required to be obtained as per Works Manual / DOP.
- k) He shall forward the contractor's request for the issue of Form\_\_\_ to the concerned authority to enable the contractor to apply for the license.
- l) He shall intimate the date of commencement and completion of the job by the contractor to the concerned authority in the prescribed forms.

- m) He will also obtain the list of equipment and its statutory compliance throughout the contract period from the contractor.
- n) The Engineer in Charge shall ensure that the contractor complies with the following requirements, till the completion of the job.
  - i) Possession of valid license issued by the competent authority under the Contract Labour (R&A) Act 1970 by the contractor (Including renewal of license).
  - ii) Possession of separate EPF and ESI code number in the name of the contractor.
  - iii) Timely remittance of ESI/EPF contributions by the contractor in respect of the labourers deployed by him.
  - iv) Maintenance of the required records under the respective statutory provisions.
  - v) Submissions of copies of ESI/EPF Challans every month by the contractor along with a statement showing the details of contributions remitted;
  - vi) Registration under GST Act.
  - vii) Income Tax Permanent Account Number
  - viii) Wage register / Attendance

## **2.3. Controls to be exercised by Engineer-in-charge**

### **2.3.1. Contract monitoring and Records to be maintained**

- a) After all the formalities have been completed and the contractor is in a position to start the work, the Engineer-in-Charge will keep a register (Work Progress Register/Daily Progress Report, Hindrance Register) in which the date of start of the work should be noted and all remarks regarding the progress of the works are recorded therein. (This is applicable for all contracts more than Rupees Ten Lakhs)
- b) The Engineer-in-Charge will also maintain a register of the material issued to the contractor if any. All the material requisition signed by him should be entered serially and this register should be utilized for preparation of the material consumption statement for submission with the final bill by the contractor. Wherever the material issues are through ERP system, separate register is not required.

- c) Engineer-in-Charge will also ensure that the required tests are carried out at regular interval to ensure the quality of work. A separate Register for tests carried out shall be maintained.
- d) The Engineer-in-Charge shall monitor all the recoveries due from the contractor either for the cost of material supplied, equipment given on hire, land rent, recoveries charges for electricity and water supply, telephone, transport or any other recoveries. Remarks for deduction made in each Running Accounts Bill should be noted.
- e) Finance Department shall generate a MIS on a monthly basis to monitor the Performance Bank Guarantees submitted by the contractor and wherever required Bank Guarantees is to be got extended by the contractor well in time. Wherever extension / encashment in BG is required, advance intimation shall be given to the contractor through Engineer in charge before the expiry of BG. In case any BG is to be encashed, intimation should be given by the Engineer in charge to Finance for necessary action.
- f) The Engineer-in-Charge should also monitor the extra items ordered to the contractor by giving details of justification for it and the basis of fixation of rates should be noted before it is sent to Finance for concurrence and for obtaining approval of the competent authority.
- g) If the contractor executes any sub-standard / incomplete work, which is otherwise acceptable considering the type of work and the quality required, the Engineer-in-Charge shall suggest reduction in the rates as penalty. An analysis for reduced rates should be sent to the Finance Department along with running account bill of the contractor. The acceptance for such works shall be obtained from a competent authority.
- h) The Engineer-in-Charge shall also keep records of any extra claim made by the contractor in respect of any changes or modifications in the design or specification of the work. The details of such claim should be obtained from the contractor and sent to Finance Department for concurrence (if required under DOP) with his comments.
- i) In case the contractor's work is delayed due to any reason beyond the control of the contractor, his request for extension of time should be processed and submitted to the competent authority for the approval as per Works Manual and

DoP. The delays are to be recorded in the hindrance register along with reasons. On receipt of approval, the Engineer in Charge may forward the request of the contractor for extension of the entry passes already issued.

- j) At the close of the month or on any agreed date, the work done by the contractor should be measured and R.A bill in the prescribed form should be submitted after the contractor has accepted the measurements. The bills should be submitted along with recovery statement and all necessary certificates regarding quantity and quality of work done.
- k) The final bill should be completed with all the certificates and statements such as completion certificate, material reconciliation statement, excess and saving statement, list of the extra items, extra claims, recovery statement and a certificate that the contractor has returned all the passes / Access control cards issued to the labour along with an undertaking that the contractor has complied with various statutory provisions should also be sent.
- l) The Engineer-in-charge shall obtain a signed certificate from the contractor that after the payment of final bill, he has no other claim and he accepts the bill as full and final settlement of all his claims.
- m) After the work has been completed and accepted, the same should be taken over and entered in the register of fixed assets, wherever applicable and handed over to the concerned Department for its future operation / maintenance.
- n) The above provisions shall also be applicable to and complied with by the Resident Construction Manager/ by the consultants wherever the work of construction supervision has been entrusted to an outside agency. A copy of these paras should form part tender document / contracts entered into with the consultant.
- o) Engineer-in-charge shall ensure strict compliance of safety norms by the contractor. Engineer-in-charge shall also maintain a record of penalties / rewards awarded to the contractor and ensure its implementation.

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## Chapter-3

**MOBILISATION ADVANCE****3.1. Mobilisation Advance**

Provision of mobilization advance should essentially be need-based. Suitable delegation of authority may be done in the Port to take decision for grant of the mobilisation advance, whether interest free or interest bearing. The following points shall be remembered.

- i) If considered justified in certain specialized and capital-intensive works, Contract may provide for an interest-bearing mobilisation advance to be paid to the contractor exclusively for the costs of mobilisation at 10 (ten) per cent of the contract price on the provision by the contractor of an unconditional BG.
- ii) Such BGs shall remain effective until the advance payment has been fully repaid, but the amount thereof shall be progressively reduced by the amount repaid by the contractor, as indicated in the interim payment certificates.
- iii) The aforesaid advance of 10 (ten) per cent may be paid in two instalments, each of five per cent. The first one may be paid on commencement of the work and provision by the contractor of the unconditional BG in respect of the advance. The second instalment may be paid on certification by the engineer of the contractor's having achieved a financial progress of 10 (ten) per cent of the contract price, as also provision of a BG by the contractor for this part of the advance.
- iv) Margin money and bank commission etc., paid by the contractor for procurement of BGs against performance security and mobilisation advance shall be to the account of the Contractor.
- v) Though the Port should not encourage interest free mobilization advance, but, if the Management feels it necessity in specific cases, then it should be clearly stipulated in the tender document and its recovery should be time based not linked with progress of work. This would ensure that even if the contractor is not executing the work or executing it at a slow pace, recovery of advance could commence and scope for misuse of such advance could be reduced.
- vi) Part 'Bank Guarantees' (BGs) against the mobilization advance should be taken in as many numbers as the proposed recovery instalments and should be equivalent to the amount of each instalment. This would ensure that at any point



of time even if the contractor's money on account of work done is not available with the Port, recovery of such advance could be ensured by encashing the BG for the work supposed to be completed within a particular period of time.

- vii) There should be a clear stipulation of interest to be charged on delayed recoveries either due to the late submission of bill by the contractor or any other reason besides the reason giving rise to the encashment of BG, as stated above.
  - viii) The amount of mobilization advance, interest to be charged, if any; its recovery schedule and any other relevant detail should be explicitly stipulated in the tendered document upfront.
  - ix) Relevant format for BG should be provided in the tender document, which should be enforced strictly and authenticity of such BGs should also be invariably verified from the issuing bank, confidentially and independently by the organization.
  - x) In case of 'Machinery and Equipment advance', insurance and hypothecation to the employer should be ensured.
  - xi) Utilization certificate from the contractor for the mobilisation advance should be obtained. Preferably, mobilisation advance should be given in instalments and subsequent instalments should be released after getting satisfactory utilization certificate from the contractor for the earlier instalment.
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## Chapter-4

**PLANT & MACHINERY / MATERIAL ADVANCE****4.1. Plant, Machinery Advance**

Another interest-bearing advance of five per cent of the contract price, depending on the merits of the case, may be paid against the new key construction equipment purchased for the work and brought to the site, if so, provided in the Bid Documents and so requested by the contractor. The advance should normally be not more than 50 (fifty) percent of the depreciated value of such plant. The Plant & Machinery should be hypothecated to the Port before the payment of advance is released. This advance shall be subject to the following conditions:

- a) the contractor shall produce satisfactory proof of payment;
- b) such equipment is considered necessary by the engineer for the works;
- c) the equipment has been verified to have been brought to site;
- d) the contractor gives an undertaking on stamp paper that the equipment will work only on that job and will not be removed from the site without obtaining written approval from the engineer; and
- e) the contractor furnishes a BG to cover the advance. No advance shall be admissible on equipment purchased under a hire purchase scheme/ financing arrangement or on hired equipment.
- f) The rate of interest shall be stipulated in the bid documents (say 10 (ten) per cent per annum) or as may be notified by the Port from time to time.
- g) The repayment of advances shall be done through proportionate percentage deductions from running bill (periodic/ interim payment).
- h) The time of commencement of repayment, rate of deductions from interim payments, and time by which the advance should be fully repaid will be as specified in the contract.
- i) All advances shall be used by the contractor exclusively for the purpose for which it is paid.

- j) Should the contractor misappropriate any portion of the advance, it shall become due and payable immediately, and no further advance will be made to the contractor thereafter.
- k) In such cases, the contractor shall also be liable for appropriate action under the contract.

#### **4.2. Secured Advance against Material brought to Site**

Secured advance on the security of materials (which are not combustible, fragile or perishable in nature) brought to the site but not yet incorporated in the works may be paid if so, provided in the Bid Documents and so requested by the contractor. The payment of advance shall be on following conditions:

- a) The advance may be paid up to 75 (seventy-five) per cent of invoice value, or the 75 (seventy-five) per cent of the corresponding value of the materials determined on the basis of BOQ rates, whichever is less.
- b) subject to the condition that their quantities are not excessive and shall be used within a period of 90 (ninety) days and subject to other stipulations in the contract.
- c) The contractor will be required to sign an indenture bond, hypothecating the goods to the procuring entity, and also be responsible for their safe custody.
- d) Before the advance is released, the Port may inspect the site to ensure that the Contractor has safeguarded the materials against pilferage and deterioration.
- e) It may be ensured that the contractor has not taken any loan/ limit from banks against hypothecation of the materials against which the secured advance is claimed. An undertaking in this regard may also be taken from the contractor.
- f) The contractor is required to submit proof of cost of materials and the delivery of material at site while claiming such advances.
- g) The stock register should be maintained from the commencement of the contract and, unless otherwise prescribed in the contracts, the stock, so considered for advance, should generally be only paid stock (and not brought on credit).

- h) Where the materials are supplied from a captive source of the contractor, the reasonableness of the valuation of such materials may be ensured.
- i) The repayment of the advance will be affected after expiry of a period of 120 days since payment of advance, whether the material is consumed in the work or not.
- j) The advance will be repaid from each succeeding running bill (periodic/ interim payment) to the extent materials for which advance has been previously paid have been incorporated into the works.

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## Chapter-5

**PROGRESS OF WORKS & REVIEW****5.1. Progress Reporting & Review**

There should be a stipulation in the contract for large value works for the contractor to submit project specific monthly progress report of the work in a computerized form (Management Information System Reports– MIS reports). The progress report shall contain the following apart from whatever else may be required to be specified:

- i) Project information, giving the broad features of the contract.
- ii) Introduction, giving a brief scope of the work under the contract and the broad structural or other details.
- iii) Construction schedule of the various components of the work, through a bar chart for the next three quarters for as may be specified, showing the milestones, targeted tasks and up to date progress.
- iv) Progress chart of the various components of the work that are planned and achieved, for the month as well as cumulative up to the month, with reasons for deviations, if any, in a tabular format.
- v) Plant and machinery statement, indicating those deployed in the work, and their working status.
- vi) Man-power statement, indicating individually the names of all the staff deployed in the work along with their designations.
- vii) Financial statement, indicating the broad details of all the running account payments received up to date, such as gross value of work done, advances taken, recoveries effected, amounts withheld, net payments, details of cheque payments received, etc.
- viii) A statement showing the extra and substituted items submitted by the contractor, and the payments received against them,

- ix) Broad details of the bank Guarantees, indicating clearly their validity periods, broad details of the insurance policies taken by the contractor, if any, the advances received and adjusted from the department, etc.
- x) Progress photographs, in colour, of the various items/ components of the work done up to date, to indicate visually the actual progress of the work.
- xi) Quality assurance and quality control tests conducted during the month, with the results thereof.
- xii) Any hold-up shall be specified.
- xiii) Dispute, if any, shall also be highlighted.
- xiv) Monthly or fortnightly progress review by engineer with contractor may be necessary to ensure that contractor deploys sufficient resources to meet the deadlines.

## **5.2. Quality Assurance**

- a) In order to control the quality of work, a Quality Assurance Cell shall be formed in every work Centre comprising of multi- disciplinary professionals/ engineers to cover all types of works, such as civil, mechanical, electrical etc.
- b) In case of non-availability of qualified professionals/ engineers in house for the purpose of quality assurance cell, then the approval of competent authority shall have to be taken for deploying professionals from outside agencies. The provision for third party quality check may also be considered for a work beyond a specified amount.

## **5.3 Design Approvals**

In case of EPC contracts approval of the designs should be taken from the appropriate authority, as defined in the tender document, to ensure that the performance levels are met by the design.

## **5.4 Time Monitoring**

### **5.4.1 Time At Large**

When the Port does not explicitly express and reserve its rights and remedies under the contract for delays in execution, it legally forfeits its right to such remedies. Under such circumstances Time is said to become at large and the contractor gets freed from his

obligation to complete within the specified time. To avoid such a situation, before the expiry of originally stipulated date of completion, the Port should extend the currency of the agreement and set a new time limit for completion and make the extended time as essence of the contract, stipulating that this is being done without prejudice to his right to recover damages and other remedies as per the contract.

#### **5.4.2 Force Majeure (FM) Clause**

Conditions beyond control of either parties like war, hostility, acts of public enemy, civil commotion, sabotage, serious loss or damage by fire, explosions, epidemics, strikes, lockouts or acts of God come under the legal concept of Force Majeure (FM).

- a) Delays in performance of contractual obligations under influence of FM conditions are condonable by the other party without any right to termination or damages, provided, notice of the happening of any such event is given by the affected party to the other within 30 (thirty) days from the date of occurrence.
- b) Works under the contract shall be resumed as soon as practicable after such event has come to an end or ceased to exist.
- c) However, if such event continues for a period exceeding 120 days, either party may at its option terminate the contract by giving notice to the other party.

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## Chapter-6

**MEASUREMENT & PAYMENT****6.1. Measurement**

Measurements of all items having financial value shall be recorded in Measurement books (MB) and/ or level field books so that a complete record is obtained of all works performed under the contract. Measurements and levels shall be taken jointly by the official designated for the purpose and the contractor. Ports may implement e- MBs (Electronic Measurement Books) and same should be integrated with IT based project monitoring system.

**6.2. Measurement books**

Measurement books can be any of the following:

- a) Bound Measurement Books
- b) Loose-leaves Measurement Books
- c) Measurement Sheets-cum-Bill Form
- d) Computerized MB

**6.2.1. Bound Measurement Books**

Bound MBs shall have pages in the format given in Annexure (WM-S2/01 to WM-S2/04). The Bound MBs shall be printed and kept in the custody of Executing Department. All these books shall be numbered and all the pages of the MBs also shall be serially numbered. The MBs when received from the Press shall be entered in the MB register to be kept with the department.

The Department concerned shall also maintain a register (Annexure (WM-S2/07)) indicating the serial number of MBs issued to the concerned engineers showing the Serial number of each MB, the name of the work for which it is issued, date of issue and date of return from the engineer and date of submission to Finance Department for record. A separate MB to be issued for measurement of each job wherever more than one RA bill is envisaged.

**6.2.2. Loose-leaves Measurement Books**

Loose-leaves Measurement Books shall be maintained in form as per Annexure (WM-S2/05) The Loose-leaves measurement book shall be maintained as per the instructions given in Annexure (WM-S2/06). All the copies of the Measurement Books serially



numbered and after completion of the work shall be got bound serially. Other records shall be maintained in the same manner as per the procedure indicated for Bound Measurement books.

#### **6.2.3. Measurement Sheets-cum-Bill Form**

Measurement Book cum Bill form is used in case of small works where the measurements are not much. The format is given in Annexure WM-S2/08

#### **6.2.4. Recording Measurement**

The measurements shall be recorded by the person who is authorized by the HOD of the executing department. The following instructions shall be followed for recording measurements:

- a) Before recording measurements, name of the work given in the work order, location of work, name of contractor, date of agreement, the date of actual commencement of work, scheduled date of completion as per work order etc shall be written in the first page of the MB
- b) Entries shall be recorded continuously. No blank pages shall be left or torn out. Any pages left blank while recording the measurements shall be cancelled and the cancellation shall be attested by the officer not below the rank of Manager.
- c) All entries shall be made in ink. No entries shall be erased. In case a mistake is made in writing down the measurement, it shall be corrected by crossing out the incorrect words and figures and writing the correct figures in words duly attested and initialed by the person taking the measurement. Cancellations shall be signed by the officer ordering such cancellation or a reference of his orders in writing shall be recorded on the measurement books. Use of white fluid is prohibited.
- d) Each measurement book shall give an index in the beginning indicating the name of the work and its pages wherein measurements for various work components have been recorded and the index shall be kept up-to-date.
- e) The quantities shall be indicated clearly and accurately. The measurements shall show the quantities executed by the contractor after the last measurement along with the cumulative quantities executed for the work. When the work is completed the date of completion shall be clearly indicated.

- f) With the Competent Authority's Approval, the persons authorized by the Engineer in Charge shall record the measurement other than the Measurement Books for specialized works in Marine Department.

#### **6.2.5. Checking of measurement by superior officers**

- a) All measurement records by a subordinate officer in-charge of the work shall be test checked by a superior officer according to the percentage decided at the unit level with the approval of the competent authority. Check measurement is applicable for single bill above Rs. 10 lakhs. The check measurements shall be as follows:
  - i) 50% of the value by immediate superior officer of the person who has taken initial measurement.
  - ii) 10% of the value shall be by next superior officer.
- b) It shall be the responsibility of the Engineer-in-Charge / Departmental Head to ensure that the percentage of checking prescribed has been followed by the Engineer/staff. Under no circumstances, the checking by superior officers is dispensed with.
- c) Checking officers should indicate the percentage of check made by them in words "checked and found correct" in the measurement book / sheet.
- d) Following principles shall be kept in view while conducting test checks of measurements recorded by subordinate officers:
  - i) Concealed items shall be subjected to a higher percentage of check as may be considered adequate by the Engineer-in-charge.
  - ii) Items to be selected for checked by the superior officers shall be those where the item rates are high and/or AHR items.
  - iii) The superior officer shall also ensure that the subordinate officer / officers have exercised the requisite percentage check envisaged.

#### **6.2.6. Contracts with Consultants**

Generally, contract with consultant stipulates that consultant shall certify quality and quantity of work, performed by contractors and perform all duties of Engineers-In-charge as per respective contracts. However, KPL officials should also exercise control with

respect to BOQ, cost and time over run and countersign the bills certified by the consultants.

### 6.3. Preparation of Bills

a) All payments for work done shall be made on bills prepared on the printed bill forms to be provided by the KPL. Following forms of bills shall be used for various payments against work measured.

- i) Measurement-cum-Bill Form (Annexure - WM-S2/08) shall be used in respect of contracts (costing less than Rs. 5,00,000) where the measurements are very few. This form provides both for recording of measurement as well as certificate of payment. In such cases no separate measurement book is required.
- ii) First and Final Bill Form (Annexure - WM-S2/09) shall be used for making payment to the contractor when a single payment is made for the work done.
- iii) Running Account Bill and Final Bill Form (Annexure - WM-S2/010) shall be used for making Running Account payments and Final payments to the contractor against work done and measured including those relating to lump sum contracts.

b) Before a bill of a contractor is prepared the following shall be ensured:

- i) Entries in the measurement books / sheets relating to the description and quantities of work executed to be scrutinized by the executing Department and their arithmetical calculations shall be checked.
- ii) An abstract of all measurements is prepared giving executed quantities against each item of work mentioned in the contract.
- iii) The abstract shall contain a reference to the page number of Measurement Books / sheets.
- iv) The entries in the abstract shall be transcribed on the bill.
- v) Ensure that the rates proposed in the bill should match with those given in the contract and the reasons for variations if any shall be recorded.
- vi) If an item executed in part for reasons not attributable to the contractor, part payment can be paid for the same after establishing reasonability and getting the same approved by authority as per DoP.

c) In case of the lump sum contracts or turn-key contract where terms and conditions provide for intermediate payments based on completion of milestone as defined in the payment terms / billing schedule, such intermediate payments shall be made on the basis of the certificate of the Engineer-in-Charge that such percentage of work has been completed. The form of the bills is given Annexure - WM-S2/11. In case of Lumpsum Final bill the format at Annexure - WM-S2/12 may be followed.

d) The bill shall be signed and certified by the Engineer-in-charge specifying the amount both in figures and words which is payable to the contractor in the prescribed format / rubber stamp.

#### 6.3.1. Recoveries

Following are the types of recoveries, which are normally required to be made from the bills of the contractors:

- a) Chargeable material if any issued to the contractors.
- b) Recoveries on account of water supply, electricity, land rent, etc. whichever applicable.
- c) Hire charges of equipments provided by the KPL.
- d) Recoveries on account of telephone charges, transport charges etc.
- e) Recoveries on account of advance payments.
- f) Recoveries towards interest on advance payment, if any, as per the contract
- g) Recoveries on account of security deposit.
- h) Recoveries on account of penalty.
- i) Recovery of Income Tax at source / works contract tax / any other applicable tax.
- j) Recoveries on account of price reduction clause towards delay in execution.
- k) Any other miscellaneous recoveries required to be made shall also be effected from the bills of the contractor.
- l) Any other recoveries as advised by other departments.

#### 6.3.2. Pre-requisite slip

A "Pre-requisite slip" (Annexure - WM-S2/13) indicating the name of the work, contractor, sanction number and date, percentage of check measurements exercised by various officers, date of commencement, date of completion wherever applicable, extension granted if any, shall be attached with each Running Account Bill. The pre-requisite slip shall be signed by Engineer-in-charge.

### **6.3.3. Documents to follow the bill for payment**

The following documents shall be forwarded to the Finance Department along with the bill.

- a) In case any extra item is included in the bill, it shall be ensured that the same has been approved by the competent authority as per the provisions of the Delegation of Authority/Power.
- b) Variation in the quantities: Approval of the competent authority shall be obtained before submitting the bill to the Finance Department
- c) It shall be ensured that the representative of the contractor signing the bill and MB has the requisite Power of Attorney.
- d) Judicious restraint needs to be exercised in respect of AHR (Abnormally High Rate) and ALR (Abnormally Low Rate) items.
- e) Proof of remittance of ESI/EPF contributions by the contractor (Copies of Challans) along with statement of the contractor.

## **6.4. Preparation of Bills in case of major works**

### **6.4.1. Interim bill or Running Account bill Payments**

At a prearranged date each month, the contractor will submit a statement in such a form as the engineer from time to time prescribes showing the amounts to which the contractor considers himself entitled up to the end of the month. The engineer would issue an Interim Payment Certificate (IPC) after following checks:

- a) Quantity of work actually completed as of an agreed 'cut-off' date;
- b) Reconciliation with Field measurements of quantities of work completed or claimed;
- c) Inventory of equipment and materials delivered to the site but not yet used in the work (materials on site);
- d) Review of claims for extra work;
- e) Checking of retention amount/material/Mobilisation advance and other recoveries;

- f) Review of variations - whether these have been approved by Competent Authority. If not, provisional rates are to be used until final valuation sanctioned by Competent Authority; and
- g) Price adjustments;
- h) The engineer will not be bound to certify any payment if the net amount thereof, after all retentions and deductions, is less than the minimum amount of Interim Payment Certificate, if any, specified in the contract.

#### 6.4.2. Final bill

1. Final Bill shall be submitted by the contractor in same manner as that in interim bills within a specified time of physical completion of work and of final certificate of completion furnished by the Engineer. Payment shall then be recommended after verification of the bill on the personal certificate of the officer-in-charge of execution of the work.
2. The following further checks shall be ensured while recommending the Final bill:
  - a) A deviation statement shall be prepared by the Executing Department showing the quantity and cost of each item of work executed as compared to the estimated quantities and amount of the contract giving reasons for excesses and savings.
  - b) A completion certificate stating that the work has been completed in all respects strictly according to the specifications given in the tender documents.
  - c) A final statement of recoveries along with a certificate that no other amount is recoverable from the contractor on any account.
  - d) A certificate from the contractor shall be recorded on the abstract measurement book / sheets and on the final bill that he has no further claims than those given in the final bill and that he accepts the payment in full and final settlement of all his claims.
  - e) A material reconciliation statement if any shall be given by the executing Department indicating the details of issue voucher reference numbers, quantity issued, quantity utilized and returned along with material return voucher number and the amount chargeable to the contractor for non-return/ excess consumption of materials in accordance with the terms of the contract. The quantity of theoretical consumption as indicated by the Engineer in-

Charge in the material reconciliation shall be accepted and need not further be verified in Finance Department.

- f) An undertaking from the contractor that he has discharged all his statutory obligations like ESI/EPF and Contract Labour (R&A) Act 1970 and he would indemnify the owner if there is any demand against KPL on this account.

## **6.5. Payment of Bills**

### **6.5.1. Payment of Running Account Bills**

RA Bills received in Finance Department shall be properly scrutinized and checked before payment is released. Besides the general check on procedural matters, following points shall be kept in view while checking the bills:

- a) Description of the item of work and the rates will be the same as given in the work order.
- b) The quantity of work executed shall not exceed the estimated quantity of the work as per contract. However, wherever exceeded approval for excess quantities shall be obtained.
- c) The work should have been taken up and completed within the period stipulated in the contract subject to the extension granted by Engineer-In-Charge. In case- extension has not been granted, a letter should be issued to the contractor by Engineer-In-charge that the release of Running Account payment does not mean that extension has been granted and contractor is permitted to perform the job without prejudice to the rights of the owner under the contract. In such cases, payment is released after retaining price reduction amount for the quantum of the work done in the subject RA bill.
- d) If there are any extra items executed by the contractors, the rates for such extra items and amount shall be duly approved by the competent authority.
- e) The contractor or his authorized representative shall sign the measurement book / sheets and the bill in token of acceptance of the measurement and payment.
- f) All the recoveries, which are due from the contractor, shall be made from the bill as indicated by the Executing Department or as are required to be made as per records in the Finance Department.

- g) Running account bills, shall be compared with the previous bills to ensure that up-to-date quantity and payment particulars are correctly recorded in the bill.
- h) To check that the prescribed certificates, wherever applicable as per DoP, have been given by the concerned Department.
- i) If any rebate is deductible on account of prompt payment, the same shall be adjusted before the bill is passed for payment.
- j) Bills shall be checked for its arithmetical accuracy.
- k) Before passing the bill, it is to be ensured that all the bank guarantees submitted by the party are valid and whenever required advance action to be taken for obtaining extension of bank guarantees, if any, by Engineer-in-Charge. Finance shall advise the Engineer in charge in advance about the extension of BG.
- l) Disbursement of payment to the contractor shall be made as per the Contract Agreement.
- m) Whenever the payment is made on the basis of labour hours, the bill should be supported by attendance-cum-payment roll of the contractors' labor duly certified by KPL representative along with compliance certificate to statutory requirements.

#### **6.5.2. Payment of final bills**

Following additional checks shall be exercised by Finance Department in respect of final bills:

- a) That the certificates and statements required to be submitted by the Execution Department along with the final bill have been submitted.
- b) The material reconciliation statement shall be checked with reference to the records available in the Finance Department.
- c) It shall be seen that the work has been completed by the contractor within the stipulated period or within such extended time as granted.
- d) In case of time over-run in the execution, Finance Department has to check whether extension of time has been granted by the competent authority. If



not, an amount equivalent to price reduction should not be released till the receipt of approval of extension of time from competent authority.

- e) To see that the total cost of completed work is within the sanctioned amount for the work and in case if there is exceeding the work order value, then the approval from Competent Authority as per Delegation of Authorities/Power is to be obtained.
- f) To see that the rates for all extra items included in the bill have been duly approved with the concurrence of the Finance Department.
- g) To see that if any special certificates are required from any statutory authorities as per contract the same have been received and attached or a certificate thereof has been given by the Execution Department.
- h) To see that the party has given the Performance Guarantee if required as per the terms of the contract and its validity.
- i) To see Bank Guarantees submitted for Security Deposit is valid upto defect liability period and all statutory deductions are made.
- j) Reasonable timeliness for payment is to be adhered.

## 6.6 Delay in payment to the contractors

Delay in eligible payments to contractors leads to delay in execution of projects, cost overruns and disputes. Hence the Port shall pay the Interim bills and Final bill within a reasonable period specified in the contract. As cash flow is a critical requirement in a project, any delay in payments impacts the speed of construction and also the future bid value as this is factored into the bid by way of an increase in interest carry cost.

- a) Hence, ad-hoc payments of not less than 75% of eligible running account bill/ due stage payment, shall be made within 10 working days of the submission of the bill. This period of 10 days is for completion of all processes including prima facie scrutiny and certification by the engineer in-charge.
- b) The remaining payment is also to be made after final checking of the bill within 28 working days of submission of bill by the contractor.
- c) In case the payment has not been released within 10 working days as prescribed above, it shall be made as soon as possible, and after payment a

written explanation for the delay shall be submitted to the next higher authority within three working days.

- d) Port may put in place a provision for payment of interest in case of delayed payment of bills by more than 30 working days after submission of bill by the contractor.
- e) Where interest is to be paid, the rate of interest should be at SBI Lending Rate applicable on the date on which payment of bill becomes due.
- f) In case of unwarranted discretionary delays in payments, including failure to authorise/ make ad hoc payment as prescribed in para above, responsibility shall be fixed on the concerned officers.
- g) Project executing authorities should have a system to monitor delays in payments and to identify such unwarranted delays.
- h) The final bill should also be paid to the contractor within three months after completion of work.
- i) All project executing authorities implementing works contracts involving aggregate payments of more than Rs.100 crore per annum shall have an online system for monitoring of the bills submitted by contractors.
- j) Such system shall have the facility for contractors to track the status of their bills.
- k) It shall be mandatory for all contractors bills to be entered into the system with date of submission and date of payment.
- l) Such system shall be put in place within one year of issue of these instructions.

Note: In above para 6.6, instructions containing "shall" are mandatory; any deviation from these instructions shall require relaxation from the Board of Directors.

## Chapter-7

**ADVANCE / ADHOC PAYMENTS****7.1. Advance payments to the contractors**

Advance payments to the contractors as a rule are discouraged and every effort shall be made to maintain a system under which payments are made promptly only for the work actually done, measured and verified for payment by the Engineer-In-charge. However, in certain cases where it becomes necessary in the interest of work to make advance payments or to give other financial aids to the contractors, the same shall be regulated in the manner prescribed hereinafter.

- a) When Running Account bill is received in the Finance Department duly verified for payment by the Engineer-in-charge and approved by the delegated authority and there is likely to be some delay in authorizing the payment for some special reasons, advance payments can be made on the recommendation of the bill passing authority. Such advances shall be paid on prescribed form of bill subject to the following conditions:
  - (i) The contractor has requested for such part payment in writing giving an undertaking that if the amount of advance paid to him is subsequently found to be more than the amount of running account bill in respect of which the advance is paid, he will refund the overpaid amount to the Port forthwith.
  - (ii) The amount of such advance shall be limited to 75% of the net amount payable of the running account bill under checking and no interest will be charged for such advance payment paid.
  - (iii) The payment shall be suitably endorsed on the running account bill as well as on the measurement book and the prescribed certificate of the Engineer-in-charge as applicable in the case of advance payments is required.

**7.2. Adhoc payments to the contractors**

In case there is likely to be delay in recording the measurement for the work done, adhoc payment restricted to 75% of the value of work done but not measured can be made on the recommendations of the Engineer in- charge. Such adhoc

payment shall be made in the prescribed form of the bill after obtaining a certificate of the Engineer-in-charge as prescribed in the Bill Form and recorded in the measurement book / sheets. If possible, such adhoc payment shall be made against specific items of the work as given in the contract.

### **7.3. Mobilisation / Material advance payment**

Payment of advance against materials can be considered if there is a provision in the contract. Payment of mobilization advance, charging of interest and its recovery are regulated in accordance with the provisions of the contract.

However, if the submission of bill to Finance delayed by Engineer-in- Charge due to any reason not attributable to contractor, interest for mobilization or other advance to be calculated in the following manner:

- i) RA Bill : Up to the date of submission of RA bill plus notional 15 working days for passing of bill
- ii) Final Bill: Up to the date of submission of final bill plus notional three months for passing of final bill.
- iii) Approval of competent authority is required to be obtained for such relaxation.

### **7.4. Supply of materials**

In exceptional cases in the interest of the work, materials & consumables can be supplied to the contractor even though it is not required to be supplied in accordance with the terms and conditions of the contract. In such cases, recoveries shall be made from the bills of the contractor, at the cost thereof to the supplier plus 15% (30 % in case of other than contractors) of such cost to cover the supplier 's overheads or at the market price thereof at location of supply by the supplier as determined by the Engineer-in-Charge, whichever is higher. Reasons for supply of material in special cases shall be recorded in writing and rates to be arrived with finance concurrence.

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## Chapter-8

**VARIATIONS IN QUANTITIES AND PRICE****8.1. Variations/ Extra/ Substituted Items****8.1.1. Variation**

Variation means increase or decrease in the quantity of any work included in the BOQ of the contract; In other words, the nomenclature remains the same but the quantities vary with those provided in the contract.

- a) omission of any such work (but not if the omitted work is to be carried out by the port with the help of another contractor);
- b) change in the character or quality or kind of any such work;
- c) change in the levels, lines, position and dimensions of any part of the works;
- d) additional work of any kind necessary for the completion of the works; and
- e) change of the specified sequence or timing of construction of any part of the works.

**8.1.2. Extra Items**

Extra items are those which are not expressly or impliedly included in the original contract.

- a) Extra Items that are completely new and are in addition to the items contained in the schedule of quantities of the contract.
- b) Items which are not available in the agreement but are required to complete the work.
- c) Provisions of extra items in a contract must be utilized exclusively within the scope of particular work and in no case be extended to other works under any circumstances.
- d) Where extra items cannot be avoided, the approvals shall be regulated on the following lines:

- i) The circumstances under which the necessity for an extra item had arisen shall be clearly indicated and the orders for executing such extra items shall be authorized by the Head of the Execution Department concerned as per DOP.
- ii) In case there are any agreed variations in the contract with reference to the computation of extra item rates, such rates shall be calculated in accordance with the terms of agreed variations.
- iii) In the absence of any specific provision in this regard, extra items shall be calculated in accordance with the relevant clause of the General Conditions of Contract.
- iv) Extra item rates can also be proposed on the basis of similar items appearing in any of the accepted tenders if in the opinion of the Executing Department such rates are reasonable.
- v) The rates for the extra items shall also be worked out at market rates prevailing at the time of commencement of execution of these items.
- vi) The proposal for extra items shall be prepared and after obtaining the signature of the contractor, shall be sent for concurrence of Finance and the sanction of Competent Authority. If the proposal is in order, the concurrence/sanction shall be at the earliest possible time to avoid disruption in progress of work.
- vii) Total cost of extra items sanctioned up-to-date along with anticipated value of work done under the contract under reference shall be given in the proposal before it is sent for sanction.

### **8.1.3. Substituted Item**

Substituted items are items which are taken up in lieu of those already provided in the contract. For substituted items, the agreement rate of the original item will be adjusted for the difference in market rates (prevailing at the time of commencement of execution of these items) of original and substituted items.

## **8.2. Written procedure in the Tender for variations**

It is important to have a written procedure as part of the contract, for the issuing of a variation instruction. Once it is decided that a variation is required, the instruction should be issued promptly to minimize any adverse effect on the overall works. Before a variation can be instructed by the Engineer to the contractor, prior approval from the Competent

Authority is needed, except for certain situations as may be specified in Special Conditions of Contract. The following are some important points :

- a) The variation or additional work must be a necessary part within the scope of the original works and should not completely change the scope/ character and purpose of the original contract.
- b) The rates for beyond the limit specified in the relevant schedule of the agreement as well as those of extra items shall be worked out in the manner prescribed in clauses of GCC.
- c) The rate/ price/ valuation do not have to be agreed with the contractor, although this is preferable.
- d) The extra items should be sanctioned within the time limit prescribed in GCC.
- e) The powers of officers to accord sanction to extra items and deviation items for works are to given in Delegation of Financial Powers.
- f) Variation beyond  $\pm 25\%$  of the stipulated quantities of individual items in the contract shall require the approval of Competent Authority as per Delegation of Powers.
- g) The rates payable for the variations up to 25% in respect of individual items in the contract shall be as per the contract rates.
- h) The rates payable for variations in quantities in excess of 25% in respect of individual items shall be worked out at market rates prevailing at the time of commencement of execution of these items.
- i) The variation may result in additional or reduced payments to the contractor or there may be no price change at all.
- j) the total expenditure on the work (including deviation and extra items) should not exceed the Approved Amount & Expenditure Sanction.
- k) The authorities preparing, examining and sanctioning extra items should ensure proper preparation of nomenclature of items and record specific reasons to execute them.
- l) Casual remarks/reasons like "required as per site conditions" or "required at site" etc should not be recorded

- m) Any change in 'approval for construction' drawings should be evaluated properly and their full financial implications worked out at that very stage for submission to the appropriate authority for approval.
- n) In case there are changes in ground levels from those shown in the approved drawings, they shall be agreed in writing, jointly by the contractor and engineer and reported to the Competent Authority for considering whether any action lies against the design consultant for non-conformity of the levels as shown by him in the drawings and those actually obtaining.

### **8.3. Keeping Track of Variations/ Extra/ Substituted Items**

The variations register shall be used to administer and keep track of the status of a variation. Normally, the contractor has a tendency to report and claim positive variations (variations causing higher payments) and may not report negative variations. However, the engineer must keep track of such negative variations also and issue timely letters. This shall cover the following important steps:

- a) The engineer's prior approval of the issue of the variation instruction;
- b) The engineer's instruction to the contractor (this letter creates the variation). Particular details of a variation are not entered into the variations register until the day the instruction is issued. Prior to that it is only a 'proposed variation' and is tracked/ administered in a separate register;
- c) The variation instruction letter must be given a unique variation number and details entered into the variation register;
- d) The register is updated at the end of each month and summarised on one sheet as 'variation status', so that the involved agencies are aware as to what work needing action is held up with each of them; and
- e) The financial implications are kept up to date.

### **8.4. Valuation of Variations**

While taking decision with regards to variations a balance should be maintained between the perceived risks in quick finalisation of variations against the opportunity costs of delayed decision making e.g. project delays, cost escalations, loss of transparency etc. Variation instructions for modified, new or additional work involving extra cost shall be valued as per the procedure set out in the relevant clauses of the contract.

The following are the steps to be taken by the Engineer:



- a) Use BOQ rates wherever applicable;
- b) If not considered applicable, use BOQ rates as the basis for valuation to arrive at reasonable rate
- c) In making his recommendations, the engineer should give the contractor the opportunity to state his case and, if he considers the BOQ rate to be inappropriate,
- d) Any stance/argument by the contractor is irrelevant if he states that the tendered price was 'wrong' or deliberately set low.
- e) Contractor may present his proposals as to how the rate should be adjusted or what basis should be used to assess a new price.
- f) The contractor must support his submission with full particulars including, where applicable, a detailed cost breakdown of any rate in BOQ.
- g) If there is disagreement, fix the appropriate rate;
- h) In the event of further disagreement, consultations between the contractor and concerned Head of department to try and agree on suitable rates;
- i) In the meantime, determine provisional rates to allow monthly certification.
- j) The threshold level of the value/ quantity of a varied item below which a variation will not merit re-fixation of rate or price should be specified in the Tender.
- k) The engineer should appropriately explain his recommendations to the concerned Head of Department before he approves the variation.
- l) In case the engineer, while doing valuation of variations, notices significant cost and time over-runs due to deviations between actual ground situation and the situation recorded in DPR, he must bring to Port's notice the reach-wise differences and the Port may consider stringent action against the consultant who has prepared such DPRs.

## 8.5. Price Variation

**8.5.1.** Price variation shall not be applicable in the contracts where period of completion is 12 (Twelve) months or less. In long term contracts, Price variation deals with rise and fall of the prices in construction materials/ labour and other key inputs during the period

of construction. The provision of price variation clauses enables contractors to factor this reduced risk and quote more competitive prices.

- a) The amount payable to the contractor shall be adjusted in respect of the rise or fall in the cost of labour, Petroleum, Oils and Lubricants (POL) and materials to the work for which appropriate formulae shall be prescribed in the contract and shall form part of the tender document.
- b) Full compensation for any rise or fall in costs to the contractor is not covered by the provisions of the contract,
- c) The unit rates and prices included in the contract shall be deemed to include amounts to cover the contingencies of uncovered portion of rise or fall of costs.
- d) The formulae may be based on weightages of the material/ labour/ POL and cost indices/ base prices. (Refer Annexure WM-S1/14 for formula on Price Variation)
- e) For calculating price variation, base prices should be taken as on the date of opening of the Bids
- f) Indices shall be appropriate for their purpose and shall relate to the contractor's proposed source of supply of inputs on the basis of which his contract price shall have been computed.
- g) If any statutory regulations or bye-laws come into force after submission of the bids, which cause additional or reduced cost to the contractor in the execution of the contract, such statutory additional or reduced cost (except which are covered in cost indices) shall be added or deducted from the contract price.
- h) Short-term contracts where the delivery period does not extend beyond 12 (Twelve) months should normally be concluded with a firm and price fixed by inviting tenders accordingly.
- i) However, even for shorter deliveries, the price adjustment [or Price Variation Clause (PVC)] may be stipulated for items with inputs (raw material, man power, etc.), prone to short-term price volatility - especially for critical or high value works – otherwise there is a possibility of the contract failing or the purchaser having to pay a higher price if prices fall.
- j) 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.

- k) It is best to proactively provide Port's own Price Variation Clause and formula 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.
- l) The variations are to be calculated periodically by using indices published by Government / chambers of commerce / any other neutral and fair source of indices.
- m) Suitable weights are to be assigned to the applicable elements, that is, fixed overheads and profits, material and labour in the price variation formula.
- n) 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.

**8.5.2. The following are important elements of Price Variation Clause:**

- 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;
- 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 Material 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 completion is accepted beyond the scheduled completion 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 Price Variation Clause;

- 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 adjustment shall apply only for work carried out within the stipulated time or extensions granted by the Employer and shall not apply to work carried out beyond the stipulated time;
- viii) Price variation may be allowed beyond the original scheduled completion date, by specific extension of that date through an amendment to the contract in cases of force majeure or defaults by the Port;
- ix) Where contract execution depends on imported (subject to customs duty and foreign exchange fluctuations) and/or locally sourced goods/ works/ services (subject to customs duty and foreign exchange fluctuations) and/or locally manufactured (subject to excise duty and other duties and taxes), the percentage and element of duties and taxes included in the price should be specifically stated, along with the selling rate of foreign exchange element taken into account in the calculation of the price of the imported item;
- x) The clause should also contain the mode and terms of payment of the price variation admissible; and
- xi) 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.
- xii) An illustrative Price Variation formula is given in Annexure WM-S1/14
- xiii) 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.
- xiv) Where no such claims are submitted by the contractor, an examination of whether there has been a downward trend in the cost, which the contractor may not bring out, is required.

- xv) 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 Port and offer the requisite reduction in the contract rate."*

- xvi) Notwithstanding the above formalities, it is in the interest of the port to be vigilant about downward variation and it is, therefore, the basic responsibility of the Port officers to make sure that the benefits of downward variation, wherever it occurs, are fully availed of.

### **8.6. Subsequent Legislation (applicable for all contracts)**

If, after the date 28 (Twenty eight) days prior to the date for submission of tenders for the contract there occur changes to any National or Statute Statute, Ordinance or Decree or other Law or any regulation or bye law of any local or other duly constituted authority or introduction of any such state statute, Ordinance, Decree, Law, regulation or bye law which causes additional or reduced cost to the contractor in execution of the contract, such additional or reduced cost shall, after due consultation with the Employer and the Contractor be determined by the Engineer or Engineer's representative and shall be added to or deducted from the contract price and the Engineer or Engineer's representative shall notify the contractor accordingly with a copy to the Employer.

- a) Such increase or decrease if any, shall be applicable within the Scheduled Completion Date or the extended date of completion of Works (for reasons not attributable to the contractor) will be to the account of the Port.
- b) Any increase in the duties, taxes, fees, after the aforesaid Scheduled Completion Date or the extended date of completion of Works will be to Contractor's account. However, any decrease of duties, taxes, fees after the date of completion of Works will be to Port's account.
- c) In case of introduction of new legislation or change or amendment in any act or law after the Scheduled/extended Completion Date (extended in accordance with the provisions of the Contract), but which comes into force or becomes effect retrospectively from a date on or before the Scheduled/extended Completion Date and which results in any increase/decrease in the duties, taxes and fees under the Contract, then such

increase/decrease, subject to the conditions stipulated in respective clause shall be to the Port's account.

- d) The Contract Price and other prices given in the Schedule of Prices are based on the applicable tariff as indicated by the Contractor in the Schedule of Prices. In case this information subsequently proves to be wrong, incorrect or misleading, the Port will have no liability to reimburse/pay to the Contractor the excess duties, taxes, fees, if any finally levied/imposed by the concerned authorities.
- e) Notwithstanding the provision contained in the above clauses, the Port shall not bear any liability in respect of a) Personal taxes on the personnel deployed by Contractor, his subcontractors/sub-subcontractors and Agents etc. b) Corporate taxes in respect of contractors and all of their sub-contractors, agents etc.

## 8.7. Financial Monitoring

Besides administering the contract with regard to its quality and completion, the engineer will be required to regularly assess the financial position and exercise financial control.

- a) The engineer has to update, on a quarterly basis, cash flow projections, cost estimates and yearly/ quarterly milestones, and submit them to the HoD of the Department.
- b) Variations should take place with a view to achieving economical completion of the work, and not to result in avoidable higher rates or costs.
- c) In case of a significant number of variation orders or unexpectedly rapid cost escalation, updation may be done more frequently.
- d) The financial statements should bring out comparisons of the initial estimated/ tendered cost with the actual cost; component-wise and activity-wise, both with respect of quantities and value.
- e) The engineer should examine these statements critically. If costs are likely to be exceeded, this should be anticipated, and a revised estimate of cost prepared, with complete explanations, for approval by the Competent Authority.

## 8.8. Preparation of Revised Project Report

As per GFR, 2017, Rule 141, for project costing Rs. 100 crore or above, the Port will set up a Review Committee consisting of a representative each from the User department and Finance department and the Executing Agency to review the progress of the work. The Review Committee shall have the powers to accept variation within 10% of the approved estimates. For works costing less than Rs. 100 crores, it will be at the discretion of the HOD of the Proponent Department to set up a suitable mechanism for review and acceptance of variation within 10% of the approved estimates.

On the lines of provisions in Ministry of Finance (DoE)'s instructions vide OM No. 24(35)/PFII/2012 dated 05/08/2016 regarding appraisal and approval of Public Funded projects/ schemes, any increase in costs due to statutory levies, exchange rate variation, price escalation within the approved time cycle and/ or increase in costs upto 20 percent due to any other reason, are covered by the approval of the original cost estimates. Any increase in this regard would be approved by the MD/Chairman/Board of Directors with the concurrence of the Financial Adviser/HOD of Finance.

Any increase in costs beyond 20 percent of the firmed-up cost estimates due to time overrun, change in scope, under-estimation, etc. (excluding increase in costs due to statutory levies, exchange rate variation and price escalation within the approved time cycle) should first be placed before a Revised Cost Committee chaired by the HOD of the Proponent department with nominated representatives from user and Finance departments to identify the specific reasons behind such increase, identify lapses, if any, and suggest remedial measures for the same. The recommendations of the Revised Cost Committee should be placed for fresh appraisal and approval before the Competent Authority as per the extant delegation of powers (It may be noted that a firmed-up cost estimate here means a cost estimate which has been through the full appraisal and approval procedure as per the extant delegation of powers).

When the variation/ excess occurs at such an advanced period in the construction of a work (Rule 78, 104 & 106 of CPWD Departmental Code) as to render the submission of a revised estimate purposeless, the completion report may explain the excess and an Officer of status not lower than that of Superintending Engineer / DGM of Port may pass the completion report, if the total expenditure in question is not greater than that which he is empowered to sanction in the case of a revised estimate.

## Chapter-9

**DELAYS IN EXECUTION & EXTENSION OF TIME****9.1. Delays in Execution**

**9.1.1.** A work may be completed ahead of schedule or delayed due to unforeseen fortuitous circumstances, extra effort or developments beyond the control of the Port or the Contractor and it is sometimes difficult to apportion credit or responsibility. The contractor may experience delay or disruption due to his own actions or inaction, those of his sub-contractor or other contractors, those of the Port officials or the engineer, or other causes. Such delays expose the non-performing party to various sanctions under the contract. These sanctions include extension of time, damages or default termination of the contract. While examining the request of the contractor for extension of time, the engineer shall consider all circumstances and categorise the delays as follows:

- a) **Excusable delays** - Force Majeure (FM), that is, acts of God, abnormal weather, floods, Pandemic and so on, applies;
- b) **Compensable delays** – or Compensation Events, which put full burden of responsibility on the Port as covered in the GCC; and
- c) **Inexcusable delay (contractor's own faults)**, which puts the full burden of responsibility on the contractor.
- d) **Concurrent delays** - when two or more events responsible for delay overlap each other. The delays may be attributable to the Port or the contractor or none, and fall in above categories. The eligibility for extension of time (EOT) should be determined by plotting each contributing concurrent delay on the critical path. The engineer should see that the concurrent delays do not result in unnecessary extra extension of time.

**9.1.2.** Once the delay is categorized, it should then be determined not only whether the contractor is eligible for time extension and/ or monetary relief but also whether sanctions, such as Liquidated Damage (LD) or default termination, can be imposed on the contractor.



## 9.2. Extension of Time (EOT)

After examining the request of the contractor for extension of time, the engineer shall consider all circumstances and categorise the delays.

- a) Extension of Time (EOT) should not be left to the end;
- b) It should be dealt with promptly during the progress of the contract and for ongoing critical delay, interim EOT may be awarded to keep the contract in force.
- c) The engineer shall, after due consultation with the contractor, determine the length of such extension and submit to the Competent Authority for approval of EOT and thereafter only notify the contractor, with a copy to the HoD of the Concerned Department.
- d) If a compensation event occurs during the execution of the contract, the same shall be dealt with in terms of the GCC.
- e) The Engineer will assess whether and by how much the intended completion date shall be extended.
- f) All extensions are to be granted subject to the right of Port to claim a reduction in prices on account of reduction in statutory duties/taxes etc. which may take place during the extended period of delivery.
- g) However, increase in prices during extended delivery period on account of increase in statutory duties/taxes etc. admissible under change in law clause shall be granted, only if extension is due to delay on the part of the Port.
- h) When it is decided to extend the completion period subject to the recovery of liquidated damages for delay in contract, the contractor must be informed in writing. Merely stating that extension is granted without prejudice to the rights of Port under the terms and conditions of contract, is not enough.
- i) Since the extension of time arises during the execution of contract, the same should not be referred to Tender Evaluation committee.
- j) After the final stage of completion is reached (final taking-over certificate issued), EOT and LD may be reviewed, if required.

- k) Normally the cases involving extension due to delay on account of contractor shall be considered with levy of LD at the rate as per contract terms and without condoning any delay attributable to the contractor. However, in compelling circumstances beyond the control of contractor or where the past record of contractor/supplier is excellent in terms of meeting their commitments, a holistic view may be taken for considering waiver of Liquidated Damages. Any proposal, with full justification, for waiver of LD rate in such cases, and/or condone the delays attributed to contractor shall require the approval of Competent Authority. If required a separate committee can be constituted to go through the reasons for delay and submit their recommendations to the competent authority.
- l) In case of Construction / Turnkey Project, where the port takes over certain facilities, which can be commissioned and can function independently irrespective of the availability of balance work of the project, Port may issue part completion certificate by taking over such facilities without imposing LD. Where such facilities cannot be commissioned and cannot function independently, LD in that event will be levied on full value of the awarded contract price.
- m) Port Management may put in place a graded authority structure whereby extension of time for completion of contract, beyond a specified threshold value of contract, may be granted by the next higher authority.
- n) Extension of time may be considered without levy of LD due to execution of excess quantities beyond permissible limits as stipulated in the tender or additional work beyond the scope of work that require additional time for execution with the approval of the Competent Authority.

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## Chapter-10

**LIQUIDATED DAMAGES AND INCENTIVE/BONUS****10.1. Liquidated Damages**

Time and date of completion shall be essence of the contract. If the contractor fails to complete the contract or any part thereof within the period fixed for such completion in the schedule or at any time repudiates the contract before the expiry of such period, Port may, without prejudice to any other right or remedy available to him, recover damages for breach of the contract and recover from the Contractor liquidated damages and not by way of penalty, a sum equivalent to the percentage specified in the contract.

Normally, tenders shall be invited with reference to a pre-determined period of completion of works. The penalties by way of Liquidated Damages (LD) proposed for identified lapses of omission or commission must be disclosed in the tender documents in clear monetary terms.

- a) The Port may without prejudice to its right to effect recovery by any other method, deduct the amount of liquidated damages from any money belonging to the Contract in its hands (which includes the port's right to claim such amount against Contractor's Bank Guarantee) or which may become due to the Contractor. Any such recovery of liquidated damages shall not in any way relieve the Contractor from any of its obligations to complete the works or from any other obligations and liabilities under the Contract.
- b) Notwithstanding anything stated above, works will be deemed to have been completed only when all its components and parts are also completed. If certain components of works are not completed in time, the works will be considered as delayed until such time all the balance jobs are also completed.
- c) Termination of the contract for further delays if any should be dealt with as per appropriate clauses.
- d) In case of delay in completion of the contract, liquidated damages subject to a maximum of ten percent of contract value should be levied as under :
  - i) For repair works costing up to Rs. Ten lakhs
    - one percent of the contract value per week of delay

- ii) For all other works
  - half percent of the contract value per week of delay
- e) No liquidated damages clause will be inserted in the contracts upto Rs. 1.00 lakh and in the contracts dealing with Consultancy Services and such contract should provide for cancellation clause.
- f) In case of works/materials/service contracts exceeding Rs. 1.00 lakh, liquidated damages will be applicable @ 0.5% of the contract value per week or part thereof, for delay in contract completion date subject to a maximum ceiling of 10% of the total value of the contract.
- g) In case any Tender Accepting Authority finds it necessary to revise his own earlier decision of imposing liquidated damages and to waive recovery thereof, he should obtain the approval of the next higher Authority for doing so.

## 10.2. Incentives/ Bonus

Provision of incentives for completion of work before schedule should be sparingly made after careful assessment of tangible benefits there from and disclosed in the tender documents in clear monetary terms. Incentives/ Bonus (e.g. one percent of the contract value per month subject to a maximum of Ten percent of contract value) for early completion and penalties for delay should, therefore, be built into the contract very judiciously with the approval of the Competent Authority.

- i) To avail of the incentive clause, it shall be mandatory on the part of the contractor to report the actual date of completion to the concerned Engineer.
- ii) The Engineer shall report the actual date of completion of the works as soon as possible through Note/ email or Letter so that the report is received within seven days of such completion by the concerned HOD or Competent Authority.

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## Chapter-11

**CLOSURE OF CONTRACT****11.1. Completion of Contract**

The contract is not to be treated as completed until a Defects Liability Certificate (DLC) has been issued. There will be only one DLC. It will be issued when the contractor has completed all his obligations under the contract.

- a) 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.
- b) Before the bank guarantee is released a "no claim certificate" may be taken from the contractor as per the format given in (Annexure - WM-S2/014).
- c) At least in large contracts (above Rs. 25 (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:

**11.2. Material and Works Reconciliation**

The Port should confirm that all Works ordered in the contract and paid for have been taken over in good condition and there is no shortcoming. Full reconciliation of all materials, machinery and assets provided to the contractor should be done including wastages and return of scrap/ off-cuts.

**11.3. Reconciliation with the User Department**

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

- i) Achievement of performance standards of Work;
- ii) Installation and commissioning, if any;
- iii) Support service during the Defect Liability Period which has ended on \_\_\_\_\_;
- iv) As Made Drawings;

- v) Return of all ID cards, gate passes, documents, drawings, protective gear, material, equipment, facilities and assets loaned to contractor.

#### 11.4. Payment Reconciliation

On satisfactory reconciliation of the following and against a “no claim certificate” from the contractor, the bank guarantee may be released and its acknowledgement taken from the contractor. The Port may reconcile payments made to the contractor to ensure that there is no liability outstanding against the contractor on account of:

- i) Liquidated Damages;
- ii) Price reduction enforced on account of shortfall in standards of Work;
- iii) Variations/ deviations from the scope of the contract;
- iv) Overpayments/ duplicate payments, if any;
- v) Payment for Services availed from Port such as electricity, water, security, transport, cranes and other machinery and vacation of accommodation, and so on,
- vi) Demurrage, insurance premiums or claims, and so on;
- vii) Works reconciliation;
- viii) Price variations;
- ix) Statutory duties paid on behalf of the contractor by Procuring Entity;

#### 11.5. Commissioning and Documentation

- a) When the work has been executed, the assets created shall be commissioned. Reasonable advance information of completion of work should be given by the contractor to the Port to enable them to make arrangements for taking over. The Port engineer may carry out detailed inspection of the commissioned works to ensure that no deficiencies are there before taking over.
- b) “As built” drawings of the work shall be submitted by the contractor or otherwise to facilitate proper maintenance of the assets, additions to the assets at subsequent dates etc. and to form part of the records of the Port.
- c) The Contractor would be responsible for obtaining Completion/ Occupancy Certificates/ Clearances and No-Objection-Certificates (NOCs), if applicable,

from the local civic authorities, for completed Works and Facilities before handing over the same to the Port for putting them to functional use.

- d) Before issue of the completion certificate by the Port, it must ensure that the Contractor restores to original status - the auxiliary services/ facilities (Roads, Sewerage, utilities, including removal of garbage and debris) affected during the construction process.
- e) On completion of the work, a Project Completion Report (PCR) shall be submitted by the Contractor duly bringing out the Final Project Completion Cost, Total Time period taken to complete the work and also completed Project Components as against the approved/awarded Cost, Time and Project Components. In case of Deposit works, the PCR shall be submitted along with Final Project Accounts including return of unspent balance amount to the Port within one month of settlement of final bills of the contractors/ other agencies deployed on the work.
- f) The Contractor shall hand over to Port or authorized Representative, the completed Work including all Services and Facilities constructed in accordance with the
  - i) Approved Plans,
  - ii) Specifications fulfilling all agreed techno-functional requirements along with Inventory,
  - iii) As built - Drawings,
  - iv) Maintenance Manual/ Standard Operating Procedure (SOP) for Equipments and Plants,
  - v) all clearances /Certificates from Statutory Authorities, Local Bodies etc if required.

Record keeping should be created at every work centre to facilitate proper stacking of records pertaining to the completed works. The records should be preserved in such a manner that the same can be retrieved whenever required.

## **11.6. Performance Appraisal of Contractors**

- a) A system of performance appraisal of contractors should be started for each work.
- b) A file for each contractor will be opened to keep record of his performance.

- c) After issue of completion certificate, Engineer-In-charge may prepare a performance report of the contractor for record.
  - d) Action for issue of warning, black listing, banning or put on holiday or suspension as per the corporate policy / decision, will be processed by the Engineer-in-charge on the basis of adverse performance.
  - e) The Engineer-in-charge shall submit a Close Report on conclusion of the contract stating his exerts/experience on contract with his recommendation.
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## Chapter-12

**COMPLETION OF WORKS AT RISK & COST OF CONTRACTOR****12.1. Rights of Port to get Work Done at Contractor's Risk and Cost**

Suitable provision shall be made in the General Conditions of Contract, whereby KPL has the right to get work done at contractor's risk and cost, or deploy necessary manpower, materials and equipment at the risk and cost of the contractor provided:

- (i) Engineer-in-charge's or Site Engineer's instructions to increase labor strength, materials and equipment on progress schedule or slow progress of works are not complied with by the contractor;
- (ii) The Site Engineer on inspection or test is not satisfied with the quality of workmanship of any work and material, and the contractor fails to reperform the work to the satisfaction of Site Engineer;
- (iii) There is any defect in the design or work done by the contractor and the contractor fails to re-perform, replace or otherwise rectify the defects as pointed out by Site Engineer to the satisfaction of Site Engineer, at the time of final tests.
- (iv) Defects and imperfections in design or work done by the contractor are noticed during the defect liability period and the contractor fails to rectify the defects at his own cost.
- (v) The contractor does not clear the site within 7 days of completion of final measurement after termination of contract.
- (vi) Balance of work is left incomplete by the Contractor on termination of the contract.

12.2. If the contractor shall fail to do any such work as aforesaid required by the Engineer, the Employer shall be entitled to carry out such work by his own workmen or by any other contractor. If such work is a work which the contractor should have carried out at the contractor's own costs the Employer shall be entitled to recover from the

contractor the cost thereon and may deduct the same from any moneys due or that may become due to the contractor.

12.3. When an alternative agency is lined up for the off-loaded job, a formal claim should be lodged in writing by the Engineer in Charge, at that time itself with the defaulting contractor and the contractor be asked to deposit the amount worked out on the basis of the work order value. This would facilitate the company in quicker recovery of the amounts from such defaulting contractors. In case there is any variation upon knowing the final bills of the second contractor, the same can be taken up separately.

12.4. If there is any valid lien of claim for which KPL may become liable but which liability is that of the contractor under the contract, and if the contractor is disputing or is otherwise not meeting his liability, payment can be made by KPL on behalf of the Contractor and adjust the same from any dues from KPL to the Contractor. If this amount available with KPL is not adequate to meet the liability, the contractor shall pay the amount called for on demand, failing which interest at prime lending rate at that time plus one percent will be chargeable on the amount due to the Owner on this account.

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## Chapter-13

**CLAIMS OF CONTRACTOR****13.1. Procedure for dealing with Claims of Contractor**

The procedure for dealing with claims of the contractor shall be elaborated in the relevant clauses of the General Conditions of Contract. Claims of contractors are to be dealt with in different stages as under:

**13.1.1. First Stage**

The Contractor, within 10 days of the occurrence of the event; or issue of orders or instructions based on which the claim is conceived should give notice of claim to both 'Engineer-in-Charge' and 'Site Engineer' giving full particulars of the nature of claim, amount of claim and the grounds for the claim. Such claims become notified claims under the contract. If this notice is not received in writing within 10 days as stipulated by the 'Engineer-in-Charge' and 'Site Engineer' or does not give any of the details mentioned above, it shall not be deemed to be a notified claim and no claims other than notified claims are recognized under the contract and the owner has no liability for any claims which are not notified, as stipulated in the contract. It is not obligatory for "Engineer-in-Charge" or "Site Engineer" to reply to any such notice or claims, though at least in clear-cut cases it may be advisable to reject claims giving reference to the relevant contract clauses.

**13.1.2. Second Stage**

Along with the final bill, the contractor should attach a list of notified claims supported by copies of notices issued as contemplated in the first stage and giving full details of nature of claims, amounts claimed and grounds for the claims.

- a) These claims included in this list, in so far as they correspond in all material particulars with the notified claims, shall be treated as the final notified claims and if in any material details any particular claim in the list differs from the corresponding notified claim, the concerned claim in the final list will be treated, as an un notified claim and will, accordingly, be inadmissible. Further, any notified claim not included in the list of claims accompanying the final bill shall be deemed to have been dropped by the contractor and shall cease to be a notified claim and hence shall not be admissible.

- b) No claim shall be admissible after submission of the final bill.
  - c) The contractor can take payment in full and final settlement of all dues without prejudice to his final notified claims.
  - d) However, if the contractor accepts any amount paid by Owner in full and final settlement of his final notified claims, such payment will be deemed to be in full and final satisfaction of all his final notified claims, even if the contractor accepts the payment under protest.
  - e) The idea is that the contractor cannot accept payment against claims under protest and thereafter drag the Port into litigation or arbitration. In view of this, all payments made against final bills and final notified claims shall be made "in full and final settlement" after which no action including arbitration is permissible under the contract.
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## Chapter-14

**DISPUTE RESOLUTION MECHANISM****14.1. Dispute Resolution Mechanism**

**14.1.1.** Normally, there should not be any scope for dispute between the Port and contractor 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 Port and contractor.

- i) When a dispute/ difference arises, both the Port and contractor should first try to resolve it amicably by mutual consultation failing which Dispute Resolution process should be invoked.
- ii) The dispute resolution method shall be specified clearly in the bidding document. It may be through a Disputes Resolution Board.
- iii) Dispute Resolution Mechanism for PPP projects is to be specifically provided in the Concession Agreement whereby if mediation does not succeed, then Arbitration under the Arbitration and Reconciliation Act is to be provided for.

**14.1.2. Dispute Resolution Board**

If a dispute of any kind, whatsoever, arises between the Port and contractor in connection with the following shall, be referred to the Dispute Resolution Board. The Works Committee may act as Dispute Resolution Board. The board may co-opt any other officer, if required for dispute resolution.

- i) Disputes arising out of the contract or the execution of the works,
- ii) whether during the execution of the works or after their completion and
- iii) whether before or after the repudiation or
- iv) termination of the contract, or
- v) any disagreement by either party with any action, in action, opinion, instruction, determination, certificate or
- vi) valuation of the Engineer.

## 14.2. Conciliation

The party initiating conciliation shall send a written notice within 28 days of the disputed decision to the other party to conciliate and proceedings shall commence when the other party accepts the initiations to conciliation.

- i) The parties may agree on the name of a sole conciliator or each party may appoint one conciliator.
- ii) The conciliation shall assist the parties to reach an amicable settlement of their dispute.
- iii) When the parties sign the settlement agreement, it shall be final and binding on the parties.
- iv) The conciliator shall authenticate the settlement agreement and furnish a copy thereof to each party.

### 14.2.1. Decision by Conciliator

- i) The Conciliator shall give a decision in writing within 28 days of receipt of a notification of a dispute.
- (ii) Conciliator shall be paid daily at the agreed rate together with reimbursable expenses of the types specified in the Contract Data and the cost shall be divided equally between the Employer and the Contractor. In case of non-agreement, either party may dispute the decision of the conciliator. If neither party refers the disputes to arbitration within 28 days, the conciliator's decision will be final and binding.

## 14.3. Outside Expert Committee (OEC)

Provision for settlement of disputed claims through Outside Expert Committee shall be in accordance with Port Guidelines on the subject, issued from time to time. For the past cases involving disputes of more than Rs.1 Crore OEC may be appointed with the approval of competent authority.

- a) However, the cases in respect of which arbitration notice is given or actual arbitration proceedings has been held may continue under arbitration and only on the request from contractor such cases may be referred to OEC.

- b) The cost of proceeding such as fees for expert, air fare, local transport, accommodation, cost incurred towards conference room etc., complete shall be borne by KPL & contractor in equal shares.
- c) Proceeding of OEC will be in accordance with part III, conciliation of the arbitration and conciliation act 1996.
- d) Both the parties shall freeze the claim of interest, if any and shall not claim the same for the period the proceedings are pending before OEC.
- e) The OEC recommendations shall be submitted to CMD, KPL for consideration.
- f) The recommendation of OEC shall be brought to the KPL Board, where OEC members will make a presentation to elaborate on their recommendations and also to clarify queries.
- g) After the approval, a contract will be signed between the parties for dispute resolution and the OEC will automatically stand terminated after 30 days from the date of settlement.

#### **14.4. Arbitration and dispute resolution**

##### **14.4.1. Arbitration.**

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 as amended by Arbitration and Conciliation (Amendment) Act, 2015. For this purpose, when the contract is with a domestic contractor, a standard arbitration clause may be included in the SBD indicating the arbitration procedure to be followed.

The following are some of the issues which lead to disputes and reference to Arbitration.

All questions and disputes relating to the meaning of the specifications, design, drawings and instructions here-in and as to the quality of workmanship or materials used on the work or as to any other question, claim, right, matter or thing whatsoever in any way arising out of or relating to the contract, designs, drawings, specifications, estimates, instructions, orders or these conditions or otherwise concerning the works or the execution or failure to execute the same whether arising during the progress of the work or after the cancellation, termination, completion or abandonment thereof shall be referred to adjudication through arbitration.

It is therefore essential that the Project monitoring cell of the Port and Engineer be aware of potential arbitration clauses and ensure that crucial documentation including site records, quantity records, handover of site etc. are recorded and secured properly for future use.

Please refer to Appendix-9 (Section-3) for further details of the Arbitration Act.

#### **14.4.2. Arbitration - disputes**

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

14.4.2.2. Arbitration awards should be critically reviewed. In cases where there is a decision against the Port, appealing should not be resorted to in a routine manner. Appealing shall be done only when the case genuinely merits going for the appeal and there are high chances of winning in the court/ higher court. There is a perception that such appeals etc. are sometimes resorted to postpone the problem and defer personal accountability. Arbitration / court awards should not be routinely appealed without due application of mind on all facts and circumstances including realistic probability of success. Casual appealing in arbitration / court cases has resulted in payment of heavy damages / compensation / additional interest cost, thereby causing more harm to the exchequer, in addition to tarnishing the image of the Port/Government.

14.4.2.3. The Port should monitor the success rate of appealing against arbitration awards. There should be a clear delegation to empower officials to accept arbitration / court orders. A special board / committee may be set up to review the case before an appeal is filed against an order. The board / committee or other authority deciding on the matter shall clarify that it has considered both legal merits and the practical chances of success considered the cost of litigation / appeal / further litigation as the case may be, it is satisfied that such litigation / appeal / further litigation cost is likely to be financially beneficial compared to accepting the arbitration/ court award.

14.4.2.4. Statistics have shown that in cases where the arbitration award is challenged, a large majority of cases are decided in favour of the contractor. In such cases, the amount becomes payable with the interest, at a rate which is often far higher than the Port/government's cost of funds. This results in huge financial losses to the Port/ government. Hence, it is in public interest to take the risk of paying a substantial part of the award amount subject to the result of the litigation even if in some rare cases of insolvency etc. recovery of the amount in case of success may become difficult.



14.4.2.5. The only circumstances in which such payment need not be made is where the contractor declines, or is unable to provide the requisite bank guarantee and/or fails to open an escrow account as required. Persons responsible for not adhering to are liable to be held personally accountable for the additional interest arising, in the event of the final court order going against the Port.

#### **14.4.3. Arbitration Awards**

14.4.3.1. In cases where the Port has challenged an arbitral award and, as a result, the amount of the arbitral award has not been paid, 75% of the arbitral award (which may include interest up to date of the award) shall be paid by the Port to the contractor/ concessionaire against a Bank Guarantee (BG). The BG shall only be for the said 75% of the arbitral award as above and not for the interest which may become payable to the Port should the subsequent court order require refund of the said amount.

14.4.3.2. In case of Running Contract, the payment may be made into a designated Escrow Account with the stipulation that the proceeds will be used first, for payment of lenders' dues, second, for completion of the project and then for completion of other projects of the same Port as mutually agreed/ decided. Any balance remaining in the escrow account subsequent to settlement of lenders' dues and completion of projects of the Port may be allowed to be used by the contractor/ concessionaire with the prior approval of the lead banker and the Port. If otherwise eligible and subject to contractual provisions, retention money and other amounts withheld may also be released against BG. (New rule 227A of GFR, 2017 notified vide OM No. F./1/9/2021-PPD issued by Department of Expenditure dated 29.10.2021)

Note: In para 14.4.3.1 instructions containing "shall" are mandatory; any deviation from these instructions shall require relaxation from the Board of Directors.

## Chapter-15

**BREACH OF CONTRACT, REMEDIES AND TERMINATION****15.1. Breach of Contract**

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 complete the Work within stipulated time. It could also be due to breach of ethical standards or any other stipulation that affects the Port seriously.

- a) As soon as a breach of contract is noticed, a show cause notice should be issued to the contractor, giving two weeks' notice, reserving the right to implement contractual remedies.
- b) If there is an unsatisfactory resolution, remedial action may be taken immediately in accordance with the terms and conditions of the contract agreement.
- c) If termination takes place because of a fundamental breach/ insolvency on the part of the contractor, the engineer shall issue a certificate for the value of work done, deducting from the amounts in respect of:
  - i) advance payments;
  - ii) any recoveries;
  - iii) taxes as due; and
  - iv) percentage to apply to the work not completed as indicated in the contract data.
- d) If the total amount due to the Port exceeds that due to the contractor, the difference will be a debt payable to the Port.

**15.2. Termination of Contract for Default of Contractor****15.2.1. Events of Default and Termination**

Without prejudice to any other remedy for breach of contract, such as removal from the list of enlisted contractors, by written notice of default sent to the Contractor, the contract may be terminated in whole or in part, if the contractor has:

- a) Committed fraud
- b) If the contractor fails to perform any other obligation under the contract within the period specified in the contract or any extension thereof granted.
- c) has seriously or repeatedly breached the contract, including
  - i) failure to complete the work within the time period specified in the contract, or any extension thereof granted;
  - ii) failure to obey instructions in relation to his progress or defective work, material or plant;
  - iii) breach of the prohibition against sub-contracting
  - iv) Failure to supply sufficient and suitable constructional plant, temporary works, labour and material as proposed in the work programme;
  - v) Substantial suspension of work for more than the specified days without authority from the engineer and failure to proceed with the work within the specified days of receipt of notice from the engineer
  - vi) Failure to comply with the requirements regarding JVs

#### 15.2.2. Termination of Contract

Before terminating the contract and taking further action, it may be desirable to obtain legal advice. 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, taking over the site and to complete the works by Port or with another contractor (risk Purchase) and use the contractor's materials, equipment, temporary works as the Port Management may think proper.
- c) In small value contracts, instead of Risk Purchase, a fixed percentage recovery may be provided in the SBD; and
- d) However, the contractor shall continue to fulfil the contract to the extent not terminated.

### **15.3. Termination of Contract for Insolvency**

If the contractor 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 contractor, without compensation to the contractor, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the Port.

### **15.4. Termination of Contract for Port's Failure or Convenience**

After placement of the contract, there may be an unforeseen situation compelling the Port to terminate the contract. In such a case, a suitable notice has to be sent to the contractor for termination of the contract. This is not Port's legal right– the contractor has to be persuaded to acquiesce.

The termination may be in whole or in part, depending upon the Port's convenience and shall adopt the following:

- a) Indicate the date with effect from which the termination will to become effective.
- b) Depending on the merits of the case, the contractor may have to be suitably compensated on mutually agreed terms for terminating the contract.
- c) Suitable provisions to this effect should be incorporated in the tender document as well as in the resultant contract.
- d) If termination occurs because of Port's convenience or a fundamental breach on his part, the engineer will certify the value of works executed, value of any materials lying at site, reasonable cost of removal of equipment, repatriation of project staff, cost of protecting and securing the works and deducting from it: (i) pending advances; (ii) other recoveries; and (iii) taxes as due.

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## Chapter-16

**DEBARMENT OF FIRMS FROM BIDDING****16.1. Debarment**

Rule 151 of GFR, 2017 deals with debarment in Ministries/Departments which is as under:

- i) A bidder shall be debarred if he has been convicted of an offence
  - a) under the Prevention of Corruption Act, 1988; or
  - b) the Indian Penal Code or any other law for the time being in force, for causing any loss of life or property or causing a threat to public health as part of execution of a public procurement contract.
- ii) A bidder debarred under sub-section (i) or any successor of the bidder shall not be eligible to participate in a procurement/tender process of any procuring entity for a period not exceeding three years commencing from the date of debarment.
- iii) The Port may debar a bidder or any of its successors, from participating in any procurement /tender process undertaken by it, for a period not exceeding two years, if it determines that the bidder has breached the code of integrity. The Port will maintain such list which will also be displayed on their website.
- iv) The bidder shall not be debarred unless such bidder has been given a reasonable opportunity to represent against such debarment.

**16.2. Guidelines on Debarment of firms from Bidding**

These guidelines are Notified vide OM No. F.1/20/2018-PPD issued by Department of Expenditure dated 02.11.2021. The guidelines with subsequent amendments if any shall be followed.

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

- i) In cases where debarment is proposed to be limited to one port, the appropriate Orders can be issued by that Port itself, thereby banning all its business dealing with the debarred firm.

- ii) Where it is proposed to extend the debarment in all ports i.e., the requisite Orders shall be issued by the Ministry of Ports, Shipping and Waterways.

### 16.3. Definitions

- i) **Firm:** The term 'firm' or 'bidder' has the same meaning for the purpose of these Guidelines, which includes an individual or person, a company, a cooperative society, a Hindu undivided family and an association or body of persons, whether incorporated or not, engaged in trade or business.
- ii) **Allied firm:** All concerns which come within the sphere of effective influence of the debarred firms shall be treated as allied firms. In determining this, the following factors may be taken into consideration:
  - a) Whether the management is common;
  - b) Majority interest in the management is held by the partners or directors of banned/ suspended firm;
  - c) Substantial or majority shares are owned by the banned/ suspended firm and by virtue of this it has a controlling voice.
  - d) Directly or indirectly controls, or is controlled by or is under common control with another bidder.
  - e) All successor firms will also be considered as allied firms.
- iii) The terms "banning of firm", 'suspension', 'Black-Listing' etc. convey the same meaning as of "Debarment".

### 16.4. Debarment by a Single Port

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

- i) A bidder or any of its successors may be debarred from participating in any procurement process for a period not exceeding two years.
- ii) Firms will be debarred if it is determined that the bidder has breached the code of integrity as per Rule 175 of GFRs 2017 including subsequent amendments if any.

- iii) A bidder can also be debarred for any actions or omissions by the bidder other than violation of code of integrity, which in the opinion of the Port, warrants debarment, for the reasons like supply of sub-standard material, non-supply of material, abandonment of works, sub-standard quality of works, failure to abide "Bid Securing Declaration" etc.
- iv) The Port before issuing the debarment order against a firm must ensure that reasonable opportunity has been given to the concerned firm to represent against such debarment (including personal hearing, if requested by firm).
- v) MD/Chairman may nominate an officer at the rank of HOD or other officer as per DOP to debar the firms.
- vi) Port that issued the order of debarment can also issue an Order for revocation of debarment before the period of debarment is over, if there is adequate justification for the same. Ordinarily, the revocation of the Order before expiry of debarred period should be done with the approval of MD/Chairman.
- vii) The Port will maintain list of debarred firms, which will also be displayed on its website.
- viii) Debarment is an executive function and should not be allocated to Vigilance Department.

## 16.5. Debarment across All Ports

- i) Where the Port is of the view that business dealings with a particular firm should be banned across all the Ports by debarring the firm from taking part in any bidding procedure floated by the Ports, the Port should forward a self-contained note setting out all the facts of the case and the justification for the proposed debarment, along with all the relevant papers and documents to the Ministry. The Ministry will issue the necessary orders after satisfying itself that proposed debarment across all the Ports is in accordance with Rule 151 of GFRs, 2017. This scrutiny is intended to ensure uniformity of treatment in all cases.
- ii) The firm will remain in suspension mode (i.e. debarred) during the interim period till the final decision taken by the Ministry.
- iii) The Port before forwarding the proposal to Ministry must ensure that reasonable opportunity has been given to the concerned firm to represent

against such debarment (including personal hearing, if requested by firm). If Ministry realizes that sufficient opportunity has not be given to the firm to represent against the debarment, such debarment requests received from Port shall be rejected.

- iv) Ministry may also give additional opportunity, at their option, to firm to represent against proposed debarment. Ministry can also take suo-moto action to debar the firms in certain circumstances.
- v) No contract of any kind whatsoever shall be placed on the debarred firm, including its allied firms by any Port after the issue of a debarment order.
- vi) Ministry will maintain list of such debarred firms, which will be displayed on Central Public Procurement Portal.

#### **16.6. Revocation of Orders**

- i) An order for debarment passed shall be deemed to have been automatically revoked on the expiry of that specified period and it will not be necessary to issue a specific formal order of revocation.
- ii) A debarment order may be revoked before the expiry of the Order, by the competent authority, if it is of the opinion that the disability already suffered is adequate in the circumstances of the case or for any other reason.

#### **16.7. Other Provisions (common to both types of debarments)**

- i) No contract of any kind whatsoever shall be placed to debarred firm including its allied firms after the issue of a debarment order by the Port/Ministry. Bids from only such firms shall be considered for placement of contract, which are neither debarred on the date of opening of tender (first bid, normally called as technical bid, in case of two packet/two stage bidding) nor debarred on the date of contract. Even in the cases of risk purchase, no contract should be placed on such debarred firms.
- ii) If case, any debar firms has submitted the bid, the same will be ignored. In case such firm is lowest (L-1), next lowest firm shall be considered as L-1. Bid security submitted by such debarred firms shall be returned to them.



- iii) Contracts concluded before the issue of the debarment order shall, not be affected by the debarment Orders.
- iv) The Debarment shall be automatically extended to all its allied firms. In case of joint venture/ consortium is debarred all partners will also stand debarred for the period specified in Debarment Order. The names of partners should be clearly specified in the "Debarment Order".
- v) Debarment in any manner does not impact any other contractual or other legal rights of the procuring entities.
- vi) The period of debarment shall start from the date of issue of debarment order.
- vii) The Order of debarment will indicate the reason(s) in brief that lead to debarment of the firm.
- viii) Ordinarily, the period of debarment should not be less than six months.
- ix) In case of shortage of suppliers in a particular group, such debarments may also hurt the interest of procuring entities. In such cases, endeavour should be to pragmatically analyze the circumstances, try to reform the supplier and may get a written commitment from the supplier that its performance will improve.
- x) All Ports must align their existing Debarment Guidelines in conformity with these Guidelines. Further, bidding documents must also be suitably amended, if required.

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## Chapter-17

# DEPOSIT WORKS UNDERTAKEN BY PORT

Deposit works include those works which an outside organisation, Govt. or private, has entrusted to the KPL for execution, by depositing the cost of the works on the basis of estimates prepared by the concerned department of KPL and approved by the competent authority and may consist of new construction and/or repairs to renovation/remodeling of any existing structures/assets.

### 17.1 Procedure followed for undertaking Deposit works

The following procedure shall be adopted in the execution of such deposit works: -

- i) The Party on whose behalf the Deposit works are being taken up shall be required to deposit the advance amount for preparation of Estimated cost of Works either by preparing a Feasibility Report or a Detailed Project Report.
- ii) Work out Estimated cost of Works to be taken up as Deposit work.
- iii) The project estimate with the lay-out plan for the deposit work shall be got approved by the requisitioning party prior to the work being taken on hand.
- iv) It shall be ensured that the estimated value of the proposed work plus applicable departmental charges (currently at 17.5%) is deposited by the party with the Port, before entering into any financial commitment to the third party by way of awarding the contract.
- v) Proper MOU is entered into with the Requisitioning party/organisation.
- vi) The organisation on whose behalf the deposit works is undertaken shall be informed that the Port or Port officials do not bind themselves to complete the work within the estimate cost and/or stipulated time frame though every effort will be made to comply with both the targets.
- vii) Port shall follow all the guidelines of Tendering, Evaluation, Award of Contract, Execution and Completion of Works as per the Guidelines in Section-1 and Section-II of Works Manual.

- viii) Any deviation involving excess expenditure over the accepted estimated values shall be brought to the notice of the requisitioning party and their acceptance should be obtained.
- ix) The expenditure shall be monitored by the Finance Department so that the deposited amount at any stage of execution does not fall-short of the actual value of executed.

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## Chapter-18

### DEPOSIT WORKS AWARDED BY PORT

#### 18.1 Deposit works awarded by Port

The Works which cannot be executed by the Port either due to non-availability of required man power or due to lack of expertise in the specific field, Ports generally assign the works to an Organisation who have the relevant expertise or appoint a Project Management Consultant (Public Works Organisation or a PSU. In such cases, Ports shall enter into an MoU with the Project Management Consultant (PMC). Port shall spell out the requirement clearly indicating the availability of land, broad specifications, functional and space requirements and special requirements if any.

#### 18.2 Steps involved in awarding Deposit works

- a) Defining the Scope of work to be rendered.
- b) Assigning work by the Port to the PMC or PWO clearly defining the scope of work, detailed designs, Preliminary estimate with detailed specifications and Bill of quantities, preparation of tenders, tender evaluation, award of contract, execution of contract, Progress review and appraisal/reporting etc.
- c) Entering into an MOU with all the details stated above. [A sample MoU is given in the Appendix (WM-S-I/10) to Section-I].
- d) Approval of Preliminary Project Report & Detailed Project Report
- e) According Administrative Approval
- f) According Technical Sanction
- g) Release of Required funds or payment of bills
- h) Execution of Work
- i) Cost and Time control by PMC
- j) Dispute Resolution by PMC or assistance by PMC
- k) Completion and handing over of Completed works and facilities to Port
- l) Handing over of In-built drawings and project records to Port
- m) Certification by the Port that PMC has completed the Works
- n) Relieving of PMC or PWO by making final due payments

## **WORKS MANUAL**

### **ANNEXURES to SECTION-2**



Annexure-WM-S2/01

**1 FACE SHEET OF MEASUREMENT BOOK**

MB Number \_\_\_\_\_

Issued to \_\_\_\_\_

Date of Issue \_\_\_\_\_

Section in Charge

-----

Annexure-WM-S2/02**2 INSTRUCTIONS FOR RECORDING THE MEASUREMENTS IN MB**

1. The measurements should be recorded by the authorized representative / person of the Execution Department.
2. Each set of measurements should commence with entries starting
  - (a) Full name of work as given in the Contract
  - (b) Location of work,
  - (c) Name of the Contractor,
  - (d) The No. And date of Agreement
  - (e) The date of commencement of the work and
  - (f) The date of measurement
3. Quantities entered in the measurement book should be clearly traceable into the R.A Bill/Final bill
4. Entries should be recorded continuously and no blank page left or torn out. Any page or space left blank inadvertently should be cancelled by diagonal lines, the cancellation being attested and dated.
5. After the payments are made entries in the Measurement Book should be crossed off by red lines drawn diagonally across the pages.
6. Copy of Measurement books should accompany the bills and accounts to which they refer.
7. All measurement of work or materials should be recorded in the measurement book at once, on the spot. The entries in the Measurement book should be made in ink. No erasures of any kind should be permitted; mistakes should be corrected by drawing the pen through the incorrect entry and inserting the correct figures between the lines.
8. When check measurements of a work are taken it is not necessary that this should be recorded in a separate measurement, but the checking officer should clearly indicate in the original measurement book the check made by him by entering the words "checked and found correct" above his dated signature against the items checked. Should there be any serious difference found, a note an explanation should be made in the measurement book.
9. In case of measurements for materials, these must be recorded from the result of actual measurement or count.



10. When any entry in a measurement book is cancelled the reasons for doing so should be recorded in the book over the dated signature of the officer canceling the measurement, whose designation should be clearly given.
11. Each set of measurement should be signed and dated by the officer by whom it is actually made and the signature of the contractor obtained in token of acceptance by him of the recorded measurement.
12. All corrections made in entries should be initialed by the person responsible.
13. No page should be removed from a measurement book and all blank pages should be checked before the measurement recorded.

-----

Annexure-WM-S2/03**3 ABSTRACT MB**

Name of the work \_\_\_\_\_

Name of Contractor \_\_\_\_\_

Bill No \_\_\_\_\_

S.No	Item No	Particulars	Page No. of M.B from where quantity brought forward	Qty	Rate	Amount	Remarks
<b>Total</b>							

Accepted

Signature of Contractor

Date \_\_\_\_\_

Signature of Engineer-in-Charge

Annexure-WM-S2/04**4 MEASUREMENT BOOK**

Date	Particulars	Measurements				Contents/Area
		No	L	B	D	

Signature of Contractor

Signature of Engineer-in-charge

Annexure-WM-S2/05**5 LOOSE-LEAF MEASUREMENT SHEET FACE SHEET OF MEASUREMENT BOOK**

M.B No. /Sheet No. \_\_\_\_\_

Name of Work \_\_\_\_\_

Contract No. \_\_\_\_\_

Cost Centre No. \_\_\_\_\_

Name of Contractor \_\_\_\_\_

R.A.Bill No. \_\_\_\_\_

Date of Measurement \_\_\_\_\_

S.No	Item No	Description as per schedule	Sheet No. of M.B from where quantity brought forward	L	B	D/H	Contents/Area

Signature of Contractor

Engineer in Charge

-----

-----

Date-----

Date-----

Annexure-WM-S2/06**6 RECORDING THE MEASUREMENTS IN LOOSE LEAF MB SHEETS**

1. The MB sheets should be used only for approved measurement after verification by Engineer.
2. Item number means serial number of the item in the schedule of rates attached with the Contract.
3. The measurement of work relating to each cost centre may be recorded separately.
4. Each page of the MB sheet shall be signed by the contractor's and Engineer-in-Charge and at the end of the measurement the following certificate shall be recorded: "Certified that the quantity of work as shown in the detailed measurement sheets from \_\_\_\_\_ to \_\_\_\_\_ pages have actually been done as per specification of the check measurements of the work.
5. The MB Sheets shall be used serially.
6. Each Site-in-charge of works should give his requirement of MB Sheets duly countersigned by the Engineer-in-charge of the work, at least one week in advance to the issuing authority, who will issue a set of loose leaf MB Sheets against acknowledgement and after making entries in the Register of issue of MB Sheets.
7. The measurement sheets will be typed in three copies (White, pink, and blue) and their distribution will be as follows:  
  
Owner (KPL) -2 Copies-One for Finance Dept.& one for Execution Dept. Contractor -1 copy
8. Initially, the first 2 copies will be sent to Finance Department with the bills. The copy of the Execution Department of KPL will be returned after the bills have been passed.
9. The printed loose leaf MB Sheets will be serially numbered. The numbering will be done as follows:  
  
Book No.& Sheet No. E.g. 1/1, 1/2, 2/1, 2/2 ....., 100 sheets will be put in one pad and machine numbered serially. After the 100 sheets of each book have been used, these will be again bound together & kept as permanent record. All the MBS relating to one work will also be bound together and kept for permanent record.

-----

Annexure-WM-S2/07**7 REGISTER OF ISSUE OF MEASUREMENT BOOKS**

S.No	MB No.	Sheet No From- To	Issued to Engineer	Name of work	Date of issue	Reference in request	Acknowled- gement	Initials

Annexure-WM-S2/08**8 MEASUREMENT BOOK-CUM-BILL FORM**

1. Name of the work .....
2. Name of the Contractor .....
3. A.A Number & date .....
4. Tech.Sanction No.& date .....
5. Date of Commencement .....
6. Date of Completion .....
7. Total value of work done .....
8. Recoveries .....
9. Amount payable .....

**A. Measurements & Gross Amount**

S.No	Item No	Description of the item	Measurements				Qty	Rate	Amount (Rs)
			No	L	B	D			
Gross Amount (A)									

1. Certified that the work has been completed as per specifications.

Contractor .....

Engineer-in-Charge

Passed for payment of Rs. .... (Rupees ..... only)

Signature of Engineer-in-charge

Annexure-WM-S2/09**9 FIRST AND FINAL BILL FORM****PART -I**

1. Name of the Department \_\_\_\_\_
2. Name of the Work \_\_\_\_\_
3. Name of the Contractor \_\_\_\_\_
4. Date of Commencement \_\_\_\_\_
5. Date of Completion \_\_\_\_\_

Certified that the work has been completed as per specifications and drawings. No further dues other than those mentioned in the Recovery statement are recoverable from the contractor. The Contractor has cleared the site and returned the gate passes.

Engineer-in- Charge

**PART II**

Item No	Description of the items	Qty	Unit	Rate	Amount (Rs)

**PART III Memorandum of Payments**

Total value of work done as per Part-II	
Deductions:	
Net Amount payable	

M.B. No.\_\_\_\_ Page No.\_\_\_\_ Recorded by \_\_\_\_ Date of Measurement\_\_\_\_ Checked by \_\_\_\_  
 Accepted in Full and Final Settlement \_\_\_\_ (Signature of Contractor)\_\_\_\_ Engineer-in-charge\_\_\_\_  
 Passed for payment of Rs.\_\_\_\_ (Rupees\_\_\_\_ only)

Signature of Finance Official \_\_\_\_\_



Annexure-WM-S2/10**10 RA AND FINAL BILL FORM**

1. Name of the Department \_\_\_\_\_
2. Name of the work \_\_\_\_\_
3. Name of the Contractor \_\_\_\_\_
4. Date of Commencement \_\_\_\_\_
5. Date of Completion \_\_\_\_\_
6. S.No. of this Bill \_\_\_\_\_
7. No. and date of last Bill \_\_\_\_\_

**PART-I****A. Total value of work done**

S.No	Particulars		Amount (Rs)
1	Total Value of Work done till this bill		
2	Less Value of Work as per Previous bill		
3	Net Value of Work done since Previous bill	(a)	

**B. Advance for work done but not measured**

Total as per previous bill	Since previous bill	Total upto date	Qty executed	Item of work	Rate	Unit	Total as per previous bill	Since previous bill	Total upto date

**C. Secured Advance**

Quantity (Qty outstanding as per previous bill)	Description of the materials	unit	Reduced Rate proposed	Total advance	Less Amount paid as per Previous bill	Net Amount Since Previous Bill

Certified that the quantity of materials against which the advance is paid have been actually brought to site and no advance has been previously paid on the security of the same materials.

Contractor \_\_\_\_\_

Engineer –In-charge \_\_\_\_\_

**PART-II**

**MEMORANDUM OF PAYMENTS**

S.No	Description	Amount (Rs)
1	Total Value of work done as per (A) of Part-I	
2	Total Advance payment as per (B) of Part-I	
3	Total secured advance as per (C) of Part-I	
4	Total of 1 to 3	
5	Less amount paid as per previous Bill	
6	Balance Payment	
7	Deductions	
8	Total Recoveries	
9	Net Amount payable	

Passed for payment of Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ only)

Signature of Finance officer

Annexure-WM-S2/11**11 LUMPSUM RA BILL**

1. Name of the Department \_\_\_\_\_
2. Name of the Work \_\_\_\_\_
3. Name of the Contractor \_\_\_\_\_
4. Sl.No. of the Bill \_\_\_\_\_
5. Sl.No. Of the last Bill \_\_\_\_\_
6. Date of Commencement \_\_\_\_\_

Part-I

S.No	Particulars	Amount (Rs)
1	Approximate value of work done up to date excluding the measured-up additions & alternation	
2	Value of measured up additions and alterations as per MB No.....	
3	Amount of Secured Advance as per part II	
4	Total (1 to 3)	
5	Less Payment made as per previous bill no.....	
6	Balance payment to be made	
7	Deductions : 1 2 3	
8	Total recoveries / Deductions	
9	Net Amount payable	

**PART II -SECURED ADVANCE**

Qty at site as per previous bill	Qty utilised since Previous bill	Qty. at site including qty. brought since previous bill	Rate applied in the previous bill	Rate recommended now in this bill	Unit	Amount (Rs)
Total Amount outstanding as per this bill						
Deduct amount outstanding as per previous bill						
Net amount outstanding as per this bill						

Certified that the quantity of materials against which the advance is paid has been actually brought to the site and the contractor has not received any advance previously on the security of the same materials and all materials are required by the Contractor for use in the work.  
 Certified that the materials are of imperishable nature.

- 1 Certified that the value of work done upto date excluding the measured-up additions and alternations is not less than Rs. \_\_\_\_\_
- 2 The details measurement for additions and alternations were made by \_\_\_\_\_ on \_\_\_\_\_ and are recorded at page \_\_\_\_\_ of MB No. \_\_\_\_\_ and checked by \_\_\_\_\_

Accepted

Contractor

Engineer-in-Charge

Passed for payment of Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ only)

Signature of Finance officer

Annexure-WM-S2/12**12 LUMP SUM FINAL BILL**

1. Name of the Department \_\_\_\_\_
2. Name of the work \_\_\_\_\_
3. Name of the Contractor \_\_\_\_\_
4. S.No. of this Bill \_\_\_\_\_
5. No.& date of last bill \_\_\_\_\_
6. Date of commencement \_\_\_\_\_
7. Date of completion \_\_\_\_\_

**PART-I**

Description of work	Quantity	Rate	Unit	Amount
Total				
Additions & Alterations				
Total value of work done				

- 1 Certified that work has been completed as per specifications and drawings
- 2 There is nothing due from the Contractor
- 3 The contractor has cleared the site.
- 4 The detailed measurement of additions and alterations were recorded by Shri \_\_\_\_\_ on \_\_\_\_\_ at page No. \_\_\_\_ of MB No. \_\_\_\_ and checked by \_\_\_\_\_

Accepted in full and final settlement

Contractor

Engineer-in-Charge

**PART-II****MEMORANDUM OF PAYMENTS**

S.No	Particulars	Amount (Rs)
1	Total value of work done as per Part-I	
2	Less payment made as per previous bill	
3	Balance payment to be made	
4	Recoveries	
5	Net amount payable	

Passed for payment of Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ only)

Signature of Finance officer

Annexure-WM-S2/13

**13 PRE-REQUISITE SLIP for RA BILL/ FINAL BILL**

1. Name of the Department \_\_\_\_\_
2. Name of the work \_\_\_\_\_
3. Name of the Contractor \_\_\_\_\_
4. Administrative Approval (AA) No. \_\_\_\_\_ Date \_\_\_\_\_
5. Technical Sanction (TS) No. \_\_\_\_\_ Date \_\_\_\_\_
6. Percentage checked by Manager / Sr. Manager \_\_\_\_\_
7. Percentage checked by Chief Manager / DGM \_\_\_\_\_
8. Date of commencement \_\_\_\_\_
9. Date of completion \_\_\_\_\_
10. Extension granted, if any (Approval copy) \_\_\_\_\_
11. M.B.No. \_\_\_\_\_

Engineer-in-Charge

Annexure-WM-S2/14

**14 NO CLAIM CERTIFICATE**

(On Contractor Letterhead)

To,  
(Contract Executing Officer)

Kamarajar Port Limited  
\_\_\_\_\_

Sub: No Claim Certificate

Ref : Contract Agreement no. -----dated -----for Construction of -----

Dear sir

With reference to the above referred contract, we have received the sum of Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ only) in full and final settlement of all the payments due to us for the supply / Construction of ----- under the above-mentioned contract agreement, between us and KPL. We hereby unconditionally, and without any reservation whatsoever, certify that with this payment, we shall have no claim whatsoever, of any description, on any account, against the KPL, against aforesaid contract agreement executed by us. We further declare unequivocally, that with this payment, we have received all the amounts payable to us, and have no dispute of any description whatsoever, regarding the amounts worked out as payable to us and received by us, and that we shall continue to be bound by the terms and conditions of the contract agreement, as regards performance of the contract.

Yours faithfully,

Signatures of contractor or  
Officer authorized to sign the contract documents  
on behalf of the contractor  
(Company seal)



# **KAMARAJAR PORT LIMITED**

## **WORKS MANUAL**

### **SECTION-3**

#### **Appendices**

(This Section deals with the Important Appendices pertaining to Works)

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## Appendix-WM-S3/A1

**GFR-2017 - RULES**

(updated upto 10-7-2024)

**Chapter – 5: WORKS**

The Following GFR provisions are applicable to Works

**Rule 130 Original works** means all new constructions, site preparation, additions and alterations to existing works, special repairs to newly purchased or previously abandoned buildings or structures, including re-modelling or replacement. Minor works mean works which add capital value to existing assets but do not create new assets. Repair works means works undertaken to maintain building and fixtures. Works will also include services or goods incidental or consequential to the original or repair works.

**Rule 131 Administrative control of works includes:** (i) assumption of full responsibility for construction, maintenance and upkeep; (ii) proper utilization of buildings and allied works; (iii) provision of funds for execution of these functions.

**Rule 132 Powers to sanction works.** The powers delegated to various subordinate authorities to accord administrative approval, sanction expenditure and reappropriate funds for works are regulated by the Delegation of Financial Powers Rules, and other orders contained in the respective departmental regulations.

**Rule 133 (1)** A Ministry or Department at its discretion may directly execute repair works estimated to cost up to Rupees Thirty Lakhs (Amended to Rs. 60 lakhs vide OM dt 10-7-24) after following due procedure indicated in Rule 139, 159 & 160.

**Rule 133 (2)** A Ministry or Department may, at its discretion, assign repair works estimated to cost above Rupees thirty Lakhs (Amended to Rs. 60 lakhs vide OM dt 10-7-24) and original/minor works of any value to any Public Works Organisation (PWO) such as Central Public Works Department (CPWD), State Public Works Department, others Central Government Organisations authorized to carry out civil or electrical works such as Military Engineering Service (MES), Border Roads Organisation (BRO), etc. or Ministry/Department's construction wings of Ministries of Railways, Defence, Environment & Forests, Information & Broadcasting and Departments of Posts, and Space etc. Rule

**Rule 133 (3)** As an alternative to 133(2), a Ministry or Department may award repair works estimated to cost above Rupees thirty Lakhs (Amended to Rs. 60 lakhs vide OM dt 10-7-24) and original works of any value to:

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

For the award of work under this sub-rule, the Ministry/ Department shall ensure competition among such PSUs/ Organisations. This competition shall be essentially on the lump sum service charges to be claimed for execution of work.

In exceptional cases, for award of work under (i) and (ii) above, on nomination basis, the conditions contained in Rule 194 would apply. The work under these circumstances shall also be awarded only on the basis of lump sum service charge [Note: Scientific Ministries/ Departments can assign repair Works estimated to cost up to Rs 5 crore on nomination basis even in normal cases. These instructions will be applicable up to three years from the date of issue of this OM. Thereafter, review will be made by Department of Expenditure to decide on further extension of these powers.]

**Rule 134** Work under the administrative control of the Public Works Departments. Works not specifically allotted to any Ministry or Department shall be included in the Grants for Civil Works to be administered by Central Public Works Department. No such work may be financed partly from funds provided in departmental budget and partly from the budget for Civil works as mentioned above. Rule

**Rule 135 (1) General Rules.** Subject to the observance of these general rules, (including Rule 144) the initiation, authorization and execution of works allotted to a particular Ministry or Department shall be regulated by detailed rules and orders contained in the respective departmental regulations and by other special orders applicable to them. Rule

**Rule 135 (2)** Ministry or Department shall put in place, as far as possible, empowered project teams for all large value projects and these teams should be tasked only with project execution and not given other operational duties.

**Rule 136 (1)** No works shall be commenced or liability incurred in connection with it until:

- i) administrative approval has been obtained from the appropriate authority in each case.

- ii) sanction to incur expenditure has been obtained from the competent authority.
- iii) a properly detailed design has been sanctioned; while designing the projects etc, principles of Life Cycle cost may also be considered.
- iv) estimates containing the detailed specifications and quantities of various items have been prepared on the basis of the Schedule of Rates maintained by CPWD or other Public Works Organisations and sanctioned.
- v) funds to cover the charge during the year have been provided by competent authority.
- vi) tenders invited and processed in accordance with rules.
- vii) a Work Order issued.

**Rule 136 (2)** On grounds of urgency or otherwise, if it becomes necessary to carry out a work or incur a liability under circumstances when the provisions set out under sub rule 1 of rule 136 cannot be complied with, the concerned executive officer may do so on his own judgement and responsibility. Simultaneously, he should initiate action to obtain approval from the competent authority and also to intimate the concerned Accounts Officer. Rule

**Rule 136 (3)** Any development of a project considered necessary while a work is in progress, which is not contingent on the execution of work as first sanctioned, shall have to be covered by a supplementary estimate.

**Rule 137** For purpose of approval and sanctions, a group of works which forms one project, shall be considered as one work. The necessity for obtaining approval or sanction of higher authority to a project which consists of such a group of work should not be avoided because of the fact that the cost of each particular work in the project is within the powers of such approval or sanction of a lower authority. This provision, however, shall not apply in case of works of similar nature which are independent of each other.

**Rule 138** Any anticipated or actual savings from a sanctioned estimate for a definite project, shall not, without special authority, be applied to carry out additional work not contemplated in the original project.

**Rule 139 Procedure for Execution of Works:** The broad procedure to be followed by a Ministry or Department for execution of works under its own arrangements shall be as under: -

- i) the detailed procedure relating to expenditure on such works shall be prescribed by departmental regulations framed in consultation with the Accounts Officer, generally based on the procedures and the principles underlying the financial and accounting

- rules prescribed for similar works carried out by the Central Public Works Department (CPWD);
- ii) preparation of detailed design and estimates shall precede any sanction for works;
  - iii) no work shall be undertaken before Issue of Administrative Approval and Expenditure Sanction by the competent Authority on the basis of estimates framed;
  - iv) Open tenders will be called for works costing Rs. Five lakh to Rs. Thirty lakh (Amended to Rs. 10 lakhs to Rs. 60 lakhs vide OM dt 10-7-24);
  - v) limited tenders will be called for works costing less than Rupees five lakhs (Amended to Rs. 10 lakhs vide OM dt 10-7-24);
  - vi) execution of Contract Agreement or Award of work should be done before commencement of the work;
  - vii) final payment for work shall be made only on the Personal Certificate of the Officer-in-charge of execution of the work in the format given below: "I Executing Officer of (Name of the Work), am personally satisfied that the work has been executed as per the specifications laid down in the Contract Agreement and the workmanship is up to the standards followed in the industry."

**Rule 140** For original/minor works and repair works entrusted as per Rule 133(2) or Rule 133(3), the Administrative Approval and Expenditure Sanction shall be accorded and funds allotted by the concerned authority under these rules and in accordance with the Delegation of Financial Power Rules. The Public Works 32 Organisation or the Public Sector Undertaking or any Organisation allotted work shall then execute the work entrusted to it in accordance with the rules and procedures prescribed in that organisation. A Memorandum of Understanding (MoU) may be drawn with Public Works Organisation or the Public Sector Undertaking for proper execution of work.

**Rule 141 Review of Projects:** After a project costing Rs. 100 crore or above is approved, the Administrative Ministry or Department will set up a Review Committee consisting of a representative each from the Administrative Ministry, Finance (Internal Finance Wing) and the Executing Agency to review the progress of the work. The Review Committee shall have the powers to accept variation within 10% of the approved estimates. For works costing less than Rs. 100 crore, it will be at the discretion of the Administrative Ministry/Department to set up a suitable mechanism for review and acceptance of variation within 10% of the approved estimates

## Chapter – 6: PROCUREMENT OF GOODS & SERVICES

### PROCUREMENT OF GOODS

**Rule 142** This chapter contains the general rules applicable to all Ministries or Departments, regarding procurement of goods required for use in the public service. Detailed instructions relating to procurement of goods may be issued by the procuring departments broadly in conformity with the general rules contained in this Chapter.

**Rule 143 Definition of Goods:** The term 'goods' used in this chapter includes all articles, material, commodity, livestock, furniture, fixtures, raw material, spares, instruments, machinery, equipment, industrial plant, vehicles, aircraft, ships, medicines, railway rolling stock, assemblies, subassemblies, accessories, a group of machineries comprising of an integrated production process or such other category of goods or intangible products like software, technology transfer, licenses, patents or other intellectual properties purchased or otherwise acquired for the use of Government but excludes books, publications, periodicals, etc. for a library. The term 'goods' also includes works and services which are incidental or consequential to the supply of such goods, such as, transportation, insurance, installation, commissioning, training and maintenance.

**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 :-

- (i) The description of the subject matter of procurement to the extent practicable should – a). be objective, functional, generic and measurable and specify technical, qualitative and performance characteristics. b). not indicate a requirement for a particular trade mark, trade name or brand.
- (ii) 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 nonessential features, which may result in unwarranted expenditure.
- (iii) 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.
- (iv) Care should also be taken to avoid purchasing quantities in excess of requirement to avoid inventory carrying costs.
- (v) offers should be invited following a fair, transparent and reasonable procedure.
- (vi) the procuring authority should be satisfied that the selected offer adequately meets the requirement in all respects.
- (vii) the procuring authority should satisfy itself that the price of the selected offer is reasonable and consistent with the quality required.

- (viii) 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.
- (ix) 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.
- (x) All Ministries/Departments shall prepare Annual Procurement Plan before the commencement of the year and the same should also be placed on their website.
- (xi) [Notwithstanding anything contained in these Rules, Department of Expenditure may, by order in writing, impose restrictions, including prior registration and/ or screening, on procurement from bidders from, or bidders having commercial arrangements with an entity from, a country or countries, or a class of countries, on grounds of defence of India, or matters directly or indirectly related thereto including national security; no procurement shall be made in violation of such restrictions].

**Rule 145 Authorities competent to purchase goods:** An authority which is competent to incur expenditure may sanction the purchase of goods required for use in public service in accordance with provisions in the Delegation of Financial Powers Rules, following the general procedure contained in the following rules.

**Rule 146** Procurement of goods required on mobilisation Procurement of goods required on mobilisation and/ or during the continuance of Military operations shall be regulated by special rules and orders issued by the Government on this behalf from time to time.

**Rule 147 Powers for procurement of goods:** [The Ministries or Departments have been delegated full powers to make their own arrangements for procurement of goods and services, that are not available on GeM. Common use Goods and Services available on GeM are required to be procured mandatorily through GeM as per Rule 149.]

**Rule 148** Deleted

**Rule 149. Government e-Market place (GeM).** Government of India has established the Government e-Marketplace (GeM) for common use Goods and Services. GeM SPV will ensure adequate publicity including periodic advertisement of the items to be procured through GeM for the prospective suppliers. The Procurement of Goods and Services by Ministries or Departments will be mandatory for Goods or Services available on GeM. The credentials of suppliers on GeM shall be certified by GeM SPV. The procuring authorities will certify the reasonability of rates. The GeM portal shall be utilized by the Government buyers for direct online purchases as under:

- (i) Up to [Rs.50,000/-] 12 through any of the available suppliers on the GeM, meeting the requisite quality, specification and delivery period. Note: In case of automobiles, procurement under this sub-rule is permitted without any ceiling limit.
- (ii) Above [Rs.50,000/- and up to Rs.10,00,000/-] 13 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 even for procurements less than [Rs 10,00,000] 14 .
- (iii) Above [Rs.10,00,000/-] 15 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 Ministries/Departments shall work out their procurement requirements of Goods and Services on either "OPEX" model or "CAPEX" model as per their requirement/ suitability at the time of preparation of Budget Estimates (BE) and shall project their Annual Procurement Plan of goods and services on GeM portal within 30 days of Budget approval.
- (vii) The Government Buyers may ascertain the reasonableness of prices before placement of order using the Business Analytics (BA) tools available on GeM including the Last Purchase Price on GeM, Department's own Last Purchase Price etc.
- (viii) A demand for goods shall not be divided into small quantities to make piecemeal purchases to avoid procurement through L-1 Buying / bidding / reverse auction on GeM or the necessity of obtaining the sanction of higher authorities required with reference to the estimated value of the total demand.

#### **Rule 150 Registration of Suppliers**

- i) [For goods and services not available on GeM, Head of Ministry/ Department may also register suppliers of goods and services which are specifically required by that Department or Office, periodically. Registration of the supplier should be done following a fair, transparent and reasonable procedure and after giving due publicity. Such registered suppliers should be boarded on GeM as and when the item or service gets listed on GeM.]
- ii) Credentials, manufacturing capability, quality control systems, past performance, after-sales service, financial background etc. of the supplier(s) should be carefully verified before registration.
- iii) The supplier(s) will be registered for a fixed period (between 1 to 3 years) depending on the nature of the goods. At the end of this period, the registered supplier(s) willing to continue with registration are to apply afresh for renewal of registration. New supplier(s) may also be considered for registration at anytime, provided they fulfill all the required conditions.
- iv) Performance and conduct of every registered supplier is to be watched by the concerned Ministry or Department. The registered supplier(s) are liable to be removed from the list of approved suppliers if they fail to abide by the terms and conditions of the registration or fail to supply the goods on time or supply substandard goods or make any false declaration to any Government agency or for any ground which, in the opinion of the Government, is not in public interest.
- v) [The list of registered suppliers for the subject matter of procurement be exhibited on websites of the Procuring Entity/ their e-Procurement portals.]

#### **Rule 151 Debarment from bidding.**

- i) A bidder shall be debarred if he has been convicted of an offence— ( a ) under the Prevention of Corruption Act, 1988; or ( b ) the Indian Penal Code or any other law for the time being in force, for causing any loss of life or property or causing a threat to public health as part of execution of a public procurement contract.
- ii) A bidder debarred under sub-section (i) or any successor of the bidder shall not be eligible to participate in a procurement process of any procuring entity for a period not exceeding three years commencing from the date of debarment. Department of Expenditure (DoE) will maintain such list which will also be displayed on the Central Public Procurement Portal.

- iii) A procuring entity may debar a bidder or any of its successors, from participating in any procurement process undertaken by it, for a period not exceeding two years, if it determines that the bidder has breached the code of integrity. The Ministry/Department will maintain such list which will also be displayed on their website.
- iv) The bidder shall not be debarred unless such bidder has been given a reasonable opportunity to represent against such debarment.

**Rule 152** Enlistment of Indian Agents: [Ministries / Departments if they so require, may enlist Indian agents, who desire to quote directly on behalf of their foreign principals.]

**Rule 153 Reserved Items and other Purchase/ Price Preference Policy.**

- i) [The Central Government, through administrative instructions, has reserved all items of hand spun and handwoven textiles (khadi goods) for exclusive purchase from Khadi Village Industries commission (KVIC). Of all items of textiles required by Central Government departments, it shall be mandatory to make procurement of at least 20% from amongst items of handloom origin, for exclusive purchase from KVIC and/ or Handloom Clusters such as CoOperative Societies, Self Help Group (SHG) Federations, Joint Liability Group (JLG), Producer Companies (PC), Corporations etc. including Weavers having Pehchan Cards.]
- ii) Ministry of Micro, Small and Medium Enterprises (MSME) have notified procurement policy under section 11 of the Micro, Small and Medium Enterprises Development Ad, 2006.
- iii) The Central Government may, by notification, provide for mandatory procurement of any goods or services from any category of bidders, or provide for preference to bidders on the grounds of promotion of locally manufactured goods or locally provided services.

**Rule 154 Purchase of goods without quotation:** Purchase of goods upto the value of [Rs. 50,000 (Rupees fifty thousand) only] on each occasion may be made without inviting quotations or bids on the basis of a certificate to be recorded by the competent authority in the following format. "I, am personally satisfied that these goods purchased are of the requisite quality and specification and have been purchased from a reliable supplier at a reasonable price."

**Rule 155 Purchase of goods by Purchase Committee.** [In case a certain item is not available on the GeM portal.] Purchase of goods costing above [Rs.50,000 (Rupees Fifty thousand only) and upto Rs.5,00,000/- (Rupees Five lakh only)]<sup>23</sup> on each occasion may be made on the recommendations of a duly constituted Local Purchase Committee consisting of three members of an appropriate level as decided by the Head of the Department. The committee will survey the market to ascertain the reasonableness of rate, quality and specifications and identify the appropriate supplier. Before recommending placement of the purchase order, the members of the committee will jointly record a certificate as under: "Certified that we, members of the purchase committee are jointly and individually satisfied that the goods recommended for purchase are of the requisite specification and quality, priced at the prevailing market rate and the supplier recommended is reliable and competent to supply the goods in question, and it is not debarred by Department of Expenditure<sup>24</sup> or Ministry/ Department concerned."

**Rule 156** Deleted. 25

**Rule 157** A demand for goods should not be divided into small quantities to make piecemeal purchases to avoid the necessity of obtaining the sanction of higher authority required with reference to the estimated value of the total demand

**Rule 158** Purchase of goods by obtaining bids. Except in cases covered under Rule 154 and 155, Ministries or Departments shall procure goods under the powers referred to in Rule 140 above by following the standard method of obtaining bids in: (i) Advertised Tender Enquiry (ii) Limited Tender Enquiry (iii) Two-Stage Bidding (iv) Single Tender Enquiry (v) Electronic Reverse Auctions

**Rule 159 E-Publishing**

- (i) It is mandatory for all Ministries/ Departments of the Central Government, their attached and Subordinate Offices and Autonomous /Statutory Bodies to publish their tender enquiries, corrigenda thereon and details of bid awards on the Central Public Procurement Portal (CPPP).
- (ii) Individual cases where confidentiality is required, for reasons of national security, would be exempted from the mandatory e-publishing requirement. The decision to exempt any case on the said grounds should be approved by the Secretary of the Ministry/ Department with the concurrence of the concerned Financial Advisor. In the case of Autonomous Bodies and Statutory Bodies' approval of the Head of the Body with the concurrence of the Head of the Finance should be obtained in each such case. Statistical information on the number of cases in which exemption was granted and the value of the concerned contract should be intimated on a Quarterly basis to the Ministry of Finance, Department of Expenditure.
- (iii) The above instructions apply to all Tender Enquiries, Requests for Proposals, Requests for Expressions of Interest, Notice for pre-Qualification/ Registration or any other notice inviting bids or proposals in any form whether they are advertised, issued to limited number of parties or to a single party.
- (iv) Deleted.26
- (v) These instructions would not apply to procurements made in terms of provisions of Rules 154 (Purchase of goods without quotations) or 155 (Purchase of goods by purchase committee) of General Financial Rules.

**Rule 160 E -Procurement**

- (i) It is mandatory for Ministries/ Departments to receive all bids through e-procurement portals in respect of all procurements.
- (ii) Ministries/ Departments which do not have a large volume of procurement or carry out procurements required only for day-to-day running of offices and also have not initiated eprocurement through any other solution provided so far, may use e-procurement solution developed by NIC. Other Ministries/ Departments may either use e-procurement solution developed by NIC or engage any other service provider following due process.
- (iii) Deleted.27
- (iv) In individual case where national security and strategic considerations demands confidentiality, Ministries/ Departments may exempt such cases from e-procurement after seeking approval of concerned Secretary and with concurrence of Financial Advisers.
- (v) In case of tenders floated by Indian Missions Abroad, Competent Authority to decide the tender, may exempt such case from e-procurement.

**Rule 161 Advertised Tender Enquiry**

- (i) Subject to exceptions incorporated under Rule 154, 155, 162 and 166, invitation to tenders by advertisement should be used for procurement of goods of estimated value of [Rs. 50 lakhs (Rupees Fifty Lakh)]<sup>28</sup> and above. Advertisement in such cases should be given on GeM as well as on GeM-Central Public Procurement Portal (CPPP). An organisation having its own website should also publish all its advertised tender enquiries on the website.
- (ii) The organisation should also post the complete bidding document in its website and on CPPP to enable prospective bidders to make use of the document by downloading from the web site.
- (iii) The advertisements for invitation of tenders should give the complete web address from where the bidding documents can be downloaded.
- (iv) [Global Tender Enquiry (GTE): (a) Where the Ministry or Department feels that the goods of the required quality, specifications etc., may not be available in the country and it is necessary to also look for suitable competitive offers from abroad, the Ministry or Department may send copies of the tender notice to the Indian Embassies abroad as well as to the Foreign Embassies in India. The selection of embassies will depend on the possibility of availability of the required goods in such countries. In such cases procurement as per Rule 160 may not be insisted. (b) No Global Tender Enquiry (GTE), however shall be invited for tenders up to Rs 200 crore or such limit as may be prescribed by the Department of Expenditure from time to time. Provided that for tenders below such limit, in exceptional cases, where the Ministry or Department feels that there are special reasons for GTE, it may record its detailed justification and seek prior approval for relaxation to the above rule from the Competent Authority specified by the Department of Expenditure.]
- (v) In order to promote wider participation and ease of bidding, no cost of tender document may be charged for the tender documents downloaded by the bidders.
- (vi) Ordinarily, the minimum time to be allowed for submission of bids should be three weeks from the date of publication of the tender notice or availability of the bidding document for sale, whichever is later. Where the Department also contemplates obtaining bids from abroad, the minimum period should be kept as four weeks for both domestic and foreign bidders.

#### **Rule 162 Limited Tender Enquiry**

- (i) This method may be adopted when estimated value of the goods to be procured is up to [Rupees Fifty Lakhs]<sup>30</sup>. Copies of the bidding document should be sent directly by speed post/registered post/courier/ email to firms which are borne on the list of registered suppliers for the goods in question as referred under Rule 150 above. The number of supplier firms in Limited Tender Enquiry should be more than three. Efforts should be made to identify a higher number of approved suppliers to obtain more responsive bids on competitive basis. Further, an organisation should publish its limited tender enquiries on [GeM as well as on GeM- Central Public Procurement Portal (CPPP). An organisation having its own website should also publish all its advertised tender enquiries on the website]
- (ii) The unsolicited bids should not be accepted. However, Ministries/ Departments should evolve a system by which interested firms can register and bid in next round of tendering.
- (iii) Purchase through Limited Tender Enquiry may be adopted even where the estimated value of the procurement is more than [Rupees Fifty Lakhs]<sup>32</sup>, in the following circumstances. (a) The competent authority in the Ministry or Department certifies that the demand is urgent and any additional expenditure involved by not procuring through advertised tender enquiry is justified in view of urgency. The Ministry or Department should also put on record the nature of the urgency and reasons why the procurement could not be anticipated. (b) There are sufficient reasons, to be recorded in writing by the competent authority, indicating that it will not be in public interest to procure the goods through advertised tender enquiry. (c) The sources of supply are definitely known and possibility of fresh source(s) beyond those being tapped is remote.

- (iv) Sufficient time should be allowed for submission of bids in Limited Tender Enquiry cases.

**Rule 163 Two bid system (simultaneous receipt of separate technical and financial bids):**

For purchasing high value plant, machinery etc. of a complex and technical nature, bids may be obtained in two parts asunder:

- (i) Technical bid consisting of all technical details along with commercial terms and conditions; and
- (ii) Financial bid indicating itemwise price for the items mentioned in the technical bid.

The technical bid and the financial bid should be sealed by the bidder in separate covers duly superscribed and both these sealed covers are to be put in a bigger cover which should also be sealed and duly superscribed. The technical bids are to be opened by the purchasing Ministry or Department at the first instance and evaluated by a competent committee or authority. At the second stage financial bids of only these technically acceptable offers should be opened after intimating them the date and time of opening the financial bid for further evaluation and ranking before awarding the contract.

**Rule 164 Two-Stage Bidding: (Obtain bids in two stages with receipt of financial bids after receipt and evaluation of technical bids)**

- (i) Ministry/Department may procure the subject matter of procurement by the method of two-stage bidding, if (a) it is not feasible to formulate detailed specifications or identify specific characteristics for the subject matter of procurement, without receiving inputs regarding its technical aspects from bidders; or (b) the character of the subject matter of procurement is subject to rapid technological advances or market fluctuations or both; or (c) Ministry/Department seeks to enter into a contract for the purpose of research, experiment, study or development, except where the contract includes the production of items in quantities sufficient to establish their commercial viability or to recover research and development costs; or (d) The bidder is expected to carry out a detailed survey or investigation and undertake a comprehensive assessment of risks, costs and obligations associated with the particular procurement.
- (ii) The procedure for two stage bidding shall include the following, namely: (a) in the first stage of the bidding process, the Ministry/Department shall invite bids through advertised tender containing the technical aspects and contractual terms and conditions of the proposed procurement without a bid price; (b) all first stage bids, which are otherwise eligible, shall be evaluated through an appropriate committee constituted by the Ministry/ Department; (c) the committee may hold discussions with the bidders and if any such discussion is held, equal opportunity shall be given to all bidders to participate in the discussions; (d) in revising the relevant terms and conditions of the procurement, the procuring entity shall not modify the fundamental nature of the procurement itself, but may add, amend or omit any specification of the subject matter of procurement or criterion for evaluation; (e) in the second stage of the bidding process, the procuring entity shall invite bids from all those bidders whose bids at the first stage were not rejected, to present final bid with bid prices in response to a revised set of terms and conditions of the procurement; (f) any bidder, invited to bid but not in a position to supply the subject matter of procurement due to modification in the specifications or terms and conditions, may withdraw from the bidding proceedings without forfeiting any bid security that he may have been required to provide or being penalised in any way, by declaring his intention to withdraw from the procurement proceedings with adequate justification.

**Rule 165 Late Bids.** In the case of advertised tender enquiry or limited tender enquiry, late bids (i.e. bids received after the specified date and time for receipt of bids) should not be considered.

**Rule 166 Single Tender Enquiry.** Procurement from a single source may be resorted to in the following circumstances:

- (i) It is in the knowledge of the user department that only a particular firm is the manufacturer of the required goods.
- (ii) In a case of emergency, the required goods are necessarily to be purchased from a particular source and the reason for such decision is to be recorded and approval of competent authority obtained.
- (iii) For standardization of machinery or spare parts to be compatible to the existing sets of equipment (on the advice of a competent technical expert and approved by the competent authority), the required item is to be purchased only from a selected firm

**Note:** Proprietary Article Certificate in the following form is to be provided by the Ministry/ Department before procuring the goods from a single source under the provision of sub-Rule 166 (i) and 166 (iii) as applicable. (i) The indented goods are manufactured by M/s ..... (ii) No other make or model is acceptable for the following reasons: ..... (iii) Concurrence of finance wing to the proposal vide: ..... (iv) Approval of the competent authority vide: (Signature with date and designation of the indenting officer)

**Rule 167 Electronic Reverse Auction**

- (i) Electronic Reverse Auction means an online real-time purchasing technique utilised by the procuring entity to select the successful bid, which involves presentation by bidders of successively more favourable bids during a scheduled period of time and automatic evaluation of bids;
- (ii) A procuring entity may choose to procure a subject matter of procurement by the electronic reverse auction method, if: (a) It is feasible for the procuring entity to formulate a detailed description of the subject matter of the procurement; (b) There is a competitive market of bidders anticipated to be qualified to participate in the electronic reverse auction, so that effective competition is ensured; (c) The criteria to be used by the procuring entity in determining the successful bid are quantifiable and can be expressed in monetary terms; and
- (iii) The procedure for electronic reverse auction shall include the following, namely: (a) The procuring entity shall solicit bids through an invitation to the electronic reverse auction to be published or communicated in accordance with the provisions similar to eprocurement; and (b) The invitation shall, in addition to the information as specified in eprocurement, include details relating to access to and registration for the auction, opening and closing of the auction and Norms for conduct of the auction.

**Rule 168 Contents of Bidding Document:** All the terms, conditions, stipulations and information to be incorporated in the bidding document are to be shown in the appropriate chapters as below: Chapter-1: Instructions to Bidders. Chapter-2: Conditions of Contract. Chapter-3: Schedule of Requirements. Chapter-4: Specifications and allied Technical Details. Chapter-5: Price Schedule (to be utilised by the bidders for quoting their prices). Chapter-6: Contract Form. Chapter-7: Other Standard Forms, if any, to be utilised by the purchaser and the bidders.

**Rule 169 Maintenance Contract.** Depending on the cost and nature of the goods to be purchased, it may also be necessary to enter into maintenance contract(s) of suitable period either with the supplier of the goods or with any other competent firm, not necessarily the supplier of the subject goods. Such maintenance contracts are especially needed for sophisticated and costly equipment and machinery. It may,

however, be kept in mind that the equipment or machinery is maintained free of charge by the supplier during its warranty period or such other extended periods as the contract terms may provide and the paid maintenance should commence only thereafter.

#### **Rule 170 Bid Security**

(i) To safeguard against a bidder's withdrawing or altering its bid during the bid validity period in the case of advertised or limited tender enquiry, Bid Security (also known as Earnest Money) is to be obtained from the bidders except Micro and Small Enterprises (MSEs) as defined in MSE Procurement Policy issued by Department of Micro, Small and Medium Enterprises (MSME) or are registered with the Central Purchase Organisation or the concerned Ministry or Department [or Startups as recognized by Department for Promotion of Industry and Internal Trade (DPIIT)]<sup>33</sup>. The bidders should be asked to furnish bid security along with their bids. Amount of bid security should ordinarily range between two percent to five percent of the estimated value of the goods to be procured. The amount of bid security should be determined accordingly by the Ministry or Department and indicated in the bidding documents. The bid security may be accepted in the form of [Insurance Surety Bonds]<sup>34</sup> Account Payee Demand Draft, Fixed Deposit Receipt, Banker's Cheque or Bank Guarantee [including eBank Guarantee]<sup>35</sup> from any of the Commercial Banks or payment online in an acceptable form, safeguarding the purchaser's interest in all respects. The bid security is normally to remain valid for a period of forty-five days beyond the final bid validity period.

(ii) Bid securities of the unsuccessful bidders should be returned to them at the earliest after expiry of the final bid validity and latest on or before the 30th day after the award of the contract. [However, in case of two packet or two stage bidding, Bid securities of unsuccessful bidders during first stage i.e. technical evaluation etc. should be returned within 30 days of declaration of result of first stage i.e. technical evaluation etc.]

(iii) In place of a Bid security, the Ministries/ Departments may require Bidders to sign a Bid securing declaration accepting that if they withdraw or modify their Bids during the period of validity, or if they are awarded the contract and they fail to sign the contract, or to submit a performance security before the deadline defined in the request for bids document, they will be suspended for the period of time specified in the request for bids document from being eligible to submit Bids for contracts with the entity that invited the Bids.

#### **Rule 171 Performance Security**

(i) To ensure due performance of the contract, Performance Security 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, [in respect of procurement only of Goods/ Consultancy Services/ Non-Consultancy Services, should be for an amount of three to five per cent (3-5%) of the value of the contract as specified in the bid documents. Performance Security may be furnished in the form of [Insurance Surety Bond] Account Payee Demand Draft, Fixed Deposit Receipt from a Commercial bank, Bank Guarantee [including e-Bank Guarantee] from a Commercial bank or online payment in an acceptable form safeguarding the purchaser's interest in all respects.

(ii) Performance Security should remain valid for a period of sixty days beyond the date of completion of all contractual obligations of the supplier including warranty obligations.

- (iii) Bid security should be refunded to the successful bidder on receipt of Performance Security.

**Rule 172 (1) Advance payment to supplier**

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

- (i) Advance payment demanded by firms holding maintenance contracts for servicing of Airconditioners, computers, other costly equipment, etc.
- (ii) Advance payment demanded by firms against fabrication contracts, turn-key contracts etc. Such advance payments should not exceed the following limits: (a) Thirty per cent. of the contract value to private firms; (b) Forty per cent. of the contract value to a State or Central Government agency or a Public Sector Undertaking; or (c) in case of maintenance contract, the amount should not exceed the amount payable for six months under the contract. Ministries or Departments of the Central Government may relax, in consultation with their Financial Advisers concerned, the ceilings (including percentage laid down for advance payment for private firms) mentioned above. While making any advance payment as above, adequate safeguards in the form of bank guarantee etc. should be obtained from the firm.

**Rule 172 (2) Part payment to suppliers:** Depending on the terms of delivery incorporated in a contract, part payment to the supplier may be released after it dispatches the goods from its premises in terms of the contract.

**Rule 173 Transparency, competition, fairness and elimination of arbitrariness in the procurement process:** All government purchases should be made in a transparent, competitive and fair manner, to secure best value for money. This will also enable the prospective bidders to formulate and send their competitive bids with confidence. Some of the measures for ensuring the above are as follows:-

- (i) the text of the bidding document should be self-contained and comprehensive without any ambiguities. All essential information, which a bidder needs for sending responsive bid, should be clearly spelt out in the bidding document in simple language. 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. The bidding document should contain, inter alia. (a) Description and Specifications of goods including the nature, quantity, time and place or places of delivery. (b) the criteria for eligibility and qualifications to be met by the bidders such as minimum level of experience, past performance, technical capability, manufacturing facilities and financial position etc. or limitation for participation of the bidders, if any. (c) eligibility criteria for goods indicating any legal restrictions or conditions about the origin of goods etc. which may be required to be met by the successful bidder. (d) the procedure as well as date, time and place for sending the bids. (e) date, time and place of opening of the bid. (f) Criteria for evaluation of bids (g) special terms affecting performance, if any. (h) Essential terms of the procurement contract. (i) Bidding Documents should include a clause that "if a firm quotes NIL charges/ consideration, the bid shall be treated as unresponsive and will not be considered".
- (ii) Any other information which the procuring entity considers necessary for the bidders to submit their bids.



- (iii) Modification to bidding document: (a) In case any modification is made to the bidding document or any clarification is issued which materially affects the terms contained in the bidding document, the procuring entity shall publish or communicate such modification or clarification in the same manner as the publication or communication of the initial bidding document was made. (b) In case a clarification or modification is issued to the bidding document, the procuring entity shall, before the last date for submission of bids, extend such time limit, if, in its opinion more time is required by bidders to take into account the clarification or modification, as the case may be, while submitting their bids. (c) Any bidder who has submitted his bid in response to the original invitation shall have the opportunity to modify or re - submit it, as the case may be, or withdraw such bid in case the modification to bidding document materially affect the essential terms of the procurement, within the period initially allotted or such extended time as may be allowed for submission of bids, after the modifications are made to the bidding document by the procuring entity: Provided that the bid last submitted or the bid as modified by the bidder shall be considered for evaluation
- (iv) Suitable provision should be kept in the bidding document to enable a bidder to question the bidding conditions, bidding process and/ or rejection of its bid. The reasons for rejecting a tender or non - issuing a tender document to a prospective bidder must be disclosed where enquiries are made by the bidder.
- (v) Suitable provision for settlement of disputes, if any, emanating from the resultant contract, should be kept in the bidding document.
- (vi) The bidding document should indicate clearly that the resultant contract will be interpreted under Indian Laws.
- (vii) The bidders should be given reasonable time to prepare and send their bids.
- (viii) The bids should be opened in public and authorised representatives of the bidders should be permitted to attend the bid opening.
- (ix) The specifications of the required goods should be clearly stated without any ambiguity so that the prospective bidders can send meaningful bids. In order to attract sufficient number of bidders, the specification should be broad based to the extent feasible
- (x) Pre-bid conference: In case of turn- key contract(s) or contract(s) of special nature for procurement of sophisticated and costly equipment or wherever felt necessary, a suitable provision is to be kept in the bidding documents for one or more rounds of pre-bid conference for clarifying issues and clearing doubts, if any, about the specifications and other allied technical details of the plant, equipment and machinery etc. projected in the bidding document. The date, time and place of pre-bid conference should be indicated in the bidding document. This date should be sufficiently ahead of bid opening date. The records of such conference shall be intimated to all bidders and, shall also be exhibited on the website(s) where tender was published.
- (xi) Criteria for determining responsiveness are to be taken into account for evaluating the bids such as: ( a ) time of delivery. ( b ) Performance/ efficiency/ environmental characteristics. ( c ) the terms of payment and of guarantees in respect of the subject matter of procurement ( d ) price. ( e ) cost of operating, maintaining and repairing etc.
- (xii) Bids received should be evaluated in terms of the conditions already incorporated in the bidding documents; No new condition which was not incorporated in the bidding documents should be brought in for evaluation of the bids. Determination of a bid's responsiveness should be based on the contents of the bid itself without recourse to extrinsic evidence.
- (xiii) Bidders should not be permitted to alter or modify their bids after expiry of the deadline for receipt of bids.
- (xiv) Negotiation with bidders after bid opening must be severely discouraged. However, in exceptional circumstances where price negotiation against an ad-hoc procurement is necessary due to some

unavoidable circumstances, the same may be resorted to only with the lowest evaluated responsive bidder.

- (xv) Deleted.
- (xvi) Contract should ordinarily be awarded to the lowest evaluated bidder whose bid has been found to be responsive and who is eligible and qualified to perform the contract satisfactorily as per the terms and conditions incorporated in the corresponding bidding document. However, where the lowest acceptable bidder against ad-hoc requirement is not in a position to supply the full quantity required, the remaining quantity, as far as possible, be ordered from the next higher responsive bidder at the rates offered by the lowest responsive bidder.
- (xvii) Procurement of Energy Efficient Electrical Appliances: Ministries/ Departments while procuring electrical appliances notified by Department of Expenditure shall ensure that they carry the notified threshold or higher Star Rating of Bureau of Energy Efficiency (BEE).
- (xviii) The name of the successful bidder awarded the contract should be mentioned in the CPPP, Ministries or Departments website and their notice board or bulletin.
- (xix) Rejection of all Bids is justified when a. effective competition is lacking. b. all Bids and Proposals are not substantially responsive to the requirements of the Procurement Documents. c. the Bids'/Proposals' prices are substantially higher than the updated cost estimate or available budget; or d. none of the technical Proposals meets the minimum technical qualifying score.
- (xx) Lack of competition in rule 173(xix) shall not be determined solely on the basis of the number of Bidders. Even when only one Bid is submitted, the process may be considered valid provided following conditions are satisfied: a) the procurement was satisfactorily advertised and sufficient time was given for submission of bids b) the qualification criteria were not unduly restrictive; and c) prices are reasonable in comparison to market values
- (xxi) When a limited or open tender results in only one effective offer, it shall be treated as a single tender contract.
- (xxii) In case a purchase Committee is constituted to purchase or recommend the procurement, no member of the purchase Committee should be reporting directly to any other member of such Committee in case estimated value of procurement exceeds [Rs. 50 lakhs].

**Rule 174 Efficiency, Economy and Accountability in Public Procurement System:** Public procurement procedure should ensure efficiency, economy and accountability in the system. To achieve the same, the following key areas should be addressed:

- (i) To reduce delay, appropriate time frame for each stage of procurement should be prescribed by the Ministry or Department.
- (ii) To minimise the time needed for decision making and placement of contract, every Ministry/Department, with the approval of the competent authority, may delegate, wherever necessary, appropriate purchasing powers to the lower functionaries.
- (iii) The Ministries or Departments should ensure placement of contract within the original validity of the bids. Extension of bid validity must be discouraged and resorted to only in exceptional circumstances.
- (iv) Deleted.

#### **Rule 175 (1) Code of Integrity**

No official of a procuring entity or a bidder shall act in contravention of the codes which includes

- (i) prohibition of (a) making offer, solicitation or acceptance of bribe, reward or gift or any material benefit, either directly or indirectly, in exchange for an unfair advantage in the procurement process

or to otherwise influence the procurement process. (b) any omission, or misrepresentation that may mislead or attempt to mislead so that financial or other benefit may be obtained or an obligation avoided. (c) any collusion, bid rigging or anticompetitive behavior that may impair the transparency, fairness and the progress of the procurement process. (d) improper use of information provided by the procuring entity to the bidder with an intent to gain unfair advantage in the procurement process or for personal gain. (e) any financial or business transactions between the bidder and any official of the procuring entity related to tender or execution process of contract, which can affect the decision of the procuring entity directly or indirectly. (f) any coercion or any threat to impair or harm, directly or indirectly, any party or its property to influence the procurement process. (g) obstruction of any investigation or auditing of a procurement process. (h) making false declaration or providing false information for participation in a tender process or to secure a contract;

- (ii) disclosure of conflict of interest.
- (iii) Disclosure by the bidder of any previous transgressions made in respect of the provisions of subclause (i) with any entity in any country during the last three years or of being debarred by any other procuring entity.

**Rule 175 (2)** The procuring entity, after giving a reasonable opportunity of being heard, comes to the conclusion that a bidder or prospective bidder, as the case may be, has contravened the code of integrity, may take appropriate measures.

**Rule 176 Buy-Back Offer:** When it is decided with the approval of the competent authority to replace an existing old item(s) with a new and better version, the department may trade the existing old item while purchasing the new one. For this purpose, a suitable clause is to be incorporated in the bidding document so that the prospective and interested bidders formulate their bids accordingly. Depending on the value and condition of the old item to be traded, the time as well as the mode of handing over the old item to the successful bidder should be decided and relevant details in this regard suitably incorporated in the bidding document. Further, suitable provision should also be kept in the bidding document to enable the purchaser either to trade or not to trade the item while purchasing the new one.

## PROCUREMENT OF SERVICES

### A. CONSULTING SERVICES

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

**Rule 178** The Ministries or Departments may hire external professionals, consultancy firms or consultants (referred to as consultant hereinafter) for a specific job, which is well defined in terms of content and time frame for its completion.

**Rule 179** This chapter contains the fundamental principles applicable to all Ministries or Departments regarding engagement of consultant(s). Detailed instructions to this effect may be issued by the concerned Ministries or Departments. However, the Ministries or Departments shall ensure that they do not contravene the basic rules contained in this chapter.

**Rule 180** Identification of Services required to be performed by Consultants: Engagement of consultants may be resorted to in situations requiring high quality services for which the concerned Ministry/ Department does not have requisite expertise. Approval of the competent authority should be obtained before engaging consultant(s).

**Rule 181** Preparation of scope of the required Consultant(s): The Ministries/ Departments should prepare in simple and concise language the requirement, objectives and the scope of the assignment. The eligibility and prequalification criteria to be met by the consultants should also be clearly identified at this stage.

**Rule 182** **Estimating reasonable expenditure:** Ministry or Department proposing to engage consultant(s) should estimate reasonable expenditure for the same by ascertaining the prevalent market conditions and consulting other organisations engaged in similar activities.

**Rule 183** **Identification of likely sources.**

- (i) Where the estimated cost of the consulting service is up to [Rupees Fifty lakhs], preparation of a long list of potential consultants may be done on the basis of formal or informal enquiries from other Ministries or Departments or Organisations involved in similar activities, Chambers of Commerce & Industry, Association of consultancy firms etc.
- (ii) Where the estimated cost of the consulting services is above [Rupees Fifty lakhs], in addition to (i) above, an enquiry for seeking 'Expression of Interest' from consultants should be published on [GeM as well as on GeM- Central Public Procurement Portal (CPPP)]<sup>45</sup>. An organisation having its own website should also publish all its advertised tender enquiries on the website. Enquiry for seeking Expression of Interest should include in brief, the broad scope of work or service, inputs to be provided by the Ministry or Department, eligibility and the prequalification criteria to be met by the consultant(s) and consultant's past experience in similar work or service. The consultants may also be asked to send their comments on the objectives and scope of the work or service projected in the enquiry. Adequate time should be allowed for getting responses from interested consultants.

**Rule 184 Short listing of consultants.** On the basis of responses received from the interested parties as per Rule 183 above, consultants meeting the requirements should be short listed for further consideration. The number of short listed consultants should not be less than three.

**Rule 185 Preparation of Terms of Reference (TOR).** The TOR should include

- (i) Precise statement of objectives.
- (ii) Outline of the tasks to be carried out.
- (iii) Schedule for completion of tasks.

- (iv) The support or inputs to be provided by the Ministry or Department to facilitate the consultancy.
- (v) The final outputs that will be required of the Consultant.

**Rule 186 Preparation and Issue of Request for Proposal (RFP).** RFP is the document to be used by the Ministry/Department for obtaining offers from the consultants for the required service. The RFP should be issued to the shortlisted consultants to seek their technical and financial proposals. The RFP should contain:

- (i) A letter of Invitation
- (ii) Information to Consultants regarding the procedure for submission of proposal.
- (iii) Terms of Reference (TOR).
- (iv) Eligibility and pre-qualification criteria in case the same has not been ascertained through Enquiry for Expression of Interest.
- (v) List of key position whose CV and experience would be evaluated.
- (vi) Bid evaluation criteria and selection procedure.
- (vii) Standard formats for technical and financial proposal.
- (viii) Proposed contract terms.
- (ix) Procedure proposed to be followed for midterm review of the progress of the work and review of the final draft report.

**Rule 187 Receipt and opening of proposals:** Proposals should ordinarily be asked for from consultants in 'Two bid' system with technical and financial bids sealed separately. The bidder should put these two sealed envelopes in a bigger envelop duly sealed and submit the same to the Ministry or Department by the specified date and time at the specified place. On receipt, the technical proposals should be opened first by the Ministry or Department at the specified date, time and place.

**Rule 188 Late Bids:** Late bids i.e. bids received after the specified date and time of receipt should not be considered.

**Rule 189 Evaluation of Technical Bids:** Technical bids should be analysed and evaluated by a Consultancy Evaluation Committee (CEC) constituted by the Ministry or Department. The CEC shall record in detail the reasons for acceptance or rejection of the technical proposals analysed and evaluated by it.

**Rule 190 Evaluation of Financial Bids of the technically qualified bidders:** The Ministry or Department shall open the financial bids of only those bidders who have been declared technically qualified by the Consultancy Evaluation Committee as per Rule 189 above for further analysis or evaluation and ranking and selecting the successful bidder for placement of the consultancy contract.

**Rule 191 Methods of Selection/ Evaluation of Consultancy Proposals:** The basis of selection of the consultant shall follow any of the methods given in Rule 192 to 194 as appropriate for the circumstances in each case.

**Rule 192 Quality and Cost Based Selection (QCBS):** QCBS may be used for Procurement of consultancy services, where quality of consultancy is of prime concern.

- (i) In QCBS initially the quality of technical proposals is scored as per criteria announced in the RFP. Only those responsive proposals that have achieved at least minimum specified qualifying score in quality of technical proposal are considered further.

- (ii) After opening and scoring, the Financial proposals of responsive technically qualified bidders, a final combined score is arrived at by giving predefined relative weight ages for the score of quality of the technical proposal and the score of financial proposal.
- (iii) The RFP shall specify the minimum qualifying score for the quality of technical proposal and also the relative weight ages to be given to the quality and cost (determined for each case depending on the relative importance of quality vis-a-vis cost aspects in the assignment, e.g. 70:30, 60:40, 50:50 etc). The proposal with the highest weighted combined score (quality and cost) shall be selected.
- (iv) The weight age of the technical parameters i.e. non- financial parameters in no case should exceed 80 percent.

**Rule 193 Least Cost System (LCS).** LCS is appropriate for assignments of a standard or routine nature (such as audits and engineering design of non-complex works) where well-established methodologies, practices and standards exist. Unlike QCBS, there is no weight age for Technical score in the final evaluation and the responsive technically qualified proposal with the lowest evaluated cost shall be selected.

**Rule 194 Single Source Selection/Consultancy by nomination.** The selection by direct negotiation/nomination, on the lines of Single Tender mode of procurement of goods, is considered appropriate only under exceptional circumstance such as:

- (i) tasks that represent a natural continuation of previous work carried out by the firm;
- (ii) in case of an emergency situation, situations arising after natural disasters, situations where timely completion of the assignment is of utmost importance; and
- (iii) situations where execution of the assignment may involve use of proprietary techniques or only one consultant has requisite expertise.
- (iv) Under some special circumstances, it may become necessary to select a particular consultant where adequate justification is available for such single-source selection in the context of the overall interest of the Ministry or Department. Full justification for single source selection should be recorded in the file and approval of the competent authority obtained before resorting to such singlesource selection.
- (v) It shall ensure fairness and equity, and shall have a procedure in place to ensure that the prices are reasonable and consistent with market rates for tasks of a similar nature; and the required consultancy services are not split into smaller sized procurement.

**Rule 195 Monitoring the Contract.** The Ministry/Department should be involved throughout in the conduct of consultancy, preferably by taking a task force approach and continuously monitoring the performance of the consultant(s) so that the output of the consultancy is in line with the Ministry/Department's objectives.

**Rule 196 Public competition for Design of symbols/logos.** Design competition should be conducted in a transparent, fair and objective manner. Wide publicity should be given to the competition so as to ensure that the information is accessible to all possible participants in the competition. This should include publication on the website of Ministry/Department concerned, as also the Central Public Procurement

Portal. If the selection has been by a jury of experts nominated for the purpose, the composition of the jury may also be notified.

## B. OUTSOURCING OF SERVICES

**Rule 197 "Non-Consulting Service"** means any subject matter of procurement (which as distinguished from 'Consultancy Services'), involve physical, measurable deliverables/ outcomes, where performance standards can be clearly identified and consistently applied, other than goods or works, except those incidental or consequential to the service, and includes maintenance, hiring of vehicle, outsourcing of building facilities management, security, photocopier service, janitor, office errand services, drilling, aerial photography, satellite imagery, mapping etc.

**Rule 198 Procurement of Non-consulting Services:** A Ministry or Department may procure certain non-consulting services in the interest of economy and efficiency and it may prescribe detailed instructions and procedures for this purpose without, however, contravening the following basic guidelines.

**Rule 199 Identification of likely contractors:** The Ministry or Department should prepare a list of likely and potential contractors on the basis of formal or informal enquiries from other Ministries or Departments and Organisations involved in similar activities, scrutiny of 'Yellow pages', and trade journals, if available, web site etc.

**Rule 200 Preparation of Tender enquiry:** Ministry or Department should prepare a tender enquiry containing, inter alia :

- (i) The details of the work or service to be performed by the contractor;
- (ii) The facilities and the inputs which will be provided to the contractor by the Ministry or Department;
- (iii) Eligibility and qualification criteria to be met by the contractor for performing the required work/service; and
- (iv) The statutory and contractual obligations to be complied with by the contractor.

### Rule 201 Invitation of Bids.

- (i) For estimated value of the non-consulting service up to [Rupees Fifty lakhs]46 or less: The Ministry or Department should scrutinise the preliminary list of likely contractors as identified as per Rule 199 above, decide the prima facie Eligible and capable contractors and issue limited tender enquiry to them asking for their offers by a specified date and time etc. as per standard practice. The number of the contractors so identified for issuing limited tender enquiry should be more than three.
- (ii) For estimated value of the non-consulting service above [Rs. 50 lakhs]: The Ministry or Department should issue advertisement in such cases on [GeM as well as on GeMCPMP]. An organisation having its own website should also publish all its advertised tender enquiries on the website. The advertisements for invitation of tenders should give the complete web address from where the bidding documents can be downloaded.

**Rule 202 Late Bids:** Late bids i.e. bids received after the specified date and time of receipt should not be considered.

**Rule 203 Evaluation of Bids Received:** The Ministry or Department should evaluate, segregate, rank the responsive bids and select the successful bidder for placement of the contract.

**Rule 204 Procurement of Non-consulting services by nomination:** Should it become necessary, in an exceptional situation to procure a non-consulting service from a specifically chosen contractor, the Competent Authority in the Ministry or Department may do so in consultation with the Financial Adviser. In such cases the detailed justification, the circumstances leading to such procurement by choice and the special interest or purpose it shall serve, shall form an integral part of the proposal.

**Rule 205 Monitoring the Contract:** The Ministry or Department should be involved throughout in the conduct of the contract and continuously monitor the performance of the contractor.

**Rule 206** Any circumstances which are not covered in Rule 198 to Rule 205 for procurement of non-consulting services, the procuring entity may refer Rule 142 to Rule 176 pertaining to procurement of goods and not to the procurement of consulting services.

## **Chapter – 8: CONTRACT MANAGEMENT**

**Rule 224 (1)** All contracts shall be made by an authority empowered to do so by or under the orders of the President in terms of Article 299 (1) of the Constitution of India.

**Rule 224 (2)** All 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 follow the designation appended below the signature of the officer authorized in this behalf.

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

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

**Rule 225 General principles for contract:** The following general principles should be observed while entering into contracts:—

- (i) The terms of contract must be precise, definite and without any ambiguities. The terms should not involve an uncertain or indefinite liability, except in the case of a cost-plus contract or where there is a price variation clause in the contract.
- (ii) Standard forms of contracts should be adopted wherever possible, with such modifications as are considered necessary in respect of individual contracts. The modifications should be carried out only after obtaining financial and legal advice.



- (iii) In cases where standard forms of contracts are not used, legal and financial advice should be taken in drafting the clauses in the contract.
- (iv) (a) A Ministry or Department may, at its discretion, make purchases of value up to Rupees two lakh and fifty thousand by issuing purchase orders containing basic terms and conditions:
  - (b) In respect of Works Contracts, or Contracts for purchases valued between Rupees one lakh to Rupees ten lakhs, where tender documents include the General Conditions of Contract (GCC), Special Conditions of Contract (SCC) and scope of work, the letter of acceptance will result in a binding contract.
  - (c) In respect of contracts for works with estimated value of Rupees ten lakhs or above or for purchase above Rupees ten lakhs, a Contract document should be executed, with all necessary clauses to make it a self-contained contract. If however, these are preceded by Invitation to Tender, accompanied by GCC and SCC, with full details of scope and specifications, a simple one page contract can be entered into by attaching copies of the GCC and SCC, and details of scope and specifications, Offer of the Tenderer and Letter of Acceptance.
  - (d) Contract document should be invariably executed in cases of turnkey works or agreements for maintenance of equipment, provision of services etc.
- (v) No work of any kind should be commenced without proper execution of an agreement as given in the foregoing provisions.
- (vi) Contract document, where necessary, should be executed within 21 days of the issue of letter of acceptance. Non-fulfillment of this condition of executing a contract by the Contractor or Supplier would constitute sufficient ground for annulment of the award and forfeiture of Earnest Money Deposit.
- vii) Cost plus contracts should ordinarily be avoided. Where such contracts become unavoidable, full justification should be recorded before entering into the contract. Where supplies or special work covered by such cost plus contracts have to continue over a long duration, efforts should be made to convert future contracts on a firm price basis after allowing a reasonable period to the suppliers/contractors to stabilize their production/execution methods and processes. Explanation : A cost plus contract means a contract in which the price payable for supplies or services under the contract is determined on the basis of actual cost of production of the supplies or services concerned plus profit either at a fixed rate per unit or at a fixed percentage on the actual cost of production

viii) (a) Price Variation Clause can be provided only in long - term contracts, where the delivery period extends beyond 18 months. In short - term contracts firm and fixed prices should be provided for. Where a price variation clause is provided, the price agreed upon should specify the base level viz, the month and year to which the price is linked, to enable variations being calculated with reference to the price levels prevailing in that month and year.

(b) A formula for calculation of the price variations that have taken place between the Base level and the Scheduled Delivery Date should be included in this clause. The variations are calculated by using indices published by Governments or Chambers of Commerce periodically. An illustrative formula has been appended to these rules at Appendix - 11 for guidance.

(c) The Price variation clause should also specify cut off dates for material and labour, as these inputs taper off well before the scheduled Delivery Dates.

(d) 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. The buyer should ensure a provision in the contract for benefit of any reduction in the price in terms of the price variation clause being passed on to him.

(e) The clause should also stipulate a minimum percentage of variation of the contract price above which price variations will be admissible (e.g. where resultant increase is lower than two per cent, no price adjustment will be made in favour of the supplier).

(f) 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

(g) Where deliveries are accepted beyond the scheduled Delivery Date subject to levy of liquidated damages as provided in the Contract, the liquidated damages (if a percentage of the price) will be applicable on the price as varied by the operation of the Price variation clause.

(h) No price variation will be admissible beyond the original Scheduled Delivery Date for defaults on the part of the supplier.

- (i) 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.
- (j) Where contracts are for supply of equipment, goods etc, imported (subject to customs duty and foreign exchange fluctuations) and/or locally manufactured (subject to excise duty and other duties and taxes), the percentage and element of duties and taxes included in the price should be specifically stated, along with the selling rate of foreign exchange element taken into account in the calculation of the price of the imported item. The mode of calculation of variations in duties and taxes and Foreign exchange rates and the documents to be produced in support of claims for such variations should also be stipulated in the Contract.
- (k) The clause should also contain the mode and terms of payment of the price variation admissible.
- (ix) Contracts should include provision for payment of all applicable taxes by the contractor or supplier.
- (x) "Lump sum" contracts should not be entered into except in cases of absolute necessity. Where lump sum contracts become unavoidable, full justification should be recorded. The contracting authority should ensure that conditions in the lump sum contract adequately safeguard and protect the interests of the Government.
- (xi) Departmental issue of materials should be avoided as far as possible. Where it is decided to supply materials departmentally, a schedule of quantities with the issue rates of such material as are required to execute the contract work should form an essential part of the contract.
- (xii) (a) In contracts where government property is entrusted to a contractor either for use on payment of hire charges or for doing further work on such property, specific provision for safeguarding government property (including insurance cover) and for recovery of hire charges regularly, should be included in the contracts.
- (b) Provision should be made in the contract for periodical physical verification of the number and the physical condition of the items at the contractor's premises. Results of such verification should be recorded and appropriate penal action taken where necessary.

(xiii) [Copies of all contracts and agreements for purchases of the value of Rupees Twenty-five Lakhs and above entered into by civil departments of the Government, should be sent to the Audit Officer and or the Accounts officer as the case may be.]

(xiv) (a) The terms of a contract, including the scope and specification once entered into, should not be materially varied.

(b) Wherever material variation in any of the terms or conditions in a contract becomes unavoidable, the financial and other effects involved should be examined and recorded and specific approval of the authority competent to approve the revised financial and other commitments obtained, before varying the conditions.

(c) All such changes should be in the form of an amendment to the contract duly signed by all parties to the contract.

(xv) Normally no extensions of the scheduled delivery or completion dates should be granted except where events constituting force majeure, as provided in the contract, have occurred or the terms and conditions include such a provision for other reasons. Extensions as provided in the contract may be allowed through formal amendments to the contract duly signed by parties to the contract.

(xvi) All contracts shall contain a provision for recovery of liquidated damages for defaults on the part of the contractor. Only in exceptional circumstances to be justified by procuring entity in writing, an exemption from such provision can be made.

(xvii) A warranty clause should be incorporated in every contract, requiring the supplier to, without charge, repair or rectify defective goods or to replace such goods with similar goods free from defect. Any goods repaired or replaced by the supplier shall be delivered at the buyers' premises without costs to the buyer.

(xviii) All contracts for supply of goods should reserve the right of Government to reject goods which do not conform to the specifications.

(xix) No claim for the payment from contractor shall be entertained after the lapse of three years of arising of the claim.

#### **Rule 226 Management of Contracts:**

(i) Implementation of the contract should be strictly monitored and notices issued promptly whenever a breach of provisions occurs.

(ii) Proper procedure for safe custody and monitoring of Bank Guarantees or other Instruments should be laid down. Monitoring should include a monthly review of all Bank Guarantees or other instruments expiring after three months, along with a review of the progress of supply or work. Extensions of Bank Guarantees or other instruments, where warranted, should be sought immediately.

**Rule 227 Legal Advice:** Wherever disputes arise during implementation of a contract, legal advice should be sought before initiating action to refer the dispute to conciliation and/or arbitration as provided in the contract or to file a suit where the contract does not include an arbitration clause. The draft of the plaint for arbitration should be got vetted by obtaining legal and financial advice. Documents to be filed in the matter of resolution of dispute, if any, should be carefully scrutinized before filing to safeguard government interest.

**Rule 227A Arbitration Awards:**

(i) In cases where the Ministry/ Department has challenged an arbitral award and, as a result, the amount of the arbitral award has not been paid, 75% of the arbitral award (which may include interest up to date of the award) shall be paid by the Ministry/ Department to the contractor/ concessionaire against a Bank Guarantee (BG). The BG shall only be for the said 75% of the arbitral award as above and not for the interest which may become payable to the Ministry/ Department should the subsequent court order require refund of the said amount.

(ii) The payment may be made into a designated Escrow Account with the stipulation that the proceeds will be used first, for payment of lenders' dues, second, for completion of the project and then for completion of other projects of the same Ministry/ Department as mutually agreed/ decided. Any balance remaining in the escrow account subsequent to settlement of lenders' dues and completion of projects of the Ministry/ Department may be allowed to be used by the contractor/ concessionaire with the prior approval of the lead banker and the Ministry/ Department. If otherwise eligible and subject to contractual provisions, retention money and other amounts withheld may also be released against BG.]

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## Appendix-WM-S3/A2

# FUNDAMENTAL PRINCIPLES OF PUBLIC PROCUREMENT

## 1.0 Fundamental Principles of Public Procurement

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

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

### 1.1. 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 enlistment of bidders, bidding, evaluation, grievance redressal, award and management of contracts. It implies that such officers must ensure that there is consistency (absence of subjectivity), predictability (absence of arbitrariness), clarity, openness (absence of secretiveness), equal opportunities (absence of discrimination) in processes. In essence Transparency Principle also enjoins upon the Procuring Authorities *to do only that which it had professed to do as pre-declared in the relevant published documents and not to do anything that had not been so declared*. As part of this principle, all procuring entities should ensure that offers should be invited following a fair and transparent procedure and also ensure publication of all relevant information on the Central Public Procurement Portal (CPPP).

### 1.2. 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). 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 Port 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: 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 Entity should be satisfied that the selected offer adequately meets the requirement in all respects;*
- g) *The Procuring Entity 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 Entity 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) *Ports shall prepare Annual Procurement Plan before the commencement of the year and the same should also be placed on their website"*
- k) *[Notwithstanding anything contained in these Rules, Department of Expenditure may, by order in writing, impose restrictions, including prior registration and/or screening, on procurement from bidders from a country or countries, or a class of countries, on grounds of defence of India, or matters directly or indirectly related thereto including national security; **no procurement shall be made in violation of such restrictions.**] (Inserted vide Department of Expenditure (DoE), Ministry of Finance (MoF) OM No. F.6/18/2019-PPD dated 23.07.2020).*

### 1.3. 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 Micro and Small Enterprises (MSEs), locally manufactured goods or services, to the extent specifically included in the 'Procurement Guidelines'; and**



- b) Reservation of procurement of specified class of goods from or through certain nominated CPSEs or Government Organisations, to the extent specifically included in the 'Procurement Guidelines'.
- c) Support to broader social policy and programme objectives of the government (for example, economic growth, strengthening of local industry - make-in-India, Ease of Doing Business, job and employment creation, and so on, to the extent specifically included in the 'Procurement Guidelines');
- d) Facilitating administrative goals of other departments of government (for example, ensuring tax or environmental compliance by participants, Energy Conservation, accessibility for People with Disabilities etc. to the extent specifically included in the 'Procurement Guidelines').
- e) Procurement policies and procedures must comply with accessibility criteria which may be mandated by the Government from time to time. Keeping this in view, Department of Expenditure amended Rule 144 of GFR, 2017 and introduced a subpoint (xi) imposing restrictions under the rule [as mentioned under (ii) above]. The detailed provisions were notified through Order (Public Procurement No.1) (Inserted vide Department of Expenditure (DoE), Ministry of Finance (MoF) OM No. F.6/18/2019-PPD dated 23.07.2020) which are as follows:

#### **1.3.1. Requirement of registration**

- a) Any bidder from a country which shares a land border with India will be eligible to bid in any procurement whether of goods, services (including consultancy services and non-consultancy services) or works (including turnkey projects) only if the bidder is registered with the Competent Authority.
- b) The Order shall not apply to (i) cases where orders have been placed or contract has been concluded or letter/notice of award/ acceptance (LoA) has been issued on or before the date of the order (23<sup>rd</sup> July 2020);

#### **1.3.2. Transitional cases**

Tenders where no contract has been concluded or no LoA has been issued so far shall be handled in the following manner: -

- a) In tenders which are yet to be opened, or where evaluation of technical bid or the first exclusionary qualifying stage (i.e. the first stage at which the qualifications of tenderers are evaluated and unqualified bidders are excluded) has not been completed: No contracts shall be placed on bidders from such countries. Tenders

received from bidders from such countries shall be dealt with as if they are noncompliant with the tender conditions and the tender shall be processed accordingly.

- b) If the tendering process has crossed the first exclusionary qualificatory stage, if the qualified bidders include bidders from such countries, the entire process shall be scrapped and initiated *de novo*. The *de novo* process shall adhere to the conditions prescribed in the Order.
- c) As far as practicable, and in cases of doubt about whether a bidder falls under paragraph (1) above, a certificate shall be obtained from the bidder whose bid is proposed to be considered or accepted.

### 1.3.3. Incorporation in tender conditions

In tenders to be issued after the date (23<sup>rd</sup> July 2020) of the order, the provisions of paragraph (1) above and of other relevant provisions of the Order shall be incorporated in the tender conditions.

### 1.3.4. Applicability

- a) Apart from Ministries/Departments, attached and subordinate bodies, notwithstanding anything contained in Rule 1 of the GFRs 2017, the Order shall also be applicable to all Autonomous Bodies;
- b) to public sector banks and public sector financial institutions; and
- c) subject to any orders of the Department of Public Enterprises, to all Central Public Sector Enterprises; and
- d) to procurement in Public Private Partnership projects receiving financial support from the Government or public sector enterprises/ undertakings.
- e) Union Territories, National Capital Territory of Delhi and all agencies/ undertakings thereof

### 1.3.5. Definitions

- a) "Bidder" for the purpose of the Order (including the term 'tenderer', 'consultant' 'vendor' or 'service provider' in certain contexts) means any person or firm or company, including any member of a consortium or joint venture (that is an association of several persons, or firms or companies), every artificial juridical

person not falling in any of the descriptions of bidders stated hereinbefore, including any agency, branch or office controlled by such person, participating in a procurement process.

- b) "Tender" for the purpose of the Order will include other forms of procurement, except where the context requires otherwise.
- c) "Bidder from a country which shares a land border with India" for the purpose of the Order means
  - i) An entity incorporated, established or registered in such a country; or
  - ii) A subsidiary of an entity incorporated, established or registered in such a country; or
  - iii) An entity substantially controlled through entities incorporated, established or registered in such a country; or
  - iv) An entity whose beneficial owner is situated in such a country; or
  - v) An Indian (or other) agent of such an entity; or
  - vi) A natural person who is a citizen of such a country; or
  - vii) A consortium or joint venture where any member of the consortium or joint venture falls under any of the above
- d) "Agent" for the purpose of the Order is a person employed to do any act for another, or to represent another in dealings with third persons.

**1.3.6. Beneficial owner for the purposes of point (c) (iv) will be as under:**

- a) In case of a company or Limited Liability Partnership, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person(s), has a controlling ownership interest or who exercises control through other means. Explanation:-
- b) In case of a partnership firm, the beneficial owner is the natural person(s) who, whether acting alone or together, or through one or more juridical person, has ownership of entitlement to more than fifteen percent of capital or profits of the partnership;
- c) In case of an unincorporated association or body of individuals, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has ownership of or entitlement to more than fifteen percent of the property or capital or profits of such association or body of individuals;
- d) Where no natural person is identified under (1.3.6) (a) or (b) or (c) above, the beneficial owner is the relevant natural person who holds the position of senior managing official;

- e) In case of a trust, the identification of beneficial owner(s) shall include identification of the author of the trust, the trustee, the beneficiaries with fifteen percent or more interest in the trust and any other natural person exercising ultimate effective control over the trust through a chain of control or ownership.

#### **1.3.7. Sub-contracting in works contracts**

In works contracts, including turnkey contracts, contractors shall not be allowed to subcontract works to any contractor from a country which shares a land border with India unless such contractor is registered with the Competent Authority. The definition of "contractor from a country which shares a land border with India" shall be as in paragraph (1.3.5) (c) above. This shall not apply to sub-contracts already awarded on or before the date of the Order (i.e. 23<sup>rd</sup> July, 2020).

#### **1.3.8. Certificate regarding compliance**

A certificate shall be taken from bidders in the tender documents regarding their compliance with the Order. If such certificate given by a bidder whose bid is accepted is found to be false, this would be a ground for immediate termination and further legal action in accordance with law.

#### **1.3.9. Validity of registration**

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

#### **1.3.10. Government e-Marketplace**

The Government E-Marketplace shall, as soon as possible, require all vendors/ bidders registered with GeM to give a certificate regarding compliance with the Order, and after the date fixed by it, shall remove non-compliant entities from GeM unless/ until they are registered in accordance with this Order.

#### **1.3.11. Model Clauses/ Certificates**

Model Clauses and Model Certificates which may be inserted in tenders / obtained from Bidders. While adhering to the substance of the Order, procuring entities are free to

appropriately modify the wording of these clauses based on their past experience, local needs etc. without making any reference to Department of Expenditure.

#### **1.3.12. Competent Authority and Procedure for Registration**

- a) The Competent Authority for the purpose of registration under this Order shall be the Registration Committee constituted by the Department for Promotion of Industry and Internal Trade (DPIIT).
- b) The Registration Committee shall have the following members
  - i) An officer, not below the rank of Joint Secretary, designated for this purpose by DPIIT, who shall be the Chairman;
  - ii) Officers (ordinarily not below the rank of Joint Secretary) representing the Ministry of Home Affairs, Ministry of External Affairs, and of those Departments whose sectors are covered by applications under consideration;
  - iii) Any other officer whose presence is deemed necessary by the Chairman of the Committee.
- c) DPIIT has laid down the method of application, format etc. for such bidders as stated in para (1) (a) above. On receipt of an application seeking registration from a bidder from a country covered by para (1) (a) above the Competent Authority shall first seek political and security clearances from the Ministry of External Affairs and Ministry of Home Affairs, as per guidelines issued from time to time. Registration shall not be given unless political and security clearance have both been received.
- d) The Ministry of External Affairs and Ministry of Home Affairs may issue guidelines for internal use regarding the procedure for scrutiny of such applications by them.
- e) The decision of the Competent Authority, to register such bidder may be for all kinds of tenders or for a specified type(s) of goods or services, and may be for a specified or unspecified duration of time, as deemed fit. The decision of the Competent Authority shall be final.
- f) Registration shall not be granted unless the representatives of the Ministries of Home Affairs and External Affairs on the Committee concur.
- g) Registration granted by the Competent Authority of the Government of India shall be valid not only for procurement by Central Government and its agencies/ public enterprises etc. but also for procurement by State Governments and their agencies/ public enterprises etc. No fresh registration at the State level shall be required.

- h) The Competent Authority is empowered to cancel the registration already granted if it determines that there is sufficient cause. Such cancellation by itself, however, will not affect the execution of contracts already awarded. Pending cancellation, it may also suspend the registration of a bidder, and the bidder shall not be eligible to bid in any further tenders during the period of suspension.
- i) For national security reasons, the Competent Authority shall not be required to give reasons for rejection/cancellation of registration of a bidder.
- j) In transitional cases falling under para (2) above, where it is felt that it will not be practicable to exclude bidders from a country which shares a land border with India, a reference seeking permission to consider such bidders shall be made by the procuring entity to the Competent Authority, giving full information and detailed reasons. The Competent Authority shall decide whether such bidders may be considered, and if so shall follow the procedure laid down in the above paras.
- k) Periodic reports on the acceptance/ refusal of registration during the preceding period may be required to be sent to the Cabinet Secretariat. Details will be issued separately in due course by DPIIT.

#### **1.3.13. Special Cases [In reference to para (1) (b) above]**

- a) Bona fide procurements made through GeM without knowing the country of the bidder till the date fixed by GeM for this purpose, shall not be invalidated by the Order.
- b) Bona fide small procurements, made without knowing the country of the bidder, shall not be invalidated by the Order.
- c) In projects which receive international funding with the approval of the Department of Economic Affairs (DEA), Ministry of Finance, the procurement guidelines applicable to the project shall normally be followed, notwithstanding anything contained in the Order and without reference to the Competent Authority. Exceptions to this shall be decided in consultation with DEA.
- d) The Order shall not apply to procurement by Indian missions and by offices of government agencies/ undertakings located outside India.
- e) The Order will not apply to bidders from those countries (even if sharing a land border with India) to which the Government of India has extended lines of credit or in which the Government of India is engaged in development projects. Updated lists

of countries to which lines of credit have been extended or in which development projects are undertaken are given in the website of the Ministry of External Affairs.

- f) A bidder is permitted to procure raw material, components, sub-assemblies etc. from the vendors from countries which shares a land border with India. Such vendors will not be required to be registered with the Competent Authority, as it is not regarded as "sub-contracting". However, in case a bidder has proposed to supply finished goods procured directly/ indirectly from the vendors from the countries sharing land border with India, such vendor will be required to be registered with the Competent Authority.
- g) Procurement of spare parts and other essential service support like Annual Maintenance Contract (AMC)/ Comprehensive Maintenance Contract (CMC), including consumables for closed systems, from Original Equipment Manufacturers (OEMs) or their authorized agents, shall be exempted from the requirement of registration as mandated under Rule 144(xi) of GFR, 2017 and Public Procurement orders issued in this regard.

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

- a) For the purpose of (2)(b) above, "qualified bidders" means only those bidders would otherwise have been qualified for award of the tender after considering all factors including price, if the Order (Public Procurement No.1) dated 23<sup>rd</sup> July 2020 had not been issued.
- b) If bidders from such countries would not have qualified for award for reasons unconnected with the said Orders (for example, because they do not meet tender criteria or their price bid is higher or because of the provisions of purchase preference under any other order or rule or any other reason) then there is no need to scrap the tender/ start the process *de novo*.
- c) The following examples are given to assist in implementation of the Order
  - i. Example 1: Four bids are received in a tender. One of them is from a country which shares a land border with India. The bidder from such country is found to be qualified technically by meeting all prescribed criteria and is also the lowest bidder. In this case, the bidder is qualified for award of the tender, except for the provisions of the Order (Public Procurement No. 1) dated 23<sup>rd</sup> July. In this case, the tender should be scrapped and fresh tender initiated.
  - ii) Example 2: The facts are as in Example 1, but the bidder from such country, though technically qualified is not the lowest because there are other technically qualified bidders whose price is lower. Hence the bidder from such

country would not be qualified for award of the tender irrespective of the Order (Public Procurement No. 1) dated 23rd July 2020. In such a case, there is no need to scrap the tender.

- iii) Example 3: The facts are as in Example 1, but the bidder from a country which shares a land border with India, though technically qualified, is not eligible for award due to the application of price preference as per other orders/ rules. In such a case, there is no need to scrap the tender.
- iv) Example 4: Three bids are received in a tender. One of them is a bidder from a country sharing a land border with India. The bidder from such a country does not meet the technical requirements and hence is not qualified. There is no need to scrap the tender.

#### **1.4. 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.

#### **1.5. 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 Entity, 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 enlistment of bidders, if applicable;
- e) Particulars of issue, receipt, opening of the bids and the participating bidders at each stage;
- f) Requests for clarifications and any reply thereof including the clarifications given during pre-bid conferences;
- g) Bids evaluated, and documents relating to their evaluation;
- h) Contracts and Contract Amendment; and Complaint handling, correspondences with Procuring Entities, consultants, banks.

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## Appendix-WM-S3/A3

# ADVANCED CONCEPTS OF VALUE FOR MONEY

## 1.1 The Concept of Value

Value is a management and economics concept. It represents the extent of satiation of a hierarchy of needs of a person by a product bought for this purpose. This is subjective and difficult to quantify. This is because different persons (or the same persons under different circumstances) would have different hierarchy of needs and would perceive different extents of satiation or value from the same product.

There are three sources of the value of a product.

The first source of value is from the functional usage of the product (known as use value) and the second source comes from the social status associated with the ownership of the product (esteem value). This can be shown as the difference between a luxury branded gold-plated, diamond encrusted pen and a disposable non-descript functional pen, though both fulfil the broadly same function and have the same use value. The luxury branded pen, in addition to the use value, also has additional esteem value.

The third source of value comes from the price that one can get by exchanging or scrapping the product at the end of the useful life of the product. This is called the disposal value. Normally, when people buy a car, they do consider the estimated disposal value of different choices of models. Value is the sum total of all the three values.

## 1.2 Total Cost of Ownership

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

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

### 1.3 Value for Money

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

Where an alternative is chosen that does not have the lowest WOL costs, then the additional ‘value added’ benefit must be proportional and objectively justifiable. Assessment of bids should be conducted only in relation to a published set of evaluation criteria (which should be relevant to the subject of the contract), and any ‘added value’

that justifies a higher price must flow from these defined criteria. In public procurement VfM is often primarily established through the competitive process. A strong competition from a vibrant market will generally deliver a VfM outcome. However, where competition is limited, or even absent, other routes may have to be used to establish VfM. These can include benchmarking, construction of theoretical cost models or 'shadow' bids by the procurement agency. For major contracts, this can require considerable financial expertise and external support. A VfM assessment, based on the published conditions for participation and evaluation, may include consideration of some factors such as:

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

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

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## Appendix-WM-S3/A4

**QCBS FOR WORKS AND NON-CONSULTANCY SERVICES****1.1 Quality-cum-cost based Selection (QCBS) for works and Non-Consultancy Services**

1) Procuring entities are hereby allowed to use QCBS for procurement of works and non-consultancy services in the following cases:

- a) Where the procurement has been declared to be a Quality Oriented Procurement (QOP) by the competent authority or
- b) For procurement of Non-Consultancy Services, where estimated value of procurement (including all taxes and option clause) does not exceed Rs. 10 crore.

*Note: In cases where estimated value was less than Rs. 10 crore but, on tendering, following QCBS process, it is proposed to place contract for more than Rs. 10 crores, the following procedure shall be adopted:*

- i) In case the difference between estimated value (including taxes etc as above) and value of the proposed contract (including taxes etc) is less than 10% of the estimated value, there will be no bar on placement of contract.
  - ii) In all other cases, the procurement process is to be scrapped and restarted either as QOP or on QCBS basis.
- 2) The principles of QCBS shall be as provided in Rule 192(i), (ii) and (iii) of the GFR. However, the maximum weight of the non-financial parameters shall in no case exceed 30%. The Competent Authority for allowing QCBS shall be as follows:-
- a) For declaring a procurement as QOP: Where the procuring entity is a CPSE, the Board of Directors of the CPSE.
  - b) For Non-consulting Services not exceeding Rs. 10 crore in value: Where the procuring entity is a CPSE, the authority or officer two levels above the officer competent to finalize the particular procurement, or the Board of Directors of the CPSE whichever is lower.

3) In all cases of QOP, a Special Technical Committee (STC) shall be constituted with the following composition: -

- a) Two or more persons who have expert knowledge and /or long experience relevant to the procurement in question;
- b) One or more persons with extensive experience in handling public projects and/or public finance in the Central Public Sector;
- c) One or more persons with experience in financial management/financial administration/audit/accountancy;
- d) Not more than one member representing the procuring entity who may *inter alia* provide administrative support to the Committee.
- e) The persons referred to in sub paras (i) to (iii) shall be persons not working under the Competent Authority specified and shall not belong to any organization under the control of, or receiving funding from, the procuring entity to which such procuring entity belongs.

4) The names of members of the Special Technical Committee shall be decided either by the Competent Authority above or by any other authority to whom such power is delegated by the competent authority; however, powers shall not be delegated to the officer or authority competent to finalize the particular procurement. Sitting fee may be paid to the members of the STC. Incidental costs including travel be paid by the procuring entity.

The STC shall make specific recommendations on the following matters:-

- a) The weight to be given to non-financial parameters (not exceeding 30%).
  - b) The specific quality/technical parameters, their weights, their scoring methodology, the minimum qualification score etc. and other relevant criteria necessary for enduring fair and transparent quality/technical evaluation of the bids.
- 5) The recommendations of the STC shall be followed except where there are special grounds in public interest for deviating from them. However, every case of deviation from the recommendations of the STC shall require approval of the Competent Authority specified above who approved the declaration of the procurement as QOP.

6) In respect of QCBS for Non-Consultancy Services not exceeding Rs. 10 crore, a Technical Committee shall be constituted to carry out functions mentioned in above paras in lieu of the STC. The composition of the Technical Committee shall follow the provisions of the above paras.

7. **Grounds for Declaring a Procurement to be Quality Oriented Procurement:** A procurement should be declared as a QOP only if there is enough justification in terms of value addition or enhancement of delivery or paramount importance of quality. Reasons for not adopting two cover/prequalification-based/least cost system shall be documented.

8. **Tender Documents-Fixing/Selection of the Evaluation/Qualification Criteria**

- a) To ensure quality, some of the criteria used in marking may be made mandatory and if a bidder does not meet those, then bids shall not be evaluated further.
- b) Weightage may also be given for timely completion of past projects of similar nature by the bidder.
- c) In all cases of QOP, a pre-bid meeting shall be held in which the technical criteria including the marking scheme shall be discussed with the potential bidders. If any changes in the criteria are necessitated by such consultation such changes shall require the recommendation of the STC. In Non-Consultancy Services, pre-bid meetings may be held at the discretion of the public authority.

9) **Fixing of Scoring/Marketing Criteria:**

- a) The scoring should not be a variable that relies on the subjective opinion of the evaluating panel. The marking scheme should enable achievement of almost similar scores irrespective of the persons/experts being involved in the evaluation process. When the outcome is consistent for the available information, the QCBS parameters are more reliable. Unambiguous description and criteria help to avoid grey areas so as to ensure that there is only one possible score for the item. As far as possible, the criteria should be so specific and clear that bidders can self-mark their own bids.
- b) It is better to specify minimum marks for meeting the qualifying criteria specified.
- c) Examples of fixed quality parameters that ought not to be considered for relative scoring including organizations' ISO/standards accreditation, etc. These are required to establish the credentials of the service provider but cannot be used for relative comparison between the various bidders.

- d) Bidders should be asked to produce certificates for the past performance. A format may be given in the tender itself outlining the contract details, completion, sustainability of service, etc. and bidders may be asked to fill it and give evidence to that effect.
  - e) Bidders may be asked to submit a detailed presentation on their proposals in the form of soft copy along with the bid so as to facilitate better understanding of their proposal and to ensure commitment.
  - f) Besides the Bill of Quantity (BOQ) output criteria for payment, Key Performance Indicators (KPI) may be specified with minimum achievement levels for payment so as to ensure quality compliance.
- 10) **Evaluation of QCBS Bids:** For evaluation, a suitable committee shall be constituted. However, members of the STC shall not be involved.
- 11) **Joint Ventures in QCBS**
- a) In conventional tenders, some bidders adopt 'name borrowing' and Joint Ventures (JV) often do not function in letter and spirit. This results in lack of quality and accountability. JVs often end in one sided participation, diluting the essence of the tender evaluation during its performance. Since quality is given weightage in the evaluation itself, in QCBS procurement, it is even more important to guard against such tendencies. Therefore, Joint Ventures may be avoided in QCBS procurements as far as possible. Joint Ventures could, however, become necessary in high technology or innovative projects where a single entity may not be able to execute the work alone.
  - b) If JVs are allowed, adequate safeguards should be provided. Since weightage for quality/ experience influences the award itself, measure should be taken to ensure that all the JV partners are present and deliver services all through the contract period. An Implementation Board with participation of all JV partners may be provided for wherein the Project Manager from the procuring entity shall also be allowed audience when required. Meeting of JV partners with the project executing authority for quarterly progress review may be made as a criterion linked to achievement of key dates or even payment.

**Note:** In this Appendix instructions containing "shall" are mandatory; any deviation from these instructions shall require relaxation from the Board of Directors (for Central Public Sector Enterprises).



**Appendix-WM-S3/A5****PROJECT MANAGEMENT****1. Management of Public funded projects**

1.1. Poor management of public funded projects costs the nation in terms of the following, be it in the owner organization or in construction firms contracted to build a project:

- i) Additional expenditure burden due to increased costs, crowding out more deserving schemes and projects
- ii) Affect viability of projects due to increase in construction, causing losses to CPSE or agency concerned
- iii) Economic burden, due to delayed return in investments
- iv) Imposes unnecessary economic burden on affected stakeholders
- v) Creates a culture of acceptance of delay and avoidable costs – breeding more cases
- vi) Increased costs of procurement due to monetization of higher risks, perceived by contractors, of delays and scope creep associated with public funded projects.

1.2. Given the importance of project management in the final outcomes of projects, owner organizations which plan, fund and implement projects as well as construction firms contracted to build and/or manage projects need to adopt an institutionalize project management standards in their processes. A number of International Project Management Standards have been evolved by Governments as well as International bodies to assist organizations minimize cost and time overruns. While there are a variety of frameworks such as ISO-21500, PMBOK, PRINCE2, LOGFRAME, etc., most of them have a lot in common and have the following elements that need to be taken into account for effective management of projects. Some of these standards may be adopted by Government to improve processes and train project staff.

1.3. The quality of project works significantly depends on supervision and monitoring. For completion of the projects within the stipulated time and cost and with specified quality standards, periodical review should be done by various levels of the officers.

1.4. Information Technology (IT) enabled project management systems can help in improving efficiency, transparency and aid faster decision making in execution of projects. These systems may be used for maintenance of records for the progress of work (including hindrance register), variations, etc., wherein reasons for delays are also to be

captured on real time basis. Such systems may be used for capturing progress and quality of work, site records/ photographs/ videos etc. including geo tagging.

1.5. Wherever applicable, the role of the Project Management Consultant (PMC) should be clearly defined in the contracts. Deployment of the PMC does not absolve the project executing authority of the responsibility to supervise the quality and timelines of the project.

1.6. The credentials and deployment schedule of key and other technical personnel to be engaged by PMC on the work should be taken along with the bid. During execution, adherence to deployment of key and other technical personnel as per the schedule of deployment should be ensured.

1.7. Execution of the work shall primarily be the responsibility of the officials designed with such responsibility. However, for large contracts senior officers shall also review the progress and quality of the work at various stages of construction. To this effect, presentations on the project performance may be made periodically before the senior officers depending upon the value of the project and progress of the project vis-à-vis schedule. Project executing authorities should put in place detailed instructions in this regard.

*Note: In para 1.7 instructions containing "shall" are mandatory; any deviation from these instructions shall require relaxation from the Board of Directors (for Central Public Sector Enterprises).*

7.8. Project executing authorities should put in place a system for capturing the photographs and videos of important and critical activities of construction. This may be implemented in projects above a threshold value or, if possible, in all projects. Such photos/ videos may be uploaded in IT based project monitoring system to facilitate monitoring the progress and quality of work as well as assessment of delay in execution of work by stakeholders and senior management. Apart from this photographs and videos may serve as permanent record of the project for posterity in case needed for any eventuality including litigation or enquiry/ investigation.

7.9. It may also be useful to stipulate organizational standards and/or certifications for project managers/staff, in complex projects, as tender conditions to minimize risk of cost and time overruns:

## **2. Organisational Standards: ISOs 21500:2012**

Guidance on Project Management is an international standard developed by the International Organization for Standardization, or ISO starting in 2007 and released in

2012. It was intended to provide generic guidance, explain core principles and what constitutes good practice in project management. ISO 21500 was developed to offer guidance on the concepts and processes of project management with the goal of implementing processes and best practices to improve project management performance. While, the standard describes important concepts and processes of project management it does not provide detailed guidance and general management topics are limited to relevant aspects of project management. The standard as developed by the ISO was modelled on the PMIs PMBOK, although there are some key differences. The ISO project management standard is only 47 pages long and is limited to the introduction of the processes, their inputs, and their outputs. Another major change is the introduction of a new subject by ISO, namely, "stakeholder management". The ISO 21500 can be used as a basis for the development of national standards. It is not intended for certification or regulatory purposes.

### **3. Organisational Standards: IS 15188:2009**

The Indian Standard, on *Construction Project Management*, covers general guidelines for construction project management. The scope of this standard covers the stages subsequent to the stage of approval (when a decision to implement the project including its financing is taken) till commissioning and handing over of the project. The standard explains that the distinct features of a construction project include the temporary nature of the organizations involved, the evolutionary process of project deliverables during project development stages and the unique output of the built facility. This standard is intended to provide a general overview of construction project management and information regarding the applicable tools and techniques. It covers general provisions about project, stakeholder, construction project life cycle, construction project delivery models, construction methodologies/techniques and organizational structures. It covers the construction project management stages such as pre construction, construction and commissioning and handing over and gives guidelines under these stages and their sub-stages for management of construction projects. It gives brief guidelines on the following construction project management functions:

- i) Scope management,
- ii) Procurement management,
- iii) Time management,
- iv) Cost management,
- v) Quality management,
- vi) Risk management,
- vii) Communication management,
- viii) Human resources management,

- ix) Health, safety and environment management,
- x) Integration management, and
- xi) Sustainability

#### 4. Project Staff certification

Project Management Institute (PMI-USA) has developed certification standards for project managers and executives in a variety of areas such as general project management, risk management, scheduling, etc. The PMI Project Management Book of Knowledge (PMBOK) describes processes, inputs, outputs and associated tools and techniques. Both organizations use the concept of process as an integral part of project management. A large number of project firms have adopted this standard for improving competence of their manpower. ISO and PMI segregate project processes into five process groups with some minor variances in labelling. The differences between the two standards are minimal with respect to process groups and subjects/knowledge areas. The substantive difference in the two standards is with the detail and description of tools and techniques, because ISO 21500:2012 do not provide it. The 47 project management processes identified in the *PMBOK® Guide* are further grouped into ten separate Knowledge Areas. Knowledge Area represents a complete set of concepts, terms, and activities that make up a professional field, project management field, or area of specialization. These ten Knowledge Areas are used on most projects most of the time. Project teams should utilize these ten Knowledge Areas and other Knowledge Areas, as appropriate, for their specific project.

The Knowledge Areas are:

- i) Project Integration Management
- ii) Project Scope Management
- iii) Project Time Management
- iv) Project Cost Management
- v) Project Quality Management
- vi) Project Human Resource Management
- vii) Project Communications Management
- viii) Project Risk Management
- ix) Project Procurement Management
- x) Project Stakeholder Management

## 5. Capacity of Contractors

Contractors involved in construction or development of large projects for the Government needs to have tremendous capacity to deliver projects on time and cost. Firms are often unable to deliver contracts on time in cases where conditions precedent is met by the Government agency. There are several other reasons for project delays or escalation of costs:

- i) Poor Governance within the firm
- ii) Financial mismanagement
- iii) Incompetent project leadership
- iv) Lack of competence in the project team
- v) Inability to use technology for project management.
- vi) Poor process management and standardisation

Financial management by the contractor is an equally critical factor. Mobilising finances and resources for several large projects on which the firm is working on poses significant managerial challenge. Hence, ensuring that the eligibility criteria in fixing the minimum turnover, net worth, profits and bidding capacity in relation the project size (simultaneous exposure in other large projects) becomes a sine qua non for successful execution of projects. There is need to ensure that contracting firms adopt appropriate management standards. Adoption of ISO 21500:2012 could be specified in the RFQ conditions when inviting tenders. Third party assessment of the capabilities listed in this standard could be called for.

Contracting firms involved project construction need qualified, trained personnel and managers to plan and construct projects in time, cost and quality. It is important to ensure that contractor organisations have qualified/ certified project management professionals at the time of commencement of works on awarded contracts. Certifications such as PMI-PMP/PRINCE2 practitioner/CPMP etc., besides experience, may be specified in the contract conditions for the key staff of the field project organisation of the contractor.

## 6. Capacity of Government Organisations

- i) Selecting and appointing a full-time competent and experienced *Project Director/Mission Director* to head the project, especially large projects, on part of the public organisation is a crucial decision. Public agencies need to appoint a Project Director in time to prevent drift and cost/time overruns. This must be the first decision in commencement of projects.

- ii) *Recruiting and staffing the public sector organisation with experienced and reliable heads of finance, technical, legal, HR & PR wings will ensure effective decision making on project options, resolving project hurdles, supervision of the Project Consultants, completing procurement processes and awarding contracts on time, launching construction/implementation, monitoring construction, contract and claims management, monitoring quality, cost control, managing stakeholders, etc., are crucial activities that only the owner organisation would care about.*
- iii) *The quality, experience and competence of the Project Design and Management Consultant selected to prepare the Detailed Project Report (DPR) is a key decision. Experience and performance of the PMC in past projects are vital in determining optimal decision making in project design. Time spent in site and market investigation, exploring and evaluating technology options, finance and implementation options, evaluating procurement options, etc., would save a lot of costs and time later. Involvement of the project organisation in the DPR preparation is a key factor in project success. Dilution of eligibility criteria in selection of consultants could save money in the short run, but end up very expensive in the long run, especially in large projects.*
- iv) *Delay in land acquisition and securing all statutory clearances for the projects are critical conditions precedent for start of any project. As a principle, no project contracts may be awarded without possession of at least 90% of the entire land and the obtaining statutory clearances/NOCs for project construction and operation.*
- v) *Weekly Project Management meetings of owner organisation with the PMC/IE and contractors are key factors in ensuring effective communications, timely detection of critical issues and their resolution. This will also enable detection and removal of hurdles, prevention of disputes or at least satisfactory resolution of disputes within the ambit of the contract.*
- vi) *The Project Management team in the Government agency has to regularly and independently track the status of the projects; identify bottlenecks and risks that may impact project delivery. Developing a risk management strategy enables identification of risks associated with the projects enabling timely decision making by the relevant authorities. A risk management group may need to be setup to periodically assess risks and review mitigation measures undertaken.*
- vii) **Delay in taking timely decisions** : Delay in decision making by the officials of the project executing authority on various changes in the project scheme arising out of emerging situations during execution of the work is also one of the contributors to the delay in completion of projects. Sometimes timely decisions on these changes

are so crucial that the next step could only be taken after addressing the change. Delay in decisions by the project executing authority can also lead to litigation due to inadequate utilisation/idling of resources of the contractor. There is frequently a feeling among officials that indecision is safe while a decision may lead to adverse consequences for the decision maker. Therefore, there is a need for project executing authorities to put in place a system of resolution of the issues coupled with timelines for various levels to take decisions.

Project executing authorities may review the flow chart of decision making and remove redundancies for faster decision making. They may also fix timelines for taking decisions on variations, extra items and changes in scope and specifications, etc to avoid delay and litigation arising out of delayed decisions.

## **7. Structuring contracts for timely completion**

- i) *Optimal sharing of risks* has been a balanced way of ensuring that the time and costs of completion of a project do not go way off the mark. Structuring contract clauses keeping in mind the principle of '*responsibility for each risk shall be with the party best equipped to handle it*' has enabled contracts to lead to lower risk perception by bidders and as a result offer better prices. Contract clauses need to be further screened using this principle.
- ii) *Scope & Design creep* are widely stated causes for project delays. Changes in scope or design midway or at start cause time and cost variations. It may be therefore essential to consider options thoroughly and spend time on designs exhaustively at the time of DPR preparation and before procurement.
- iii) *Timely release of payments* to contractors raises the confidence level of contractors to mobilise more resources for early completion. DMRC's practice of releasing 80% of the Interim Payment Certificates (Bills) within 14 days of claim by contractor and the rest within 28 days of certification by the Engineer. Building these payment clauses into contracts raises contractor confidence, reduces project risk perception and enables better prices.
- iv) Embedding a *fair price variation clause* in contracts that mimics the market forces of escalation/reduction would lower risks to contractors and to the public organisation as well. PV clauses would vary from contract to contract, depending the structure of materials and costs.
- v) *Dispute Resolution Board (DRB)* may be created by express consent of the procuring entity and the contractor to monitor the project execution at various stages

of completion. This is a conciliation forum to resolve disputes amicably. The primary function of DRBs is to monitor the progress of the project with respect to contract requirements. In case of any non-compliance with respect to the contract, the Board immediately interferes and suggests ways to resolve the dispute. DRB mechanism may be embedded in contracts.

- vi) *Encourage institutional arbitration:* Settlement of disputes through Institutional arbitration is better than ad-hoc arbitration. Institutional arbitration provides an established format with a proven record ensures impartial decision-making and adherence to pre-established rules and procedures.

## 8. Aligning the Interest of The Stakeholders

- i) The incentive structure for all the key stakeholders of public procurement ought to be such that the system itself will ensure timely delivery of the projects / works in a qualitative manner within approved cost. A balanced framework and work culture, where risk and rewards are properly shared amongst stakeholders and timely completion of quality projects is the common goal, can be the bedrock of efficient project management. An incentive structure, which may include pecuniary as well as non-pecuniary aspects (Including public recognition), linked with measurable parameters of outcome / output, can help align the interests of stakeholders. An ethics-based regime, where integrity of all the stakeholders is nurtured, can help increase efficiency in all aspects of project management.
- ii) Public authorities may devise strategies to provide incentives to contractor's /concessionaires/ consultants/ architects/ other stakeholders by various means, including bonus, better rating and recognition for early/ timely / quality completion of the projects. Similar strategies may be devised for recognition of engineers/ officers/ other team members for early / timely and quality completion of the projects. The practice of mentioning the names of the contractor and the project in charge publicly at work sites may be implemented. Such recognition may be in a form which has long shelf life so as to associate the contractor and project In-charge with the life of the project.
- iii) "Coming together is a beginning; keeping together is progress; working together is success". It is an accepted fact that the success of any project is dependent on a well-coordinated team working towards a common goal. For successful execution of any project within specified time, cost and quality, the interest of all the stakeholders need to be aligned. Coordinated efforts of all stakeholders such as contractors, consultants, public authority and project executing authority and public representatives will bring about the best possible outcome.



**Appendix-WM-S3/A6****CONTRACT MANAGEMENT- GOVERNING ISSUES****1. Contractor Relationship Management**

Contractor Relationship Management comprises the following functions:

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

**2. Code of Integrity for Public Procurement (CIPP)****2.1 Introduction**

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

**2.2 Code of Integrity for Public Procurement**

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

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

- ii) **“Fraudulent practice”**: any omission or misrepresentation that may mislead or attempt to mislead so that financial or other benefits may be obtained or an obligation avoided. This includes making false declaration or providing false information for participation in a tender process or to secure a contract or in execution of the contract;
- iii) **“Anti-competitive practice”**: any collusion, bid rigging or anti-competitive arrangement, or any other practice coming under the purview of The Competition Act, 2002, between two or more bidders, with or without the knowledge of the procuring entity, that may impair the transparency, fairness and the progress of the procurement process or to establish bid prices at artificial, non-competitive levels;
- iv) **“Coercive practice”**: harming or threatening to harm, persons or their property to influence their participation in the procurement process or affect the execution of a contract;
- v) **“Conflict of interest”**: participation by a bidding firm or any of its affiliates that are either involved in the consultancy contract to which this procurement is linked; or if they are part of more than one bid in the procurement; or if the bidding firm or their personnel have relationships or financial or business transactions with any official of procuring entity who are directly or indirectly related to tender or execution process of contract; or improper use of information obtained by the (prospective) bidder from the procuring entity with an intent to gain unfair advantage in the procurement process or for personal gain; and
- vi) **“Obstructive practice”**: materially impede the procuring entity's investigation into allegations of one or more of the above mentioned prohibited practices either by deliberately destroying, falsifying, altering; or by concealing of evidence material to the investigation; or by making false statements to investigators and/ or by threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or by impeding the procuring entity's rights of audit or access to information;

### 2.3 Obligations for Proactive Disclosures

- i) Procuring authorities as well as bidders, contractors and consultants, are obliged under Code of Integrity for Public Procurement to suo-moto proactively declares any conflicts of interest (coming under the definition mentioned above

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

## 2.4 Punitive Provisions

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

- i) If his bids are under consideration in any procurement
  - a) Forfeiture or encashment of bid security;
  - b) calling off of any pre-contract negotiations; and
  - c) rejection and exclusion of the bidder from the procurement process
- ii) If a contract has already been awarded
  - a) Cancellation of the relevant contract and recovery of compensation for loss incurred by the procuring entity;
  - b) Forfeiture or encashment of any other security or bond relating to the procurement;
  - c) Recovery of payments including advance payments, if any, made by the procuring entity along with interest thereon at the prevailing rate;
- iii) Provisions in addition to above:

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

## 2.5 Conduct of Public Servants in Public Procurement - Risks and Mitigations

### Risk-1

**Hospitality:** Hospitality (including facilitation of travel, lodging, boarding and entertainment during official or unofficial programs) from suppliers may tend to cross the limits of ethical/ occasional/ routine/ modest/ normal business practice. Officials sent to firm's premises for inspections/ meetings may mistakenly presume entitlement to hospitality from the firm, even if other arrangements are available at the location.

### Mitigation

Hospitality must never be solicited, directly or indirectly. The frequency, scale and number of officials availing hospitality should not be allowed to identify the recipient in a public way with any particular contractor, supplier or service provider or raise doubts about its neutrality. It should not involve significant travel, overnight accommodation or trips abroad. Particular care should be taken in relation to offers of hospitality from firms (say participating in current or imminent tenders or its execution) who stand to derive a personal or commercial benefit from their relationship with the recipient.

### Risk-2

In the contracts signed with suppliers by some of the Procuring Entities have clauses of pre-inspection at the firm's premises, where there is a provision that the suppliers or the vendors will pay for the travel, stay, hospitality and other expenses of the Inspecting officials

### Mitigation

This is not in keeping with need to safeguard the independence of the inspecting teams. Such provisions in contracts need to be discouraged, so that Inspections are not compromised. Necessary steps maybe taken to strictly avoid such provisions in the contracts with suppliers/ vendors.

Risk-3

**Gifts:** Gifts from suppliers may tend to cross the limits of ethical/ occasional/ routine/ modest/ normal business practice, especially on festive season. Since the value of the gift may not be known to the recipient, it may cause inadvertent violation of Conduct rules.

Mitigation

Gifts must never be solicited, directly or indirectly. An official should not accept and retain gifts more valuable than the limit as laid down in the conduct rules. Cash, gift cheques or any vouchers that may be exchanged for cash may not be accepted regardless of the amount. Particular care should be taken in relation to gifts from firms (say participating in current or imminent tenders or its execution) who stand to derive a personal or commercial benefit from their relationship with the recipient. Any gift received inadvertently in violation of above, must immediately either be returned or else reported and deposited in Toshakhana/ Treasury.

Risk-4

**Private Purchases from Official Suppliers:** Procuring Officials may mistakenly consider it innocuous to seek discounts in private procurements from suppliers having official dealings or its associates (especially from Rate Contract holders).

Mitigation

Officials involved in Public Procurement must never indulge in any non-official pecuniary transaction with the contractors, suppliers or service providers with whom they have official dealings; including seeking or accepting special facilities or discounts on private purchases (particularly same items which are being ordered officially on rate contracts).

Risk-5

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

Mitigation

Officials involved in Public Procurement must never indulge in any non-official pecuniary transaction with the contractors, suppliers or service providers with whom they have

official dealings; including soliciting of sponsorship for unofficial and private cultural, social, sporting, religious, charitable or similar organisations or events.

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## Appendix-WM-S3/A7

# INTEGRITY PACT

### 1. Integrity Pact (IP)

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

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

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

- i) Promise on the part of the Procuring Entity to treat all bidders with equity and reason and not to seek or accept any benefit, which is not legally available;
- ii) Promise on the part of bidders not to offer any benefit to the employees of the Procuring Entity not available legally and also not to commit any offence under Prevention of Corruption Act, 1988 or Indian Penal Code 1860;
- iii) Promise on the part of Bidders not to enter into any undisclosed agreement or understanding with other bidders with respect to prices, specifications, certifications, subsidiary contracts, etc.
- iv) Undertaking (as part of Fall Clause) by the Bidders that they have not and will not sell the same material/ equipment at prices lower than the bid price.

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



- xi) **Role/ Functions of IEMs:** The Monitors would not be subject to instructions by the representatives of the parties and should perform their functions neutrally and independently. They would review independently and objectively, whether and to what extent parties have complied with their obligations under the Integrity Pact. For this purpose, they would have access to all contract documents/ books of accounts of the bidders in case of any allegation of violation of any provisions of the Integrity Pact or payment of commission, whenever required. The IEMs will have the option to participate in such meetings among the parties related to the project provided such meetings could have an impact on the contractual relations between the parties. Ideally all IEMs of an organization should meet once every two months to take stock of ongoing tendering process. The IEMs would examine all complaints received by them and give their recommendations/ views to the designated officer of the Procuring Entity, at the earliest. The Monitors would also inform the Procuring Entity, if they notice or have reason to believe, a violation of the Integrity Pact. They may also send their report directly to the Central Vigilance Commission, in case of suspicion of serious irregularities requiring legal/ administrative action. At least one IEM would be invariably cited in the NIT. However, for ensuring the desired transparency and objectivity in dealing with the complaints arising out of any tendering process, the matter should be examined by the full panel of IEMs, who would look into the records, conduct an investigation, and submit their joint recommendations. The recommendations of IEMs would be in the nature of advice and would not be legally binding. IEMs may not be equated with consultants in the Procuring Entity. Their role is independent in nature and the advice once tendered would not be subject to review. The role of the Chief Vigilance Officer (CVO) of Procuring Entity shall remain unaffected by the presence of IEMs. A matter being examined by the IEMs can be separately investigated by the CVO, if a complaint is received by him or directed to him by the CVC. As per para 5.13 of CVC OM No. 05/01/22 issued vide letter No. 015/VGL/091 dated 25.01.2022, in the event of any dispute between the management and the contractor relating to those contracts where Integrity Pact is applicable, in case, both the parties are agreeable, they may try to settle dispute through mediation before the panel of IEMs in a time bound manner. If required, the organizations may adopt any mediation rules for this purpose. In case, the dispute remains unresolved even after mediation by the panel of IEMs, the organization may take further action as per the terms & conditions of the contract.

## Appendix-WM-S3/A8

# SALIENT FEATURES OF THE INDIAN CONTRACT ACT

## 1.1 Elementary Legal Practices

**1.1.1 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.

**1.1.2 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.

**1.1.3 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.

**1.1.4 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 unenforceable

- i) Competency of the parties
- ii) Freedom of consent of both parties
- iii) Lawfulness of consideration
- iv) Lawfulness of object

## 1.2 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.

**1.2.1 Categories of persons and bodies who are parties to the contract may be broadly subdivided under the following heads: -**

- i) Individuals;

- ii) Partnerships;
- iii) Limited Companies;
- iv) Corporations other than limited companies

**1.2.2 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.

**1.2.3 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.

**1.2.4 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.

**1.2.5 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.

### **1.3 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.

### **1.4 Free consent of both Parties**

**1.4.1** The consent is said to be free when it is not caused by coercion, undue influence, fraud, misrepresentation 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, misrepresentation 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 their presentations made had been true.

**1.4.2** 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.

**1.4.3** Distinction has also to be drawn between a mistake of 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.

## **1.5 Consideration**

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

## **1.6 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.

## **1.7. 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. Procuring Entity is not bound to consider a tender, which is received beyond that time.

## **1.8 Communication of Acceptance**

A date is invariably fixed in tender forms up to 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.

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

### **1.9 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.

### **1.10 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 Procuring Entity to forfeit the earnest money.

### **1.11 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.

### **1.12 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.

### 1.13 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.

### 1.14 Stamping of Contracts

Under entry 5 of Schedule I of the Indian Stamp Act, an agreement or memorandum of agreement for correlating 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).

### **1.15 Authority for Execution of Contracts**

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

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

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

### **1.16 Contract Effective Date**

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

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

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**Appendix-WM-S3/A9****SALIENT FEATURES OF THE INDIAN ARBITRATION & CONCILIATION ACT****1.0 Salient Features of the Indian Arbitration & Conciliation Act 1996 and Arbitration and Conciliation (Amendment) Act, 2015**

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.

**1.1 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".

**1.2 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.

**1.3 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.

#### **1.4 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.

#### **1.5 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.

#### **1.6 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:

Determine admissibility, relevance, materiality and weight of any evidence;

- i) Decide on their own jurisdiction;
- ii) Decide on interim measures;
- iii) Termination of proceedings; and
- iv) Seek court assistance in taking evidence.

## **1.7 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.

## **1.8 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.

## **1.9 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.

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

### 1.10.1 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 (thirty) lakh for various slabs of disputed value from Rs five lakh to above Rs 20 (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.

**d) 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.

**e) Time constraints:** An arbitrator shall disclose all circumstances which may affect his ability to deliver an award within 12 (twelve) months.

### 1.10.2 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 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.

### **1.10.3 Procedural and Jurisprudence simplified**

**i) 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.

**ii) 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.

**iii) 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.

**iv) 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.

#### **1.10.4 Seeking interim relief from courts [section 9]**

- i) Seeking the assistance of the court in taking evidence [section 27]
  - ii) Appealing against the order of a court where the court refuses to refer the parties to arbitration. [section 37(1) (a)]
  - iii) Restricting the right to second appeal and preserving the right of parties to approach the Supreme Court in appeal. [section 37 (3)]
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## Appendix-WM-S3/A10

**SALIENT FEATURES OF THE COMPETITION ACT****1.0 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:
  - i) On its own motion on the basis of information and knowledge in its possession, or
  - ii) 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
  - iii) On receipt of a reference from the Central Government or a State Government or a statutory authority
- viii) The Act provides for Director General office as a separate investigative wing to assist the CCI. The DG looks into the complaints received from the CCI and submits all findings to it. DG is solely responsible for making enquiries, for examining documents and for making investigations into complaints. The DG is vested under the Act with powers of summoning of witnesses, examining them on oath, requiring the discovery and production of documents, receiving evidence on affidavits, issuing commissions for the examination of witnesses etc.
- ix) The Act in Section 49 (3) lays down the **advocacy function of CCI** and lays down that the CCI shall take suitable measures for the promotion of competition advocacy, creating awareness and imparting training about competition issues. Section 32 of the Act grants the CCI **extra-territorial jurisdiction** over anticompetitive conduct which has an appreciable adverse effect on competition within India. Any anticompetitive activity taking place outside India but having an appreciable adverse effect on competition within India shall be subject to the application of the Competition Act.
- x) Under s. 21 of the Act, any statutory authority can suo motto or on request of a party in the course of a proceeding before it **can make a reference** to CCI. CCI shall give its opinion within sixty days of receipt of such reference by such statutory authority. Under the provisions of the Act, the authority which made reference shall consider the opinion of the Commission and thereafter, give its findings recording reasons on the issues referred to in the said opinion by CCI.

Section 21A in the same language provides for such reference by CCI to any statutory authority.

**xi) The key provisions of the Competition Act include:**

- i) Section 3 of the Competition Act, 2002 dealing with anti-competitive agreements;
- ii) Section 4 of the Competition Act, 2002 which discusses abuse of dominance;
- iii) Section 5 and 6 of the Competition Act, 2002 dealing with the regulation of combinations.
- iv) 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.
- v) 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.
- vi) 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:
- vii) Agreement entered into between enterprises or associations of enterprises or persons or associations of persons or between any person and enterprise.
- viii) Practice carried on by any association of enterprises or association of persons.
- ix) Decision taken by any association of enterprises or association of persons.

- x) Section 3(3) of the Competition Act enlists four broad classifications of horizontal agreements which are presumed to cause an appreciable adverse effect on competition (AAEC) in India.
  - 1. Agreements regarding Prices
  - 2. Agreements regarding Quantity/ Quality
  - 3. Market Allocation
  - 4. Bid Rigging

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

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

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

**1.1 Collusive bidding:** Agreement between firms to divide the market, set prices or limit production – involves, kickbacks and misrepresentation of independence

- i) Bid Rotation
- ii) Bid Suppression
- iii) Complementary Bidding
- iv) Subcontracting arrangements
- v) Market Allocation

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

- i) Declare Anticompetitive Agreements Void
- ii) Impose Heavy Penalties
  - 1. Penalty can be up to 10 (ten) percent of the average turnover for the last three preceding financial years upon each of such persons or enterprises which are parties to bid-rigging

2. Cartel, a penalty of up to three times of its profit for each year of the continuance of such agreement or 10 (ten) percent of its turnover for each year of the continuance of such agreement, whichever is higher
3. Order the parties to Cease & Desist
4. Modification of agreements
5. Remedy Damage to reputation
6. Fix Individual Liability
7. Grant Interim orders
8. Any other order as CCI deems fit

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

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

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

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

**1.5 The fee -**

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

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## Appendix-WM-S3/A11

## SALIENT FEATURES OF THE WHISTLE BLOWERS' PROTECTION ACT

### 1.0 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:
  - i) The sovereignty, strategic, scientific or economic interests of India, or the incitement of an offence
  - ii) Records of deliberations of the Council of Ministers
  - iii) That which is forbidden to be published by a court or if it may result in contempt of court;
  - iv) A breach of privilege of legislatures;
  - v) Commercial confidence, trade secrets, intellectual property (if it harms a third party);
  - vi) That relayed in a fiduciary capacity;
  - vii) That received from a foreign government;
  - viii) That which could endanger a person's safety etc.;
  - ix) That which would impede an investigation etc.;
  - x) Personal matters or invasion of privacy.

- v) However, if information related to (b), (e), (f), and (j) is available under the Right to Information Act, 2005, then it can be disclosed under the Act.
- vi) Any public interest disclosure received by a Competent Authority will be referred to a government authorized authority if it falls under any of the above prohibited categories. This authority will take a decision on the matter, which will be binding.
- vii) 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.
- viii) 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.
- ix) Any person who negligently or with mala fide reveals the identity of the complainant shall be punished with imprisonment up to three years and fine not exceeding fifty thousand rupees.
- x) Similarly, any disclosure made with malafide and knowingly that it was false or misleading shall be punished with imprisonment up to two years and fine not exceeding thirty thousand rupees.
- xi) 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 willful 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.
- xii) 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.

- xiii) 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.
- xiv) 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.
- xv) 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.
- xvi) 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.
- xvii) 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.
- xviii) 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.
- xix) 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-WM-S3/A12

### LEGAL ASPECTS OF PUBLIC PROCUREMENT

#### 1.0 Relevant Provisions of the Constitution of India

##### 1.1 Equality for Bidders

Article 19 (1) (g) of the Constitution of India (under Part III – ‘Fundamental Rights’) grants all its citizens the right “to practice any profession or to carry out any occupation, trade or business”. This has been interpreted by courts in a way so as to ensure that every citizen of India has a right to get equal opportunity to bid for and be considered for a public procurement contract. However, this provision does permit stipulation of reasonable eligibility or pre-qualification criteria for the selection of successful bidders in a public procurement contract. Thus a public procurement 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 who are authorised to do so are listed in the DFPR. Provisions of DFPR are expanded upon by various departments by issuing SOPs. Rule 224, Chapter 8: Contract Management of the GFR 2017 covers this aspect also.

But in Kamarajar Port, all contracts are to be entered into by the authorized persons For and on behalf of the Board of Directors of Kamarajar Port Limited.

##### 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 given in various Appendices in this Section.

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